Department of Health and Human Services
Division of Licensing and Regulatory Services
State House, Augusta, Maine
Preliminary Analysis

Date: **September 16, 2010**

Project: **Pen Bay Healthcare to become a member of MaineHealth**

Proposal by: **MaineHealth**

Prepared by: **Phyllis Powell, Assistant Director, Planning, Development and Quality**
Steven R. Keaten, Healthcare Financial Analyst
Larry Carbonneau, Healthcare Financial Analyst

CON
Directly Affected Party: None

COPA
Persons Requesting Notification of an application from the department:
Anthem Health

Interveners:
Office of the Attorney General - 22 M.R.S.A. §1855 (6)
Governor's Office of Health Policy and Finance – 22 M.R.S.A. §1855 (6)

CON Recommendation: Approval with conditions
COPA Recommendation: Approval with conditions

	Proposed Per Applicant	**Approved CON**
Estimated Capital Expenditure	$ 94,226,246	$ 94,226,246
Maximum Contingency	$ 0	$ 0
Total Capital Expenditure with Contingency	$ 94,226,246	$ 94,226,246
Third Year Incremental Operating Cost Savings	$ (286,000)	$ (286,000)
Capital Investment Fund (CIF) Impact:	$ 0	$ 0
Bureau of Insurance Regional Impact Estimate Savings		(0.10 %)

I. Abstract

A. From Applicant

i. CON From Applicant

"The Board of Trustees and Incorporators of Pen Bay Healthcare propose to amend the Articles of Incorporation and Bylaws so that MaineHealth shall become its sole member thereby making Pen Bay Healthcare a subsidiary corporation of MaineHealth (Membership). Pen Bay will maintain its existing corporate form. MaineHealth will be substituted for Pen Bay's existing corporators. The scheduled effective date is subject to gaining all required approvals, consents and authorizations."

"Pen Bay Healthcare is a non-profit § 501(c)(3) health care corporation, located in Rockport, Maine, and provides a critically necessary continuum of high quality inpatient and outpatient health care services for the residents of Knox, Waldo and Lincoln counties."

"The "Definitive Agreement" between MaineHealth and Pen Bay Healthcare, signed by the Chief Executive Officers of each of the parties reflects all consideration passing between MaineHealth and Pen Bay."

"Please refer to Exhibit I-A: Definitive Agreement."

"The Pen Bay Healthcare Board of Directors will continue to be responsible for providing governance oversight of Pen Bay and its operations and Pen Bay will remain the sole member of its non profit subsidiaries and sole share holder of its for profit subsidiary."

"The sole Member of the corporation shall be MaineHealth, acting through its Board of Trustees. The Member shall have the power to elect members of the Pen Bay Healthcare Board of Trustees; to amend Pen Bay Articles of Incorporation; and to exercise such other powers as may be conferred on the Member by law, the Articles of Incorporation, or the bylaws of the corporation. The exercise of the following powers by the Board of Trustees of Pen Bay Healthcare shall be subject to the approval of the sole Member:

1. adoption of the annual capital and operating budgets, including modifications thereof, by Pen Bay and its subsidiaries;
2. adoption of any strategic plan, including modifications thereof by, Pen Bay and its subsidiaries;
3. incurring any indebtedness in excess of $500,000 other than included within any approved operating or capital budget;
4. the sale, lease, disposition, mortgage, or encumbrance of any assets dedicated to the operations by Pen Bay or its subsidiaries involving assets of $500,000 or more in value;
5. entry by Pen Bay or its subsidiaries into any merger, consolidation, business combination or joint venture, or the creation or acquisition of any subsidiary organization except for

any of the foregoing included in a long range plan approved by Pen Bay and MaineHealth;

6. the filing of a voluntary petition or application under federal or state law by Pen Bay or its subsidiaries seeking relief from debtors, reorganization, liquidation or dissolution;
7. authorization for the capital investment by Pen Bay and its subsidiaries in any individual, entity or project in the form of cash or either tangible or intangible property in excess of $500,000;
8. authorization for developing, implementing, or terminating programs and services by Pen Bay and its subsidiaries other than those included within any strategic or financial plan approved by Pen Bay and MaineHealth; and
9. amendment of the Articles of Incorporation of Pen Bay or its subsidiaries"

"The exercise of the following powers by the Board of Trustees of Pen Bay, but not its subsidiaries, shall be subject to the approval of the sole Member.

1. the selection, annual election, evaluation, and termination of the CEO;
2. adoption of Pen Bay's bylaws and any amendments and modifications to Pen Bay's bylaws."

"All property of Pen Bay pre-closing will remain the property of Pen Bay post-closing. Pen Bay will retain its tax-exempt charitable status. Endowment funds of Pen Bay, including funds held in trust or otherwise for the benefit of Pen Bay or its subsidiaries, will remain assets of Pen Bay subject to budgeting control of the Pen Bay Board of Trustees."

"No change to the existing level and array of healthcare services provided by Pen Bay can occur unless it is initiated by Pen Bay and approved by MaineHealth."

"The Definitive Agreement also includes provisions for a change in the composition of the MaineHealth Board of Trustees. After consultation with the Pen Bay Board, the MaineHealth Board's Governance Committee shall nominate for election one trustee for a three year term to the MaineHealth Board who shall be a current or past Pen Bay Board member. Nominations for subsequent terms for the Board seat shall be handled in the same manner. MaineHealth will also continue to add Pen Bay service area residents to the MaineHealth Board of Corporators."

"As a member of MaineHealth, Pen Bay will continue and increase its participation in the development and implementation of MaineHealth-initiated and sponsored health status improvement, clinical integration, and quality improvement initiatives. Pen Bay 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. Pen Bay has the option to participate in MaineHealth's health benefit and workers' compensation plans, and its professional liability insurance trust."

"MaineHealth has also submitted a letter of intent to the Department in anticipation of the filing an application for a Certificate of Public Advantage (COPA) for the proposed acquisition of control by MaineHealth of Pen Bay as a subsidiary corporation. The issuance of a Certificate of

Public Advantage is governed by the Hospital and Health Care Provider Cooperation Act, 22 M.R.S.A. Chapter 405-A, which prescribes a review process for evaluation of the transaction under detailed statutory standards. Under an agreement of the involved parties, this is a combined CON/COPA application."

"There is no capital expenditure requiring a Certificate of Need as described in 22 M.R.S.A. § 329 (3) involved in making Pen Bay a subsidiary corporation of MaineHealth (Membership). There is no net increase in third year operating costs associated with this project. The project does not involve a debit against the amount credited to the Capital Investment Fund for the current annual effective period."

"MaineHealth is Fit, Willing and Able – Over the past thirteen years, MaineHealth has brought seven hospitals, two home health agencies and one hospital administrative support services organization in as members of MaineHealth. The DHHS CON unit determined that MaineHealth was fit, willing and able to support those changes in ownership for the seven hospitals (Brighton Medical Center, St. Andrews Hospital, Miles Memorial Hospital, Stephens Memorial Hospital, Jackson Brook Institute/Spring Harbor Hospital, Waldo County General Hospital and Southern Maine Medical Center) and one of the home health agencies (Community Health Services of Cumberland County)."

"MaineHealth is even better positioned today to bring in Pen Bay as a member than it was for these organizations. MaineHealth has the organizational structures and resources in place to ensure the quality of services at Pen Bay continues to improve and that Pen Bay maintains all appropriate licenses, certifications and accreditations. The Board of Pen Bay Healthcare and all key personnel at Pen Bay and MaineHealth will remain in place."

"Is Economically Feasible – Pen Bay becoming a member of MaineHealth involves no capital expenditure by MaineHealth or Pen Bay requiring a certificate of need. Neither Pen Bay, MaineHealth, the State of Maine or the health care delivery system in Maine will incur any net increase in operating expenses as a result of this change in ownership. MaineHealth, as evidenced by its Standard and Poor's AA- credit rating and its financial statements, has the financial capability to support this transaction"

"Meets a Public Need – Based on an extensive review and analysis, Pen Bay's Community Incorporators ("owners"), Board of Trustees, Executive Management and Medical Staff determined that Pen Bay could best meet its mission of providing high quality health care and improving the health of the communities it serves if it became a part of a larger health system. It selected MaineHealth as the organization that best shares Pen Bay's nonprofit values and its vision that health care is best delivered as locally as possible. Pen Bay will secure significant clinical and economic benefits from MaineHealth membership, strengthening its ability to serve its communities. Membership has the potential to positively impact the health status of the community and the quality of care."

"Is Consistent with Orderly and Economic Development – Creating the opportunity for Pen Bay to join MaineHealth, (enabling it to take maximum advantage of the benefits described in

this application and to expand opportunities for collaborative efforts) is consistent with the orderly and economic development of the healthcare delivery system."

"Is Consistent With the State Health Plan – MaineHealth has developed and implemented the most comprehensive array of initiatives focused on population based health and prevention of any organization in Maine and has committed to continue to re-direct its resources to these initiatives. As an affiliate, Pen Bay has taken advantage of multiple opportunities for collaboration with MaineHealth and its members to lower costs and increase efficiency and quality. Membership will ensure Pen Bay's continuing access to these initiatives and further expands opportunities for collaboration in clinical services planning and delivery. The change in ownership should have no impact on regional and statewide health insurance premiums. MaineHealth's commitment to electronic information systems is extensive, including an ambulatory electronic record, a PACs system for imaging, an electronic ICU monitoring system and its support of Health InfoNet."

"Outcomes and Community Impact – The change in ownership will not negatively affect the quality of care at existing providers, and will not negatively impact Pen Bay's existing services. Pen Bay's finances should improve through cost reductions resulting from its access to MaineHealth's administrative integration initiatives. MaineHealth's support and expertise will create additional opportunities for Pen Bay to improve the quality of care it provides and improve the health of its communities."

"Service Utilization – Pen Bay joining MaineHealth will have no adverse impact on the utilization of services by residents of the service area."

"Capital Investment Fund – Since there is no capital expenditure and no net increase in operating expenses, the change of ownership does not involve a debit against the Capital Investment Fund."

B. CONU Discussion

i. CON Analysis

MaineHealth is a non-profit healthcare corporation that is the parent of several hospitals, nursing facilities, physician practices and other health care related entities located throughout parts of southern, western and mid-coastal Maine. MaineHealth also has numerous strategic affiliation agreements with other hospitals within the same area. By virtue of its size, MaineHealth is the largest such healthcare organization in Maine. MaineHealth's administrative offices are located in Portland, Maine.

Pen Bay Healthcare (PBHC) is a non-profit healthcare corporation that is the parent of a 109-bed acute care community hospital Pen Bay Medical Center (PBMC) and several other healthcare related entities that serve towns in their primary and secondary service areas of Knox, Waldo and Lincoln counties. PBHC administrative offices and the hospital are located in Rockport, Maine. PBMC is approximately 85 miles from Maine Medical Center in Portland.

MaineHealth and PBHC have entered into a “Definitive Agreement” that would make PBHC a subsidiary corporation of MaineHealth (Membership). In addition to the CON application, MaineHealth and PBHC have also simultaneously filed for a Certificate of Public Advantage (COPA).

This project involves additional capital expenditures and/or commitments by MaineHealth of $3 million to support electronic medical record deployment for Pen Bay and their employed physicians and $25,000-$50,000 towards telecommunication/teleconferencing equipment to facilitate communications between the two organizations. These costs when they materialize are not CON reviewable costs. PBHC will pay a fee to become a member of MaineHealth. That fee is currently calculated on the basis of 0.045% of a members net operating expenditures.

II. Fit, Willing and Able

A. From Applicant

i. CON From Applicant

"Summary – MaineHealth has demonstrated it is fit, willing and able to support Pen Bay as a member organization. During the past thirteen years, MaineHealth has brought seven hospitals, two home health agencies and one hospital administrative support services organization in as members of MaineHealth. Bringing all seven of the hospitals (Brighton Medical Center, St. Andrews Hospital, Miles Memorial Hospital, Stephens Memorial Hospital, Jackson Brook Institute/Spring Harbor Hospital, Waldo County General Hospital and Southern Maine Medical Center) and one of the home health agencies (Community Health Services of Cumberland County) required determinations by the Maine Department of Health and Human Services Certificate of Need Unit that MaineHealth was fit, willing and able to support these organizations. Under the leadership of MaineHealth and these organizations' boards, managements and clinical leadership, all have made significant contributions to the communities they serve and have been recognized frequently for those contributions. As an example of the value provided to the communities served, MaineHealth rescued Jackson Brook Institute from bankruptcy and transformed it into the leading provider of mental health services in Maine, Spring Harbor Hospital. Spring Harbor Hospital now serves as the gatekeeper/ coordinator for southern, central and western Maine for the triaging of mental health admissions to community hospitals, Riverview Hospital, and Spring Harbor Hospital. MaineHealth monitors the quality of services provided by its members and has set a vision of quality to be recognized nationally as a leader in health care quality and safe patient and family centered care. Its members have been recognized nationally by such organizations as U.S. News and World Report, Centers for Medicare and Medicaid, the LeapFrog Group, Solucient, Avatar, The American Nurses Credentialing Committee for Magnet Hospitals, HealthGrades, Governor's Award for Environmental Excellence, The Maine Health Management Coalition, the American Cancer Society and the American College of Surgeons Trauma Center Verification Program."

Profile of MaineHealth

"MaineHealth
465 Congress Street
Suite 600
Portland, Maine 04101"

"http://www.mainehealth.com"

"Maine Health's vision is working together so our communities are the healthiest in America."

"MaineHealth is a non-profit § 501(c)(3) health care corporation, with the purpose of developing a broad range of integrated health care services in Maine through member organizations, including hospitals and other health care provider organizations."

Service Area
"MaineHealth's service area is defined in the following manner:

Primary:	Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo and York counties.
Secondary:	Aroostook, Hancock, Penobscot, Piscataquis and Washington counties."

Members, Affiliated Entities & Related Parties

"MaineHealth consists of the following members":

"Maine Medical Center – hospital; Maine Medical Partners – diagnostic, physician and practice management services; MMC Realty Corp - real estate. Maine Medical Center is involved in the following joint ventures:

Maine Heart Center – joint venture with cardiologists, cardiac surgeons and anesthesiologists for managed care contracting;

MMC Physician Hospital Organization (PHO) - a joint venture with the Portland Community Physicians Organization;

New England Rehabilitation Hospital of Portland - joint venture rehabilitation hospital with HealthSouth;

MMC/Maine General Medical Center Joint Venture Cardiac Catheterization Lab;

Cancer Care Center of York County –MMC/Southern Maine Medical Center/Goodall Hospital joint venture radiation therapy center."

"Maine Mental Health Partners - Spring Harbor Hospital psychiatric hospital; outpatient mental health services; contract management of inpatient and outpatient mental health services."

"NorDx – general and reference laboratory services."

"Home Health Visiting Nurses of Southern Maine – home health care for Cumberland and York Counties."

"Concentra – joint venture limited liability corporation providing occupational health services."

"Maine Molecular Imaging – joint venture providing positron emission tomography (PET) scans."

"Lincoln County Health Care – oversees and coordinates the integration of health care services of St. Andrews Hospital and Healthcare Center and Miles Health Care."

"St. Andrews Hospital and Healthcare Center – hospital, nursing home, home health agency, physician practices and assisted living."

"Miles Health Care – hospital, nursing home, home health agency, physician practices and assisted living."

"Western Maine Health Care – hospital (Stephens Memorial Hospital), nursing home and physician practices."

"Maine PHO – joint Physician-Hospital Organization (PHO) of the PHO's of Maine General Medical Center, Southern Maine Medical Center, Maine Medical Center, and St. Mary's Regional Medical Center."

"Maine Behavioral Health Partnership – joint venture of MaineHealth, Maine Medical Center, Sweetser, Spurwink, Southern Maine Medical Center, Spring Harbor Hospital and St. Mary's Regional Medical Center providing behavioral health case management services for self-insured employers."

"Synernet – not for profit organization providing group purchasing and consulting services for its member organizations."

"Waldo County Healthcare Inc. – hospital (Waldo County General Hospital), home health, hospice, physician practices."

"Southern Maine Medical Center – hospital, home health, physicians practices."

"MaineHealth also has strategic affiliation agreements with MaineGeneral Health, Mid Coast Health Services, St. Mary's Regional Medical Center and Pen Bay Healthcare."

Fit, Willing and Able

"Throughout its history, MaineHealth has demonstrated on numerous occasions its ability to effectively and efficiently integrate a variety of health care organizations into its governance and management structures while maintaining a strong and vibrant role for the local community in governance. Examples include:

- Community Health Services, the largest home health agency serving Cumberland County joins MaineHealth (1996);
- Brighton Medical Center merged into MMC and its acute care services consolidated at MMC (1996);

- Maine Medical Center and HealthSouth create a 50/50 100 bed joint venture acute rehabilitation hospital at the former Brighton Medical Center, combining MMC's acute rehabilitation program with New England Rehabilitation Hospital's 80 beds (1996);
- St. Andrews Hospital and Health Care Center and Miles Health Care join MaineHealth (1996 – 1997); MaineHealth combined St. Andrews and Miles under a single governance structure to ensure the delivery of services in Lincoln County is fully integrated and coordinated (2008)
- Western Maine Health Care (Stephens Memorial Hospital) joins MaineHealth (1999)
- Through a series of mergers, the financially distressed Jackson Brook Institute is converted to the not-for-profit MaineHealth member Spring Harbor Hospital (1999-2001)
- Synernet, a shared services organization of 7 hospitals, joins MaineHealth (2001)
- Community Health Services merges with Visiting Nurse Service of Southern Maine and Seacoast New Hampshire, the largest home health agency in York County, to create Home Health Visiting Nurses of Southern Maine (2004)
- The Maine PHO (a joint venture of Physician Hospital Organizations of Maine Medical Center, Southern Maine Medical Center, MaineGeneral Medical Center and St. Mary's Regional Medical Center) becomes a MaineHealth member to integrate regional risk based contracting and quality improvement (1999)
- Waldo County Healthcare Inc. joins MaineHealth (2008)
- Southern Maine Medical Center joins MaineHealth (2009)"

"Bringing eight of these organizations (Brighton Medical Center, St. Andrews Hospital, Miles Memorial Hospital, Stephens Memorial Hospital, Jackson Brook Institute/Spring Harbor Hospital, Community Health Services, Waldo County Healthcare Inc. and Southern Maine Medical Center) required determinations by the Maine Department of Human Services Certificate of Need Unit that MaineHealth was fit, willing and able to support these organizations."

"In addition to bringing these organizations into its corporate structure, MaineHealth has established various affiliation agreements with the following organizations. These affiliations seek to improve quality, access and efficiency through cooperative efforts:

- MaineGeneral Health/MaineGeneral Medical Center (1997)
- Mid Coast Health Services/Mid Coast Hospital (1999)
- St. Mary's Regional Medical Center (2000)
- One Maine Collaborative (MaineHealth, Eastern Maine Health Care and MaineGeneral Health) (2007)
- Pen Bay Healthcare (2008)"

"The rationale for these organizations joining MaineHealth or establishing formal affiliations has the following common themes:

- Achievement of clinical and financial benefits from economies of scale;
- Cost effective access to capital;

- Avoidance of duplication of services and improving efficiency, access and quality."

"The increasing complexities of health care delivery, financing and reimbursement make it difficult, if not impossible, for small to medium size organizations to meet the needs of their communities as stand alone organizations. Evidence of these trends of hospitals joining systems include:

- Nationally, 55% of all community hospitals are in health care systems;
- In Maine, 60% of hospitals are members of or affiliated with Maine based or national systems."

"Through a definitive agreement, MaineHealth and the organizations that have joined MaineHealth as members have defined the roles, responsibilities and expectations of the organizations. MaineHealth's approach to governance and management, embodied in the Definitive Agreement with Pen Bay Healthcare and with members such as Southern Maine Medical Center, Waldo County Healthcare, Western Maine Healthcare, Miles Healthcare and St. Andrews Hospital, can best be described as a "decentralized model". The joining organization's board, medical staff and management retain field responsibility for policy, management, fiscal affairs, clinical program development, quality and safety and performance improvement. The CEO's of the member organizations along with the MaineHealth senior staff recommend policy and program development and budget performance targets to the MaineHealth Board of Trustees. The MaineHealth Board reviews and approves member organizations' budgets, strategic and financial plans, property acquisitions and dispositions, debt financing above a certain level and major capital projects."

Commitment to Quality

"MaineHealth is committed to being recognized by patients, payors and providers as the benchmark for quality and safety, patient and family experience and evidence based use of resources. On a quarterly basis the MaineHealth board reviews quality performance measures for all member and affiliate organizations, including:

- National Quality Forum hospitals measures
- Performance of participants in the MaineHealth Vital Network (electronic ICU monitoring system)
- Home health clinical measures
- Long term care clinical measures
- Patient satisfaction measures"

"In 2007, the MaineHealth Board adopted the following 10 year vision for quality and safety:

> 'In 2017 MaineHealth will be a nationally recognized leader in health care quality and safe patient and family centered care. We will achieve that status not because we seek national prominence for its sake but rather it will be founded on an unwavering system level commitment to quality and safety and continuously improving the health of the

> communities we serve. Achieving and sustaining excellence starts with our belief that every single patient in the communities we serve deserves the highest quality health care services that we can provide in an efficient and cost effective manner. We will communicate publicly our quality, safety and cost information to aid patients and their families in making informed choices when seeking health care services. The core of our success will be our boards and management teams focusing at all levels on quality and safety as the critical elements driving strategic planning. Across the continuum of care our physicians, nurses, staff, patients and their families will collaborate to set high standards, monitor performance, openly share results and work together to continuously improve quality and safety.'"

"To implement that vision, MaineHealth has established its Center for Quality and Patient Safety under the direction of Dr. Vance Brown, MaineHealth Chief Medical Officer. The Center is focusing on:

- Board Engagement – All MaineHealth and member board members are completing a core curriculum in quality and safety developed by the Center. That training enables every board member to better understand quality, safety and performance improvement and enables them to take a greater role in ensuring quality and safety in their organization.
- Education and Consultation – Center staff provide support and expertise to member organizations in developing and implementing quality and safety initiatives. Responsibility for quality improvement and monitoring will remain at the local level.
- Performance Measurement and Reporting – Member organizations are overwhelmed at present by the number of organizations requesting quality and safety performance information. The Center provides support for data collection, measurement and reporting allowing members to focus on actual quality and performance improvement.
- Accreditation and Regulatory Support – The Center provides the support and expertise to ensure member organizations attain and maintain all appropriate licensure and accreditation standards.
- System Wide Performance Targets – Working with members, MaineHealth identifies annually system wide performance targets to ensure consistency and accountability for major clinical processes. Included in these efforts will be clinical decision support systems that facilitate the monitoring of performance."

"Under MaineHealth's Leadership, our member organizations have been recognized by a wide variety of organizations for the quality of services they provide to their communities. Presented below is a sample of the awards and recognition received. In addition to these awards, MaineHealth has been named for the past four years by SDI to its list of the Top 100 Integrated Health Networks (based on grades for operations, quality, scope of services and efficiency). MaineHealth ranked number 86 in 2007 and number 26 in 2010 (See Exhibit II-A)."

MAINEHEALTH NOTABLE AWARDS AND RECOGNITIONS

"Miles Health Care

- 2009 Miles Home Health & Hospice was found "deficiency free" following a state survey
- 2008 Obstetrics Nurse Janice Woods received the Maine Hospital Association's Caregiver of the Year award.
- 2007 Miles Memorial Hospital received the Exceeding Patient Expectations Award from Avatar International
- 2006 Miles Medical Group – Pediatrics – 2005 Top score in asthma care
- 2006 Miles Medical Group – eIntensive Care Unit begins. EICU is a system that allows intensive care specialists to monitor patients remotely providing better coverage and reducing costs.
  2006 Miles Medical Group-Family Medicine – Rated #2 in MaineHealth system
- 2005 Miles Memorial Hospital – Intensive Care Unit nurses earn highest patient satisfaction survey scores in 2005
- 2005 Chase Point Assisted Living – High marks in state survey
- 2005 Coves Edge Long Term Care – Gets 97 in Press-Ganey survey
- 2004 Miles Memorial Hospital Social Worker Dorothy Peterson receives the Maine Hospital Association's Caregiver of the Year Award.
- 2004 Miles Home Health & Hospice – State Survey – deficiency free
- 2004 Miles Memorial Hospital – Avatar Exceeding Patient Expectations Award
- 2003 Miles Memorial Hospital – Avatar Exceeding Patient Expectations Award (2002)
- 2003 Miles Home Health & Hospice – Medicare Home Health Survey – deficiency free
- 2002 Miles Home Health & Hospice – Hospice State License Survey – deficiency free
  2002 Miles Obstetrics - #1 in Patient Satisfaction surveys
- 2002 Miles Home Health & Hospice – State survey – deficiency free
- 2002 Miles Memorial Hospital – Avatar high patient satisfaction survey results
- 1998 Coves Edge Long Term Care – No deficiencies in Maine Department of Health & Human Services Survey
- 1998 Miles Home Health & Hospice – 96/100 – Joint Commission on the Accreditation of Healthcare Organizations survey
- 1995 MMH gets good ratings (87/100) on Joint Commission on the Accreditation of Healthcare Organizations survey
- 1997 Miles Memorial Hospital scores 95 on Joint Commission on Accreditation of Healthcare Organizations survey
- 1997 Miles one of the first 10 Baby Friendly Hospitals in US (Unicef)
- 1997 Miles Memorial Hospital Lab – Joint Commission of Accreditation of Healthcare Organizations perfect score"

"St. Andrews Hospital and Healthcare Center

- 2009 St. Andrews Home Health received the Boothbay Harbor Chamber of Commerce Community Service Award

- 2008,2007,2006,2005,2004,2003, St. Andrews Hospital and Healthcare Center received the "Exceeding Patient Expectations" from Avatar International
- 2008 St. Andrews Home Health was found "deficiency free" following a state survey
- 2007 Saint Andrews Home Health received "Home Care Elite – Top 100"
- St. Andrews Home Health received the OCS Top 500 Home Care Agency in the Country award"

"NorDx

- 2004, 2002 Governor's Award for Environmental Excellence -
- 2005 EPA Environmental Merit Award –
- 2005 Maine Environmental Leader -
- 2008,2007,2006,2005,2004,2003,2002Participant in Maine's STEP-UP
- 2008,2007,2006,2005,2004Participant in Governor's Carbon Challenge -
- 2003 NorDx was also honored by receiving a write up in the State Officials Guide (2003) in the chapter of Environmental Management Systems, published by the Council of State Governments
- 2006,2005,2004,2003 Avatar Patient Satisfaction,"

"Spring Harbor Hospital

- 2009 Maine Mental Health Partners welcomed its first new member agency, Community Counseling Center, July 1st
- 2009 Maine Mental Health Partners, Maine's first integrated mental health care delivery system.
- 2008**:** Board member Anne Pringle named Volunteer of the Year by Maine Governor John Baldacci
- 2008: Director of Nutritional Services Joseph Pastore wins **Future Horizons Award** from the National Society of Healthcare Foodservice Management (HFM).
- 2007**:** $324,000 grant from the Maine Health Access Foundation to continue the hospital's pilot program to integrate mental health treatment within primary care settings in Maine.
- 2007**:** $15,000 grant from The Sadie and Harry Davis Foundation to research outcomes of Spring Harbor's intensive community treatment program serving youth and families of Greater Portland.
- 2006: $12 million grant from The Robert Wood Johnson Foundation for dissemination of research to identify and prevent serious mental illness in youth
- 2006**:** $1 million donation from Judy and Al Glickman of Cape Elizabeth to establish the Glickman Family Center for Child & Adolescent Psychiatry at Spring Harbor Hospital
- 2006**:** Joint Commission *Gold Seal of Approval* (Spring Harbor Hospital & Spring Harbor Counseling)
- 2005**:** Construction of the new Spring Harbor Hospital facility is named 'Project of Distinction' by the Maine chapter of the Project Management Institute.
- 2004**:** *Healthcare Leaders* national finalist for *Top Leadership Teams in Healthcare* competition (executive management team)

- 2004**:** Spring Harbor Hospital opens Maine's only inpatient treatment unit for youth with developmental disorders and autism
- 2004**:** *Warren Williams Assembly Speakers Award* from the American Psychiatric Association (William McFarlane, M.D., director of psychiatric research)
- 2004**:** GAINS Center *National Achievement Award* for involvement in the Cumberland County Jail Diversion Grant Program (the ACCESS assertive community treatment team for adults)"

"Western Maine Health Care

- 2009 Leapfrog award as Top Rural Hospital
- 2011,2010,2009 The Commission on Cancer (CoC) of the American College of Surgeons (ACoS) has granted Three Year Accreditation with Commendation to the Cancer Program at Stephens Memorial Hospital.
- 2008 - Our diabetes self management program received an award from the American Diabetes Association for our self-management program.
- 2008 Blue Ribbon Award - Maine Health Management Coalition
- 2008 Western Maine Health received the Employer of the Year Award from the Oxford Hills Chamber of Commerce
- 2007 - The FDA awarded SMH with a perfect score for the inspection of our mammography department.
- 2007 Our Breast Cancer Team was awarded the Sandra C. Labarec North East Volunteer Values Award by the American Cancer Society
- 2007 Blue Ribbon Maine Health Management Coalition (only for part of the year)
- 2007, 2005 SHARP Awards Facility of the Year by Advance for Providers, a national magazine for long term care
- 2006 - The Women's Imaging Center received the first award ever by the Mammography Regulation and Reimbursement Report for breast imaging innovation for our free mammogram coupon program
- 2006 Maine Health Management Coalition Blue Ribbon Award
- 2006 Market Square Health Care Center - (WMH's nursing home)"

"Maine Medical Center

- **U.S. News & World Report**

  2008 #41 of 50 in nation for gynecologic care

  2007 #45 of 50 in nation for orthopedic care
  2007 #50 of 50 in nation for heart care and heart surgery

- **Centers for Medicare & Medicaid Services**

  2007 Top 1% in nation for heart attack
  2007 Top 5% in nation for overall cardiac mortality

- **Committee on Trauma of the American College of Surgeons**

  2007 Certified Level I Trauma Center

- **The Leapfrog Group**

  2006 **Leapfrog** Top 50 Hospitals (based on safety practices)

- **Hospitals & Health Networks Magazine**

  2007 Top 25 "Most Wireless" Hospitals
  2006 Top 100 "Most Wired" Hospitals
  2006 Top 25 "Most Wireless" Hospitals

- **American Nurses Credentialing Committee**

  2006 Magnet Recognition for Excellence in Nursing

- **Maine State Employees Health Commission**

  2006 "Preferred Hospital"

- **Consumer's Digest**

  2005: #4 on list of "50 Exceptional U.S. Hospitals"
  (based on Leapfrog/NQF safety practices)

- **Joint Commission**

  Joint Commission Accredited Hospital
  2007 Disease-specific Certification: Primary Stroke Center
  2006 Disease-specific Certification: Heart Failure

- **Solucient (formerly HCIA)**

  1999 Top 100 Cardiovascular Hospitals
  2001 100 Top Cardiovascular Hospitals
  2002 100 Top Hospitals
  2004 100 Top Cardiovascular Hospitals

- ***Child* Magazine**

  2003 Top 25 Children's Hospitals

- **Cleverly + Associates Community Value Index**

  2007 Community Value Top 100 Provider

- **HealthGrades**

  2009 Ratings

  Ranked #1 in Maine for Overall Cardiac Services nine years in a row (2001-2009)

Ranked #1 in Maine for Cardiology Services nine years in a row (2001-2009)
Ranked #1 in Maine for Cardiac Interventions Procedures seven years in a row (2003-2009)
Recipient of the HealthGrades Cardiac Care Excellence Award™ five years in a row (2005-2009)
Only Hospital in Maine to Receive HealthGrades Cardiac Care Excellence Award™ five years in a row (2005-2009)
Recipient of the HealthGrades Coronary Intervention Excellence Award™ two years in a row (2008-2009)
Only Hospital in Maine to Receive HealthGrades Coronary Intervention Excellence Award™ two years in a row (2008-2009)
Ranked Among the Top 5% in the Nation for Cardiology Services seven years in a row (2003-2009)
Ranked Among the Top 5% in the Nation for Coronary Interventional Procedures seven years in a row (2003-2009)
Ranked Among the Top 10% in the Nation for Overall Cardiac Services seven years in a row (2003-2009)
Five-Star Rated for Overall Cardiac Services in 2009
Only Hospital in Maine Five-Star Rated for Overall Cardiac Services in 2009
Five-Star Rated for Cardiology Services six years in a row (2004-2009)
Five-Star Rated for Coronary Interventional Procedures nine years in a row (2001-2009)
Five-Star Rated in the Treatment of Heart Attack nine years in a row (2001-2009)
Five-Star Rated in the Treatment of Heart Failure in 2009
Ranked #1 in Maine for Joint Replacement Surgeries
Ranked Among the Top 10% in the Nation for Joint Replacement Surgeries
Recipient of HealthGrades 2008 Joint Replacement Excellence Award™
Only hospital in Maine to receive HealthGrades 2008 Joint Replacement Excellence Award™ Five-Star
Rated for Joint Replacement Surgeries
Five-Star Rated for Total Knee Replacement Surgery
Five-Star Rated for Total Hip Replacement Surgery

- **American Red Cross of Southern Maine**

  2007 Outstanding Medical Provider

- **National Research Corporation**

  2004-2005 Healthcare Market Guide, “Consumer’s Choice #1, Overall Quality and Image”
  2007-2008 Healthcare Market Guide, “Consumer’s Choice #1, Overall Quality and Image”

- **United Way of Greater Portland**

  2004 “Leading the Way” Award

- **Ronald McDonald House − Portland, Maine**

  2004 "Heart of Gold" Award

- **City of Portland**

  1997 Mayoral Proclamation recognizing MMC's value to community

- **Pine Tree Council, Boy Scouts of America**

  2004 Distinguished Citizen Award to Vincent S. Conti

- **U.S. Department of Health and Human Services**

  2005 Medal of Honor for Organ Donation Success

  2008 Medal of Honor for Organ Donation Success

- 2008
  Family Medicine Centers were awarded three out of three blue ribbons from the Maine Health Management Coalition for the Pathways of Excellence – Primary Care Initiative

- 2007

  6th Annual Nursing Excellence Awards: Pediatric Diabetes Dream Team receives Team Award

  Communications & Marketing group receives three awards from the New England Society for Healthcare Communications

  R1 (Cardiac Surgical Post-Op and Intermediate Care Unit) receives the 2006 Service Quality Innovation Award from Avatar

  Environmental Services named Department of the Year by Health Facilities Magazine and the American Society for Healthcare Environmental Services

  Special Care Unit awarded 2007-2008 Beacon Award for Critical Care Excellence by the American Association of Critical-Care Nurses

- **American Heart Association/American Stroke Association**
  2010 Get With the Guidelines – Stroke Gold Award

  NCQA Level 3 Patient Centered Medical Home for Family Medicine Centers

- **Thompson Reuters**

  2009 Top 100 Cardiac Hospitals

- **U.S. Department of Health and Human Services**

2005-2009 Medal of Honor for Organ Donation Success

- **Nursing Professionals 2009 Top 100 Hospitals to Work For**
- **ADVANCE Magazine for HIM Professionals**
  2009 HIM Department of the Year
- **Coastal Counties Workforce Investment Board**

  2009 Employer of the Year

- **Hospitals & Health Networks**
  2008 Top 25 "Most Wireless" Hospitals
- **Northeast Health Care Quality Foundation**
  2000 Certificate of Recognition
  2003 Certificate of Recognition
- **National Research Corporation**

  2004-2005 Healthcare Marketing Guide
  "Consumer's Choice #1, Overall Quality and Image"
  2009-2010 Healthcare Marketing Guide
  "Consumer's Choice #1, Portland's Most Preferred Hospital Overall Quality and Image"

❖ "**HealthGrades**
2008 Ratings Ranked # 1 in Maine for Joint Replacement"

"Southern Maine Medical Center"

"Awards"

"Avatar: National Independent Patient Satisfaction Surveys
2003: Five Star Service
2004: Most improved; Exceeding Patient Expectations; Five Star Service
2005: Overall Best Performer; Exceeding Patient Expectations, Five Star Service
2006: Overall Best Performer; Most Improved; Exceeding Patient Expectations
2007: Overall Best Performer; Exceeding Patient Expectations
2008: Overall Best Performer; Exceeding Patient Expectations"

"Maine Hospital Association's Caregiver of the Year award for the State of Maine
Caregiver of the Year Award: 2005 and 2006
Diane Frechette, RN and Gregory Leach, MD
State of Maine Volunteer of the Year Award: 2004 and 2005
Preston Powell and Walter Leffler"

"2008 **SMMC Visiting Nurses HomeCare Elite (Top 25 Percent of Home Health Providers)"**

"2009 **SMMC Visiting Nurses Kennebunk Chamber Non-Profit Business of the Year Award"**

"2006 **SMMC: Kennebunk-Kennebunkport Chamber Business of the Year Award"**

"Quality Citations"

"Centers for Medicare & Medicaid Services"

"Exceeded national average in 2008 for the delivery of care to patients with a heart attack, heart failure, pneumonia and surgery."

"In 2009, SMMC exceeded the 90th percentile in the Nation for the care of their surgical patients."

"Joint Commission"

"Accredited by the Joint Commission"

"Maine Health Management Coalition (MHMC)"

"Blue Ribbon awarded for Patient Experience for care delivered from April 2008 to March 2009."

"Blue Ribbon awarded for Patient Safety for care delivered in 2009."

"Blue ribbons awarded for each of the areas of Clinical Quality –

- A blue ribbon for the care delivered to patients with a heart attack, pneumonia and congestive heart failure;
- A blue ribbon with a gold inlay (exceeding the national 90th percentile) for care provided to select surgical patients."

"MHMC Medical Home Model Pilot Site (2010-2012)"

"SMMC PrimeCare Internal Medicine, Biddeford: Chosen by MHMC as a pilot site for a state-wide initiative to improve the integration of patient care while eliminating duplication of services."

"Maine State Employees Health Commission"

"2010,2009,2008 A "Preferred Hospital":"

"National Committee for Quality Assurance (NCQA)"

"18 SMMC PrimeCare physicians were awarded three-year recognition status for the chronic care of patients with diabetes."

"13 Primary Care Physicians and all 3 Cardiologists at SMMC PrimeCare physicians were awarded three-year recognition status for the chronic care of patients with heart disease and stroke."

"SMMC PrimeCare Internal Medicine has received three year recognition status as Patient Centered Medical Home Level I."

"Harvard Pilgrim Hospital Honor Roll (2009)"

"Among the top 25% of adult, acute care hospitals whose performance, measured nationally, based on clinical quality, patient safety, patient experiences and quality metrics."

"Robert Wood Johnson Initiative "Transforming Care at the Bedside" Initiative (2009-1012)"

"Certificates/Accreditations"
"Certified Healthy Heart Cardiac Rehabilitation Program
Certified by the American Association of Cardiovascular and Pulmonary Rehabilitation through 2012."

"Certified Breath of Life Program
Certified by the American Association of Cardiovascular and Pulmonary Rehabilitation through 2012."

"Cancer Care"

"Accredited by the American College of Surgeons Commission on Cancer"

"'Accreditation with Commendation' Program approved through 2012"

"SMMC Bariatric Surgery"

"American College of Surgeons Bariatric Surgery Center Network Level 2b Accredited Bariatric Center"

"Radiology

1. **MRI Services** - Accredited by the American College of Radiology through 2011
2. **Certified Mammography Facility** through 2012 by U.S. Department of Health & Human Services Public Health Service Food and Drug Administration
3. **Mammographic Imaging Services -** Accredited by the American College of Radiology through 2012

4. **Ultrasound Imaging Services -** Accredited by the American College of Radiology through 2010
5. **Mammographic Imaging Services at PrimeCare Physician Associates -** Accredited by the American College of Radiology through 2011
6. **Certified Mammography Facility at PrimeCare Physician Associates** through 2011 by U.S. Department of Health & Human Services Public Health Service Food and Drug Administration
7. **Certified Mammography Facility at Diagnostic & Therapy Center at Kennebunk** through 2011 by U.S. Department of Health & Human Services Public Health Service Food and Drug Administration
8. **Mammographic Imaging Services at Diagnostic & Therapy Center at Kennebunk -** Accredited by the American College of Radiology through 2011
9. **Computed Tomography Services (for adult and pediatric patients) –** Accredited by the American College of Radiology through 2011
10. **Computed Tomography Services (for adult and pediatric patients) at SMMC PrimeCare Physicians** – Accredited by the American College of Radiology through 2012
11. **Ultrasound Imaging Services at SMMC PrimeCare Physicians -** Accredited by the American College of Radiology through 2012"

"Blood Bank"

"American Association of Blood Banks Accreditation"

"Laboratory: Both SMMC and SMMC Laboratory at Healthcare Drive"

"Accredited by the College of American Pathologists Accreditation"

"Synernet

- **2009** Gerry Vicenzi Receives ACHE Regent Award for 2009
  Gerry Vicenzi was presented with the American College of Healthcare Executive's Regent Award for 2009 by Darlene Stromstad, President of Goodall Hospital. The award was presented at the Northern New England Association of Healthcare Executives (NNEAHE) Annual Meeting on Friday, November 13, 2009. Mr. Vicenzi was also recently elected to serve as ACHE Regent for Maine over the next three years beginning with the ACHE National Congress will be held in Chicago March 21st to the 25th 2010."

"Waldo County General Hospital"
"2010 Speech pathologist Jennifer Whitcomb placed on inaugural Alumni Wall of Accomplishments at the University of Maine in Presque Isle."

"2009 The Leapfrog Group 2009 Top Rural Hospital. One of the top three rural hospitals recognized nationally for delivering high quality care and using resources wisely."

"2009 Harvard Pilgrim's Hospital Honor Roll"

"2009 Placed on state's list of preferred hospitals with blue ribbons in all three categories."

"2009 Dr. Linda Tyer recognized by the American Diabetes Association and the National Committee of Quality Control Assurance."

"2009 Speech pathologists Nathan Curtis, Jessica Wilbur and Jennifer Whitcomb present at the American Speech-Language-Hearing Assn. annual convention in New Orleans."

"2008 Dr. Deborah Peabody honored as Belfast Area Chamber of Commerce Citizen of the Year."

"2008 Waldo County Home Health & Hospice named to the HomeCare Elite."

"2008 Speech pathologist Erica Ricker elected president of Maine Speech Language and Heating Association"

"2007 Synernet Workers Compensation Fund Top Performer"

"2007 Rob Fowler, RN, received Public Health Epidemiology Recognition Award."

"2007 Diabetes Self-Management Education Program is recognized for continuing excellence by the American Diabetes Association."

"2007 Director Dale Kuhnert appointed as a trustee member of the State Licensing Review Board for a 3-year term."

"2006 Michael Towey, MA, CCC-SLP, receives the Patricia C. Lindamood Award for a lifetime of 'Clinical Leadership Excellence in Language and Literacy'"

"2006 Pulmonologist Dr. Robert Weiss is names to John Hopkins University School of Medicine's education initiative: Creating Optimism in Managing Cardio-Pulmonary Disease"

"2006 Stan Harding Jr. of the maintenance department received an American Red Cross Real Hero Award."

"2005 Synernet Workers Compensation Fund Most Improved"

"2005 Executive Director Mark Biscone received a recognition award from the Belfast Area Chamber of Commerce for 'outstanding commitment to healthcare in Waldo County.'"

"2003 State of Maine Governor's Council on Physical Fitness, Sports, Health and Wellness award for Community Wellness Program"

"2002 Certificate of achievement from Secretary of State highlighting 100 years of incorporation in Maine"

"2002 Northeast Health Care Quality Foundation certificate of recognition"

"2001 WCGH's Diabetes Self-Management Program awarded Recognition status from the American Diabetes Association."

"2000 Maine Humanities Council award for exemplary leadership as a Literature and Medicine Partner Hospital."

"2000 WCGH named Business of the Year by the Belfast Area Chamber of Commerce."

"1999 Dr. Dana Whitten recognized for physician excellence by the Maine Health Management Coalition and the Maine HMO Council."

"1998 Margaret Chase Smith Maine State Quality Award."

"Arthur Jewell Community Health Center Ambulance Service receives Service of the Year Award from Mid-Coast Emergency Medical Services Council."

"1996 American Cancer Society special citation for providing a smoke-free environment."

"1995 Maine Child Care Director's Association award for outstanding support of children and families."

"HomeHealth Visiting Nurses

- 2010 - Dr. Susan Sepples, HHVN Board member will be recognized as "Board Member of the Year" by Visiting Nurse Associations of America (VNAA).

- 2009 - received two grants from the United Way of Greater Portland totaling $92,462. These grants support charity care for children and adults and expand the capacity of the agency to deliver pediatric palliative end-of-life care.

- 2009 - received a $12,000 home health and a $6,500 community health grant from the United Way of York County to support charity care for home health and community care patients.

- 2009 - received a $20,000 grant from the Elmina B. Sewall Foundation to expand access to home Telehealth care for elders at high risk of hospitalization.

- 2009 - Gordon Browne, HHVN Board member was recognized as "Board Member of the Year" by Home Care & Hospice Alliance of Maine.

- 2008 - The Department of Health and Human Services awarded a grant of over $1.8 million over three years to support preventive health services for women and children throughout Southern Maine to HomeHealth Visiting Nurses, Androscoggin Home Health and Hospice and Portland Public Health.

- 2008 – received the “2007 Employer of the Year” award from York County Community College. This award recognizes local businesses that demonstrate stability, growth in the industry and a strong investment in the community.

- 2008 - The Davis Family Foundation awarded $25,000 to grant funds to bring new advancements in Telehealth technology to patients at high risk for hospitalization.

- 2008 - received a $3,000 grant from the Community Building Program of the Maine Community Foundation to support their nursing scholarship fund.

- 2008 - received a $10,000 grant from the Elmina B. Sewall Foundation to support charity care to children and adults in Southern Maine

- 2007 - received CHAP accreditation

- 2007 - “Enjoying Life with Diabetes” self-management program awarded Recognition from the American Diabetes Association.

- 2007 - Philips Lifeline Academy presented “Exceptional Performance Award” for exceeding market benchmark goals.
- 2006 - Madelyn Bergen Belliveau, volunteer for HHVN, was awarded the 2006 Volunteer of the Year Award from the Maine Home Care Alliance.

- 2006 - Maryanna Arsenault, CEO was presented with the “Distinguished Service Award” from the Home Care Alliance of Maine.

- 2006 - received a Media Award from the Home Care Alliance of Maine.

- 2006 - Sandi Kelly, Lifeline Program Coordinator, received the Exceptional Performance Award from Lifeline as part of their Academy program.

- 2006 - The Rosamond Thaxter Foundation granted $1,500 to support home health care services in the Kittery area

- 2005 - The Davis Family Foundation awarded $20,000 to support the expansion of the Telehealth program to patients in Cumberland County.

- 2005 - The Thaxter Foundation granted $1,500 to support home health care services in the Kittery/seacoast New Hampshire area.

- 2004 – received CHAP accreditation

- 2004 - Anthony Forgione, HHVN Board Chair, received the Board Member of the Year award from the Home Care Alliance of Maine."

"Profile of Pen Bay Healthcare
Six Glen Cove Drive
Rockport, Maine 04856
www.penbayhealthcare.org"

"Pen Bay Healthcare, established in 1983, is a non-profit 501(c)(3) health care corporation whose mission is "caring for and improving the health and quality of life of the people of mid-coast Maine. Pen Bay Healthcare currently consists of:

- Pen Bay Medical Center… 109 bed hospital offering medical/surgical, obstetrical, new born and psychiatric/substance abuse inpatient services
- Kno-Wal-Lin… a home health, palliative care and hospice agency serving Knox, Waldo and Lincoln Counties
- Knox Center for Long Term Care… a dually certified skilled nursing and long term care facility
- Quarry Hill… offers independent living, assisted living, skilled nursing, rehabilitation and long term care[1]"

"Pen Bay Healthcare is governed by a 19 member Board of Trustees consisting of community volunteers, members of the Medical Staff and senior executives. Pen Bay Medical Center's service area consists of: Rockland, Camden, Thomaston, Warren, Rockport, Union, Waldoboro, Cushing, South Thomaston, Owls Head, Tenants Harbor, Vinalhaven, Hope, Lincolnville, Washington, Friendship, Spruce Head, Islesboro, Glen Cove, Port Clyde, West Rockport, North Haven, Matinicus, and Monhegan Islands."

"Licenses, Certifications & Accreditations

"Statements of Deficiencies" and site visit reports from the previous three years for all the health care facilities and services in which MaineHealth member organizations have been involved are on file with the Department of Health and Human Services' Division of Licensing and Regulatory Services."

[1] Until February 2010, Pen Bay Healthcare also owned and operated Mid Coast Mental Health Services, which provides child and adult outpatient mental health services, adult crisis stabilization unit and mobile crisis team, and addiction services. As a result of continuing operating losses, responsibility for operating this entity has now been transferred to a consortium headed by Maine Mental Health Partners. See discussion at p. 46, *infra*.

"Presented below is information on our members' current licenses, certifications and accreditations. "

MaineHealth Members' Current Licenses, Certifications and Accreditations

MaineHealth Member	Facility/Service	State Licensed	CMS Certified	JCAHO/Other Accreditation
Maine Medical Center	Hospital	✓	✓	✓
New England Rehabilitation Hospital (MMC joint venture)	Hospital	✓	✓	✓
Spring Harbor Hospital	Hospital	✓	✓	✓
St Andrews Hospital & Healthcare Center	Hospital	✓	✓	
St Andrews Hospital & Healthcare Center	Nursing Home	✓	✓	
St Andrews Hospital & Healthcare Center	Home Health	✓	✓	
St Andrews Hospital & Healthcare Center	Assisted Living	✓		
Miles Health Care	Hospital	✓	✓	
Miles Health Care	Nursing Home	✓	✓	
Miles Health Care	Home Health	✓	✓	
Miles Health Care	Assisted Living	✓		
Western Maine Health Care	Hospital	✓	✓	
Western Maine Health Care	Nursing Home	✓	✓	
Home Health Visiting Nurses of Southern Maine	Home Health	✓	✓	✓
NorDx	Laboratory Services		✓	✓
Waldo County Healthcare	Hospital	✓	✓	
Waldo County Healthcare	Home Health	✓	✓	
Southern Maine Medical Center	Hospital	✓	✓	✓
Southern Maine Medical Center	Home Health	✓	✓	✓

Key Personnel and Organizational Chart(s)

"William Caron, President and Chief Executive Officer, MaineHealth. Prior to his current position, Mr. Caron was Executive Vice President and Treasurer at MaineHealth and Vice President and Treasurer at Maine Medical Center in Portland, Maine. He previously was a Partner with Ernst & Young and headed their East Region healthcare consulting practice in Philadelphia, Pennsylvania."

"Frank McGinty, Executive Vice President & Treasurer, MaineHealth. Prior to his current position, Mr. McGinty was Senior Vice President for External Affairs and Senior Vice President & Treasurer of Anthem Blue Cross and Blue Shield of Maine. Mr. McGinty also worked in the public sector as the Maine Department of Human Services' Deputy Commissioner for Health & Medical Services and as Executive Director of the Maine Health Care Finance Commission."

"Vance Brown, MD, Chief Medical Officer, MaineHealth. Prior to joining MaineHealth, Dr. Brown was chairman of Family Practice of the Cleveland Clinic. He is board certified in Internal Medicine and in Family Practice"

"Roy A. Hitchings Jr., FACHE, President and CEO, Pen Bay. Mr. Hitchings has been CEO of Pen Bay Healthcare and Pen Bay Medical Center for the last 11 years. He has 36 years of leadership experience in healthcare, is a former chairman of the Maine Hospital Association board and a founding board member of the Knox County free clinic. Mr. Hitchings graduated from Dartmouth College, has a MBA from Harvard Business School and is an active Rotarian."

"Dana Goldsmith, MD, Vice President for Medical Affairs, Pen Bay. Dr. Goldsmith has served as the Chief Medical Officer at Pen Bay Medical Center for the last six years. Prior to that he was a full-time practicing pediatrician and Chairman of the Department of Pediatrics at Pen Bay. Dr. Goldsmith has an undergraduate degree from Bowdoin College, gradated from Boston University School of Medicine, completed his pediatric residency at Maine Medical Center and is board certified in Pediatrics."

"Maura Kelly, CPA, MST, Vice President for Fiscal Services. Ms. Kelly has been the Chief Financial Officer for Pen Bay Healthcare for the last 2 ½ years. Prior to that she was the assistant treasurer at Tufts New England Medical Center and the Director of Finance at Cape Cod Hospital and Falmouth Hospital. Ms. Kelly is a CPA, completed her undergraduate degree in accounting at Northeastern University and her Masters of Science in Taxation at Bentley College."

"Eric Waters, Chief Operating Officer, Pen Bay. Mr. Waters oversees the day-to-day operations of the hospital and has been at PBMC for four years. He has over 24 years of healthcare experience, having served as the Vice President for Support Services at Mount Sinai Medical Center in New York City and senior leadership positions at the ARAMARK Corporation and ServiceMaster. He did his undergraduate work at the State University of New York and has a Masters of Business Administration and Finance from Rutgers University."

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are specific to the determination that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

ii. CON Analysis

MaineHealth's current member affiliates' licenses, certifications and accreditations are numerous with all being State Licensed, CMS Certified and several are Joint Commission accredited. Currently not all member hospitals of MaineHealth are Joint Commission accredited. MaineHealth has demonstrated that they are capable of delivering the proposed services at the proper standard of care. They have been able to successfully integrate other healthcare systems into the parent corporation while continuing to meet licensing standards. Recent activity includes:

- On December 31, 2008, MaineHealth was granted a Certificate of Need for Waldo County Healthcare, Inc to become a member of MaineHealth.
- On March 12, 2009, MaineHealth was granted a Certificate of Need for Southern Maine Medical Center to become a member of MaineHealth.

PBMC's current license is valid until May 31, 2011. The Medical Facilities Unit of the Division of Licensing and Regulatory Services last completed a site survey on March 23, 2007 and deficiencies were recorded. The applicant submitted a plan of correction on April 23, 2007 that was accepted by the Division on May 7, 2007. PBMC is Medicare and MaineCare certified. PBMC is currently accredited by the Joint Commission; PBMC was last accredited on August 21, 2009.

The following is a list of CON projects for PBMC:

- PBMC has had no CON reviewable projects in the last decade.
- On July 10, 2006 PBMC received a Not Subject to Review (NSTR) letter to perform exterior façade improvement to the hospital at a capital cost of $2,152,955.
- On April 22, 2008 PBMC received a NSTR letter to build a garage/physical plant workshop and office space for maintenance staff at a capital cost of $2,395,235.

CONU concludes that the applicants have demonstrated that they meet this criteria.

iii. COPA Criteria

This section requires no COPA recommendation.

v. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner find that MaineHealth and PBHC are fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

COPA RECOMMENDATION: This section requires no COPA recommendation.

III. Financial Capability of Applicants and Financial Impact of Project

A. From Applicant

i. CON From Applicant

"Pen Bay becoming a member of MaineHealth involves no capital expenditure by Pen Bay or MaineHealth requiring a certificate of need. Neither Pen Bay, MaineHealth, the State of Maine or the health care delivery system in Maine will incur any net increase in operating expenses as a result of Pen Bay becoming a member of MaineHealth."

"Like all MaineHealth members, Pen Bay will pay MaineHealth dues to support MaineHealth's operations. Currently, those dues are calculated on the basis of 0.045% of a member's net operating revenue. In the case of Pen Bay, those dues will be approximately $575,000 for FY 2011. MaineHealth does not anticipate there will be a significant increase in the dues percentage over the next three years. As an offset to those dues, we anticipate Pen Bay will receive benefits from membership from participation in MaineHealth programs that will offset those dues, if not exceed them. Since there will be no net increase in Pen Bay's operating expenses resulting from membership in MaineHealth, membership will require no price increase for Pen Bay services."

"Attached as Exhibits III-A, III-B and III-C are audited financial statements for MaineHealth, Pen Bay Healthcare and Maine Medical Center. While Maine Medical Center is not the applicant, the CON unit has expressed an interest in reviewing Maine Medical Center's audited financials as part of its review of this application. A review of the financials of MaineHealth and Pen Bay demonstrate the financial ability of both organizations to support ongoing operations. Further evidence of MaineHealth's financial strength is that since 2003 it has maintained a AA- credit rating from Standard & Poors. Its rating was reconfirmed as recently as June 2008."

"Also attached as Exhibit III-D is the CON Unit Financial Forecast Module. The module was completed based on instructions provided to MaineHealth by CON Unit staff and Bureau of Insurance staff. The application is a joint application by MaineHealth and Pen Bay. No where in our application or in the information we have supplied to the CON Unit in completing the Financial Module will you find a "payment" to Pen Bay by MaineHealth or Maine Medical Center for assets or other considerations that would constitute a capital expenditure (as defined by CON regulations or generally accepted accounting principles) in return for Pen Bay agreeing to becoming a member of MaineHealth."

"The CON Unit Financial Module was intended for use in the review of "projects" that include a capital expenditure that results in incremental operating expenses, e.g., depreciation, interest, staff and supplies. Several of the tables included in the module require the applicant to identify those capital expenditures or the associated operating costs and/ or incremental revenue resulting from the project. CON Unit staff have made certain modifications to the module to accommodate

this CON application which requires review only because there is a change of ownership, not because there is a capital expenditure or increase in third year operating expenses above the review limits."

"Given the unique nature of this application in terms of the modifications required by the CON Unit in completing the Financial Module, we have provided the following additional information and assumptions used in completing selected tables in the module."

"Table 1A-Project Cost and Table 1B Construction Timing present the assets of Pen Bay Medical Center as of March 31, 2009 not a new capital expenditure. "Related Hospital Acquisition Costs-Line 5 Acquisition of Fixed Assets" of $43,606,299 is the net plant, property and equipment line from the Pen Bay Healthcare balance sheet and "Related Hospital Acquisition Costs-Line11 Other" of $50,619,947 is Pen Bay HealthCare's total assets minus net plant, property and equipment, not a new capital expenditure. "Table 1B Construction Timing" treats Pen Bay Medical Center existing assets like a "construction" project, but there is no construction or capital expenditure."

"Table1C-Deprecation Expense treats the existing net property and equipment assets of Pen Bay Medical Center from Table 1A as if they were a new annual capital expenditure and calculates new depreciation expense of $5,062,442 on those assets. These are existing assets of Pen Bay Medical Center 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."

"Table 2 – Debt Financing Arrangement, Sources and Uses of Funds As part of this change of ownership there is no new debt to be financed or equity contributions required since neither MaineHealth or Maine Medical Center is making a "payment" to Pen Bay Medical Center as a condition of joining MaineHealth. If such a "payment" were being made, presumably, it would show up in subsequent schedules as an increase in Pen Bay Healthcare assets (which it does not) since there is no payment by MaineHealth or Maine Medical Center."

"Tables 3A, 3C, 4, 5, and 13 present, as instructed by the CON Unit staff, in the "Project Only" column charges, revenue, expenses and utilization which are the existing and forecasted activity for Pen Bay Healthcare. There are no capital expenditures or incremental operating expenses for a "project" in these entries."

"Table 6B-Operating Expenses Project Only presents Pen Bay Medical Center expenses for 2010-2012 for salaries and wages, employee benefits and supplies and other expenses not including depreciation or interest. As instructed by the CON Unit staff, at the bottom of Table 6B, we have provided information on changes in Pen Bay Medical Center expenses related to membership in MaineHealth, i.e., dues paid to MaineHealth to support MaineHealth's operations and savings to Pen Bay Medical Center resulting from its participation in MaineHealth's employee health insurance and other benefits programs and in MaineHealth's administrative integration programs."

"MaineHealth dues are calculated as 0.0045 times Pen Bay Medical Center's total operating revenue, the same procedure used for all MaineHealth members. The 0.0045 assessment is assumed to remain at that level. Using total operating revenues for Pen Bay Medical Center as presented in Table 9B and adding back in bad debt (calculating net revenue according to generally accepted accounting principles) results in annual dues to MaineHealth of approximately $575,000 for each year 2011-2013."

"Pen Bay Medical Center's savings from MaineHealth membership are then calculated in Table 6B as follows":

Southern Maine Medical Center	2011	2012	2013
Dues to MaineHealth	$575,000	$575,000	$575,000
Savings from Health Insurance and Other Insurance	$801,000	$801,000	$801,000
Savings from Other	$60,000	$60,000	$60,000
Net Savings	$286,000	$286,000	$286,000

"Pen Bay Medical Center's dues to MaineHealth are offset by its savings from participation in the MaineHealth employee health plan and other programs."

"Table 20-Capital Investment Fund Calculation presents on the "Future Values (As Reported)" portion of the table existing depreciation and interest of Pen Bay Medical Center for 2013 (from Table 9B), the MaineHealth dues and the savings from health insurance and other insurance programs, all of which are correct entries. Table 20 calculates on the "Current Values Adjusted for Time Value of Money" portion of the table a "Charge for CIF" of ($0) and "Insurance Cost" of ($0). As calculated by Table 20, Pen Bay Health Care joining MaineHealth involves no capital expenditure by Pen Bay Medical Center or MaineHealth requiring a certificate of need and does not result in any increase in operating expenses for Pen Bay Medical Center, MaineHealth, Maine Medical Center, the State of Maine or the health care delivery system in Maine."

"Table 24 Calculation of CON Filing Fee treats the existing assets of Pen Bay Medical Center of $92,045,931 as a capital expenditure and, as a result, a CON filing of $93,000. 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."

"Compliance with DHHS Licensure, CMS Certification, JCAHO Accreditation, Local Zoning, Environmental Protection and Other Applicable Statutory and Regulatory Requirements"

"MaineHealth membership will encourage Pen Bay's continuing compliance with State licensure, Medicare certification requirements, and JCAHO accreditation requirements."

"Pen Bay will continue to comply with applicable zoning requirements, environmental protection regulations, and other applicable municipal, State and Federal ordinances, statutes and regulations."

ii. COPA From Applicant

1. Introduction

"As the Application form (Section XI) recognizes, the Hospital and Health Care Provider Cooperation Act provides that

> The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by a preponderance of the evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement."

"22 M.R.S.A. §1844(5). The Act enumerates six potential advantages from a cooperative arrangement, and five potential disadvantages. The disadvantages all relate to potential reductions in competition resulting from the cooperative arrangement. The Act directs the Department to weigh in the aggregate the balance of enumerated potential advantages over potential disadvantages."

"Although the statute recites first the six potential advantages to be weighed and then the potential disadvantages, the Department's application template, the relevant portions of which are quoted above in italics, combines advantages and disadvantages in the same sections. The discussion below follows the application template."

"As will be evident from the discussion below, there will be no significant anti-competitive impact from the inclusion of Pen Bay Healthcare in the MaineHealth system. For basic community hospital-type services, there is little patient origin overlap between Penobscot Bay Medical Center and the nearest MaineHealth-member hospitals – 25-bed Waldo County General Hospital in Belfast; and 40-bed Miles Memorial Hospital in Damariscotta. There has been no strategic behavior by managed care payors that has sought to encourage any one of these hospitals to offer preferential returns to a payor in return for a steerage of patients."

"In short, the Applicants believe that there is essentially nothing to be weighed on the negative side of the COPA Act balance. There are definite benefits -- some of them potentially significant -- to be weighed on the positive side, as noted below, and in Section IV."

2. Efficiencies Likely to Result from the Transaction

a. Cost Savings

"The Applicants estimate that Pen Bay Healthcare's membership in MaineHealth will yield immediate operational savings to Pen Bay Healthcare and its employees. These include reductions in the cost of employee benefits and insurance, and savings in administrative expenses such as fees for consulting, planning and legal services."

"Based on its estimate of achievable savings, Pen Bay Healthcare is in a position to commit to achieving $1 million, net of dues payments to the MaineHealth system for services provided by the system, over the first three years post-dating the closing of the transaction."

b. Regional Service Planning

"Membership of Pen Bay Healthcare in the MaineHealth system provides the opportunity for coordinated, region-wide planning of health care services among Waldo County General Hospital, Pen Bay Healthcare and Lincoln County Healthcare. In the currently fragmented configuration, each local health care system tends to focus on the needs of its own service area population of 30,000 to 40,000 people. Whether a service could be organized and provided more efficiently or effectively on a three-county basis, achieving lower per-capita costs because the fixed costs could be distributed over a 100,000 persons in three county region, is likely to be studied only when there is a crisis, such as occurred this year with mental health services in the mid coast Maine region were near collapse."[2]

"Once Pen Bay Healthcare is a member of the MaineHealth system, regional and joint planning will be institutionalized. The parties have identified the provision of home health, mental health and substance abuse, oncology, general surgery, orthopedic surgery, urology, and nephrology as items warranting joint study for a regional approach, and will commence the effort promptly.[3] Under the conditions proposed with this application, similar to that applied by DHHS in the Southern Maine Medical Center Certificate of Public Advantage, the parties will report the results of their study within 24 months of the closing of their transaction. The report will propose, as appropriate, a plan for pursuing additional clinical efficiencies within 48 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, and benchmarks by which to measure the success of such a plan. The Department may thereafter modify the conditions of the certificate to incorporate the plan proposed."

c. **Electronic Medical Information Systems**

[2] See discussion later, at pp. 46.

[3] The Applicants are proposing conditions (pp. 84-85), similar to that approved by DHHS in the MaineHealth/Southern Maine Medical Center Certificate of Public Advantage, for reporting and implementation of the results of their regional planning.

"As part of the Definitive Agreement MaineHealth has agree to make a capital contribution of $3 million over five years to the Penobscot Bay Healthcare system for an ambulatory electronic medical record and practice management system in Penobscot Bay Healthcare-employed physician groups Since electronic medical record deployment has significant health care quality implications, it is discussed in later sections of this Application. As will be noted in that discussion, the deployment of electronic medical record also has implications for the cost-effectiveness of health care delivered – reducing medical re-testing, for example -- so the efficiency gains from this commitment deserve mention in this section."

d. **Adaptation to Delivery System Changes**

"State health planning is moving health care systems in Maine toward a delivery model that requires hospitals to accept financial risk associated with quality of performance. In its recently issued report, the Advisory Council on Health Systems Development, constituted by the Maine Legislature to examine payment system reform, noted the national movement toward accountable care organizations and patient centered medical homes, and observed that Maine will need to implement such changes regardless of the outcome of federal health care reform efforts.[4] As the report noted, such changes require caregivers such as hospitals to integrate clinically with other care providers, to develop information systems to manage the full continuum of care, and reimbursement and incentive systems that reward effective care outcomes rather than quantity of health service."[5]

"As a stand alone entity, Pen Bay Healthcare does not have the scope or capacity to create an accountable care organization. It has never engaged in risk contracting. It lacks the actuarial scope to absorb risk. It does not have the information systems to analyze, assess, measure and control risk."

"As a member of the MaineHealth system, Pen Bay Healthcare will be part of an organization that does have the necessary scope to participate in accountable care organizations, and will be included in any MaineHealth-wide participation in patient centered home and accountable care organization initiatives."

3. Effects on Competition

a. **General Acute Care Hospital Services**

1. Hospital Service Areas

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[4] Report to the Legislature to Advance Health Care Payment Reform in Maine, January 2010. p.2 (http://www.maine.gov/tools/whatsnew/attach.php?id=91516&an=1.)

[5] The Council recognized that Hospital and Health Care Provider Cooperation Act may play a key role in enabling the type of collaboration and integration necessary to achieve payment reform. The Council's Report recommended that "The Legislature examine the Hospital and Medical Care Provider Cooperation Act to assure adequate protections exist to foster the collaboration needed to support payment reform models." Report, p. 7

"There is no universally accepted definition of hospital geographic "markets" or procedures to use when deriving geographic markets. Hospitals often use service areas to delineate the population they serve and to identify other hospitals serving the same populations. In Maine, one accepted definition of service areas is the health service area ("HSA") served by the hospital."[6]

"Penobscot Bay Medical Center is a 109 bed facility, 18 of which are designated inpatient psychiatric beds. Penobscot Bay Medical Center is located in the Rockland Hospital Service Area ("HSA"), which includes most of the towns in Knox County: Rockland, Camden, Thomaston, Warren, Rockport, Union, Waldoboro, Cushing, South Thomaston, Owls Head, Tenants Harbor, Vinalhaven, Hope, Lincolnville, Washington, Friendship, Spruce Head, Islesboro, Glen Cove, Port Clyde, West Rockport, North Haven, Matinicus, and Monhegan Islands. In 2008, according to Maine Health Data Organization ("MHDO") data, over 85% of Penobscot Bay Medical Center's discharges were from towns in the Rockland HSA, and 50% of those were from five of these towns: Camden, Rockport, Rockland, Thomaston and Warren."

"Abutting the Rockland HSA to the northeast is the Belfast HSA. Waldo County General Hospital, which became a MaineHealth member in late 2008, is situated in the Belfast HSA. Waldo County General Hospital is a Medicare certified "critical access hospital," with 25 beds – a little less than 25% the size of Penobscot Bay Medical Center. The Belfast HSA includes Belfast, Brooks, Freedom, Liberty, Lincolnville, Monroe, Morrill, Sandy Point, Searsmont, Searsport, and Stockton Springs. According to Google Maps, Waldo County General Hospital is a 34 minute drive (without traffic– a bad assumption in summer) from Penobscot Bay Medical Center. Waldo County General Hospital is well within the orbit of Eastern Maine Medical Center ("EMMC"). EMMC is a 411 bed tertiary care hospital located in Bangor, Maine. According to Google Maps, it is a 38 mile drive from Waldo County General Hospital to EMMC, taking 61 minutes."

"Abutting the Rockland HSA to the southwest is the Damariscotta HSA, in which Miles Memorial Hospital is situated. Miles Memorial Hospital, which became a member of MaineHealth in the late 1990's, is a 38 bed facility located in the town of Damariscotta. By bed size, Miles Memorial Hospital is a little less than 40% of the size of Penobscot Bay Medical Center. The Damariscotta HSA includes Alna, Bremen, Bristol, Chamberlain, Damariscotta, Edgecomb, New Harbor, Newcastle, Nobleboro, Pemaquid, Round Pond, South Bristol, and Walpole. Miles Memorial Hospital is in the orbit of Mid Coast Hospital in Brunswick, Maine,

[6] "Maine Hospital Service Areas," Maine Health Data Organization, March 28, 2005. See also Maine Quality Forum web site, which identifies 34 service areas for all Maine's hospitals. http://www.mainequalityforum.gov/2004%20HOSPITAL%20INPATIENT%20SERVICE%20AREA.xls. The Muskie Institute's reports on various features of the Maine health care system also utilize an analysis by hospital service area. See, e.g., http://www.maine.gov/dhhs/oms/pdfs_doc/MaineCare ED Study FINAL 6-18-2004.doc.

which is a growing hospital that will have (in 2010) 94 beds. According to Mapquest, Miles Memorial Hospital is 24 miles from Mid Coast Hospital , taking 43 minutes."[7]

"MaineHealth does not have a hospital service area, because it does not itself provide hospital services."

"Because Maine Medical Center is a 600+-bed hospital providing tertiary services such as cardiothoracic surgery, neurosurgery, interventional cardiology and radiology, trauma services, neonatology, and kidney transplants for a large population base,, the Portland HSA in which Maine Medical Center is located accounts for a much smaller proportion of Maine Medical Center's volume than would a small community hospital such as Waldo County General Hospital or Miles Memorial Hospital. Maine Medical Center draws patients from throughout the State of Maine and into coastal New Hampshire. MMC includes within its self-defined "primary service area" all the towns of Cumberland and York Counties. Maine Medical Center's "secondary service area" comprises the nine counties in southern, central and western counties in Maine : Androscoggin, Oxford, Franklin, Somerset, Sagadahoc, Kennebec, Lincoln , Knox and Waldo. Maine Medical Center's "tertiary service area" comprises the five counties in northern and eastern Maine (Penobscot, Piscataquis, Hancock, Washington and Aroostook counties)."

2. Hospital Service Area Shares

"For the same reasons summarized in MaineHealth's Application for a Certificate of Public Advantage for the MaineHealth/Southern Maine Medical Center Definitive Agreement, which was filed in October 24 2008,[8] instead of attempting to define a "relevant market" to compute a "market" share, the Applicants describe below the patient origin characteristics of each relevant service area, and then analyze the inferences that should be drawn from the most recent MHDO patient origin data."

"As the discussion will make clear, the HSA in which Penobscot Bay Medical Center is located, the Rockland HSA, is largely self-contained. Approximately two-thirds of the hospital discharges of Rockland HSA residents are accounted for by Penobscot Bay Medical Center. This 2/3rd's service area share is calculated based on a denominator that includes all discharges, including discharges of patients requiring high-end services that Penobscot Bay Medical Center

[7] Miles Memorial Hospital, Waldo County General Hospital and Penobscot Bay Medical Center are also in the outside orbit of Maine General in Augusta/Waterville, Maine. MaineGeneral has 126 beds in Augusta and 161 in Waterville, and has just applied for a CON to combine these facilities into a 226 bed unit at a location between Augusta and Waterville. MaineGeneral's Augusta campus is 40 miles and 56 minutes driving time from Penobscot Bay. MaineGeneral's Augusta campus is also is 30 miles and 49 minutes driving time from Miles Memorial Hospital

[8] The discussion of the Hospital and Health Care Provider Cooperation Act, and the relevance of "market of share," appears at pp. 33-39 of the Joint CON/COPA Application of MaineHealth and Southern Maine Medical Center, filed October 24, 2009. For purposes of the instant application, this discussion is incorporated by reference.

(and Waldo County General Hospital or Miles Memorial Hospital) do not provide. For community hospital service-type cases, Penobscot Bay Medical Center share of the Rockland HSA is no doubt much higher."

"The relative insularity of Penobscot Bay Medical Center's position in the Rockland HSA is reflected in Penobscot Bay Medical Center's designated status as a sole community provider under Medicare. Since 1984, Penobscot Bay Medical Center has been designated by Medicare as "a sole community provider" under the provisions of Section 405.460(f) (4) of the [now CMS] regulations, and thus granted an exception from the routine cost limit."

"The insularity of Penobscot Bay Medical Center's position is also reflected in the absence of cross-privileging among Penobscot Bay Medical Center, Waldo County General Hospital and Miles Memorial Hospital. There are no physicians with active staff privileges at Penobscot Bay Medical Center who also have active staff privileges at either Waldo County General Hospital or Miles Memorial Hospital."[9]

"The following table presents 2008 patient origin discharge data from the MHDO's database for the Rockland HAS":

2008 Discharges

Rockland HSA	Penobscot Bay Medical Center	Miles Memorial Hospital	Waldo County General Hospital	Maine Medical Center	Eastern Maine Medical Center	Other Hospitals	All Hospitals
Rockland-ME	1004	34	14	131	29	89	1301
Camden-ME	542	10	15	70	22	15	674
Thomaston-ME	340	13	6	61	6	28	454
Warren-ME	290	46	4	70	16	33	459
Rockport-ME	265	5	7	57	6	22	362
Union-ME	246	27	26	57	15	27	398
Waldoboro-ME	235	240	0	138	7	84	704
Cushing-ME	135	10	0	22	6	13	186
South Thomaston-ME	133	4	6	26	8	8	185
Owls Head-ME	129	2	1	38	5	8	183
Tenants Harbor-ME	116	18	0	24	1	9	168
Vinalhaven-ME	111	0	1	24	12	15	163
Hope-ME	89	5	6	29	8	6	143
Lincolnville-ME	79	0	75	27	19	9	209
Washington-ME	79	31	3	24	5	52	194
Friendship-ME	71	31	0	20	2	4	128

[9] In the past year, there was one physician on the active staff at Waldo County General Hospital who also had active staff privileges at Penobscot Bay Medical Center. That physician -- an emergency department physician at Waldo -- has moved to locum tenens status at Penobscot Bay Medical Center.

2008 Discharges

Rockland HSA	Penobscot Bay Medical Center	Miles Memorial Hospital	Waldo County General Hospital	Maine Medical Center	Eastern Maine Medical Center	Other Hospitals	All Hospitals
Spruce Head-ME	57	2	0	20	0	5	84
Islesboro-ME	33	0	10	10	4	7	64
Glen Cove-ME	29	0	0	0	1	2	32
Port Clyde-ME	27	1	0	9	0	0	37
West Rockport-ME	21	0	1	8	1	5	36
North Haven-ME	20	0	0	6	1	5	32
Unknown town	5	0	5	0	0	5	15
Matinicus-ME	2	0	0	1	0	0	3
Monhegan-ME	1	2	0	0	0	1	4
Total	**4059**	**481**	**180**	**872**	**174**	452	**6218**
Share	**65%**	**8%**	**3%**	**14%**	**3%**	**7%**	**100%**

"As the table indicates, according to MHDO, of the discharges in 2008 of residents from the Rockland HSA towns, 65% were from Penobscot Bay Medical Center. Miles Memorial Hospital and Waldo County General Hospital accounted for, respectively only 8% and 3% of the discharges from the Rockland HSA."[10]

"At least half of Miles Memorial Hospital's 8% share of the Rockland HSA is attributable to residents from Waldoboro, a town where Miles Memorial Hospital maintains a primary care physician practice. If Waldoboro were excluded, then Miles Memorial Hospital's share would drop to 5%."[11]

"With particular reference to Waldoboro, with total population of less than 5000 and the only town where there is non-neglible overlap in patient origin between Penobscot Bay Medical Center and Miles Memorial Hospital, the hospital affiliations of the primary care physicians there limit opportunities for competition at the hospital level. There is a Pen Bay Medical Center-employed group with three family practice physicians who have practiced in Waldoboro for over a decade. These three physicians have staff privileges at Penobscot Bay Medical Center but not Miles Memorial Hospital. There is another group of physicians in Waldoboro -- two

[10] The two tertiary care institutions -- Maine Medical Center Eastern Maine Medical Center -- accounted for, respectively 14% and 3%. Other hospitals accounted for the remaining 7%. The Applicants have not performed a detailed analysis of the discharges from Maine Medical Center, but past experience indicates that many patients traveling over two hours to Portland from the Rockland HSA for care at Maine Medical Center were likely be treated for conditions that cannot be treated at Penobscot Bay Medical Center.

[11] Twelve percent (12%) of the discharges of Waldoboro residents were by hospitals other than Penobscot Bay Medical Center, Waldo County General Hospital, Miles Memorial Hospital, Eastern Maine Medical Center, and Maine Medical Center.

family practice clinicians and a pediatrician -- employed by an affiliate of Miles Memorial Hospital. This group of physicians has also operated in Waldoboro for over 10 years, and none of the physicians has admitting privileges at Penobscot Bay Medical Center. There are also two independent primary care physicians in Waldoboro who have staff privileges at Miles Memorial Hospital but not Penobscot Bay Medical Center."[12]

"Absent evidence that hospital affiliation of these physicians plays any significant role in a patient's decision to choose these physicians—and the Applicants know of none -- the lack of overlap in medical staff membership among physician groups in Waldoboro largely forecloses any significant robust competition between Penobscot Bay Medical Center and Miles Memorial Hospital for hospital admissions of Waldoboro residents. The primary care physicians in Waldoboro do not have the opportunity to offer their patients a choice of hospitalization between Penobscot Bay Medical Center and Miles Memorial Hospital when either institution would be suitable. A Miles Memorial Hospital medical staff physician without Penobscot Bay Medical Center staff privileges would have to advise the patient that if he or she were to be hospitalized at Miles Memorial Hospital, the Miles Memorial Hospital physician could continue to provide care at the hospital, but that if the patient wanted to be hospitalized at Penobscot Bay Medical Center, his or her care would have to be transferred to another physician."

"What is true for Waldoboro is true *a* fortiori true for the whole of the Rockland HSA. Penobscot Bay Medical Center is the largest hospital of the three, measured by number of beds, over twice as large as Miles Memorial Hospital, and four times larger than Waldo County General Hospital. With this configuration, one would expect that neither Miles Memorial Hospital nor Waldo County General Hospital would be attracting significant number of patients from this area, and the data bears this out. What overlap exists is only on the margins, and not at levels that would provoke an insurer to exclude or threaten to exclude Penobscot Bay from an insurer's network, or "penalize" patients financially (higher co-pays or deductibles) for using Penobscot Bay Medical Center. Penobscot Bay Medical Center's share of the Rockland HSA is approximately six times the combined share of Miles Memorial Hospital and Waldo County. It is reasonable to assume that any commercial payer doing business in the Rockland HSA would conclude that a contract with Penobscot Bay Medical Center is necessary thereby limiting any opportunities for significant price competition from these other two hospitals affecting Penobscot Bay's rates."

"The data set forth below demonstrates that the converse is also true. Penobscot Bay Medical Center can not significantly constrain pricing at either Miles Memorial or Waldo County General Hospital. Penobscot Bay Medical Center's discharges from the adjoining HSA's in which these two hospitals are located are not significant enough to provoke strategic payor behavior that would induce significant price or other concessions at either Waldo County General Hospital or Miles Memorial Hospital."

"In the case of Waldo County General Hospital, located in the Belfast HSA, the hospital shares in the HSA are shown below. Because some of the patient "outflow" from the Belfast

[12] Drs. Walter Love and Margaret Webb.

HSA to Penobscot Bay Medical Center is for inpatient services that Waldo County General Hospital does not provide (it is about one-quarter the size of Penobscot Bay Medical Center), its 8% share probably overstates its share of inpatient services that Waldo County General Hospital also can provide":[13]

Belfast HSA Discharges, 2008

Town Code	Waldo County General Hospital	Penobscot Bay Medical Center	Miles Memorial Hospital	Maine Medical Center	Eastern Maine Medical Center	Other Hospitals	All Hospitals
Belfast-ME	739	95	2	70	250	128	1284
Brooks-ME	102	7	0	11	46	30	196
Freedom-ME	37	3	0	16	8	15	79
Liberty-ME	48	23	0	13	13	25	122
Lincolnville-ME	65	20	0	13	18	11	127
Monroe-ME	29	7	0	6	48	15	105
Morrill-ME	128	20	0	24	45	15	232
Sandy Point-ME	5	0	0	0	2	1	8
Searsmont-ME	41	25	3	9	31	11	120
Searsport-ME	267	28	1	24	109	37	466
Stockton Springs-ME	100	16	1	9	58	27	211
Total	**1561**	**244**	**7**	**195**	**628**	**315**	**2950**
Share	**53%**	**8%**	**0%**	**7%**	**21%**	**11%**	**100.0%**

"Before adjustment for services provided at Penobscot Bay Medical Center but not at Waldo County General Hospital, Penobscot Bay Medical Center's share of the Belfast HSA is 8%. However, of the 244 discharges to Penobscot Bay Medical Center from the Belfast HSA, 126 (53%) fell within two major diagnostic groups: mental health or drug/substance above, neither of which Waldo County General Hospital provides to inpatients. Thus, Penobscot Bay Medical Center's share of inpatient discharges for services available at both Waldo County General Hospital and Penobscot Bay Medical Center is substantially smaller than 8%."

"In the case of Miles Memorial Hospital and the hospital discharge distribution from the Damariscotta HSA, the shares are as follows":

Damariscotta HSA Discharges, 2008

Town Code	Miles Memorial Hospital	Penobscot Bay Medical Center	Waldo County General Hospital	Maine Medical Center	Eastern Maine Medical Center	Other Hospitals	All Hospitals

[13] For example, Penobscot Bay Medical Center provides inpatient mental health and substance abuse services, whereas Waldo County General Hospital does not.

Damariscotta HSA Discharges, 2008

Town Code	Miles Memorial Hospital	Penobscot Bay Medical Center	Waldo County General Hospital	Maine Medical Center	Eastern Maine Medical Center	Other Hospitals	All Hospitals
Alna-ME	20	2	0	12	1	16	51
Bremen-ME	58	4	0	19	1	15	97
Bristol-ME	57	7	0	25	0	31	120
Chamberlain-ME	9	0	0	4	0	2	15
Damariscotta-ME	233	16	0	60	1	34	344
Edgecomb-ME	49	1	0	27	0	53	130
New Harbor-ME	71	4	0	31	0	22	128
Newcastle-ME	129	11	0	50	1	32	223
Nobleboro-ME	91	15	0	55	0	36	197
Pemaquid-ME	26	1	0	8	0	5	40
Round Pond-ME	39	4	0	17	0	12	72
South Bristol-ME	29	3	0	20	1	9	62
Walpole-ME	26	1	0	8	1	4	40
Total	**837**	**69**	**0**	**336**	**6**	**271**	**1519**
Share	**55%**	**5%**	**0%**	**22%**	**0%**	**18%**	**100%**

"As the table illustrates, Penobscot Bay Medical Center's share of the Damariscotta HSA is 5%. These data also includes inpatient mental health services, a services that Miles Memorial Hospital does not provide. Even without adjustment for these and other services,[14] it is apparent that Penobscot Bay Medical Center does not draw a substantial share of patients from the Damariscotta HSA. Miles Memorial Hospital's share of the Damariscotta HSA (55%) is approximately ten times Penobscot Bay Medical Center's share (5%)."

"In sum, Penobscot Bay's small share of HSA discharges compared to Miles Memorial's large share makes it unlikely that Penobscot Bay can serve as an effective alternative for Miles Memorial, and therefore unlikely that managed care payers could use Penobscot Bay Medical Center to obtain any significant price concessions from Miles Memorial Hospital of Damariscotta HSA discharges."

[14] If a comparison of discharges focused only on the subset of services offered at both Penobscot Bay Medical Center and Miles Memorial Hospital were necessary, further adjustments to Penobscot Bay Medical Center's already small share of the Damariscotta HSA would be warranted for vascular surgery, hematology and oncology. Miles Memorial Hospital does not provide these services, whereas Penobscot Bay Medical Center does. In addition, Penobscot Bay Medical Center has urologists, neurologists, and ENT physicians in its employ; Miles does not. In fact, Penobscot Bay Medical Center makes these clinicians available to do outpatient work at Miles Memorial Hospital, and patients in the Damariscotta HSA under the care of these physicians, when in need of specialty-specific inpatient procedures, likely will be hospitalized at Penobscot Bay Medical Center, where the specialist can follow their care.

3. Impacts on Payors

"The Applicants believe that there are no likely significant adverse consequences from the Definitive Agreement on the ability of health care payors to negotiate optimal payment and service arrangements with hospitals or health care providers. In addition, the conditions proposed by the Applicants to accompany a Certificate of Public Advantage will address any residual concerns on this issue."

"What the data concerning service area shares discussed in the last sub-section suggests is confirmed in actual practice. Contracts between Penobscot Bay Medical Center and managed care payors are not influenced to any significant extent by any competitive rivalry between Penobscot Bay Medical Center and either Waldo County General Hospital or Miles Memorial Hospital. Both Miles and Waldo are a fraction of Penobscot Bay Medical Center's size, and as noted above, the lack of physician overlap between the three hospitals limits payer opportunities to induce price competition between Penobscot Bay and each of the two Maine Health hospitals. The Applicants are not aware of any recent circumstance in which a sizeable managed care payor has suggested to Penobscot Bay Medical Center that it would like to negotiate an exclusive or even a preferred arrangement for the provision of hospital services for residents of Penobscot Bay Medical Center's primary service area to the exclusion of the other institutions such as Waldo County General Hospital or Miles Memorial Hospital. Similarly, none of the managed care payors has suggested to MaineHealth that it would like to negotiate an exclusive or even a preferred arrangement for the provision of hospital services for residents of Waldo County General Hospital's service area or Miles Memorial Hospital's service area, to the exclusion of Penobscot Bay Medical Center." [15]

"To provide further assurances in this regard, the Applicants will make the same commitment for Penobscot Bay Healthcare that was made in connection with the MaineHealth/Southern Maine Medical Center transaction, and embodied in the Certificate of Public Advantage issued by the Department in March 2009. During the term of the certificate,

[15] The transaction is unlikely to foreclose any future competition between Penobscot Bay Medical Center and MaineHealth hospitals that would occur in the absence of the combination. MaineHealth has not and does not seek actively to have its member hospitals actively to draw patients from Penobscot Bay Medical Center service area that could otherwise be properly treated at Penobscot Bay Medical Center. In part this reflects MaineHealth's philosophy, which is to support the provision of care locally when the care can be competently and efficiently delivered locally. It also reflects the fact that specialists and sub-specialists who practice at MaineHealth's largest hospital, Maine Medical Center, rely on primary care physicians and some specialty physicians from around the state, including Penobscot Bay Medical Center's service area, for the referral of patients. MaineHealth and Maine Medical Center seek to support these referral patterns. Any Maine Health initiative that would compromise the ability of "local" physicians to maintain viable practices could lead to a shift in referral patterns away from Maine Medical Center. Further, Maine Health's general philosophy is to have care provided locally are community hospitals wherever possible, and this entails assuring the viability of the physician practices in those local communities.

Penobscot Bay Medical Center will set its annual consolidated budgeted operating margin at a level less than or equal to 3% of its total operating revenue."

b. Mental Health Services

"The Applicants have also considered whether there may be any likely disadvantages resulting from any material reduction in competition for the provision of mental health services as a result of their Definitive Agreement. Their answer is 'no.'"

"As noted previously, Penobscot Bay Medical Center provides inpatient psychiatric services and substance abuse services using an 18-bed designated psychiatric unit within its facility. Waldo County General Hospital and Miles Memorial Hospital do not provide such services and do not have designated psychiatric units. The nearest providers of inpatient psychiatric services are MaineGeneral Medical Center in Augusta, Mid Coast Hospital in Brunswick, and Eastern Maine Healthcare Systems and its Acadia Hospital affiliate in Bangor. Spring Harbor Hospital, a MaineHealth member providing inpatient psychiatric services to adults and children, is located more distant still, in South Portland, Maine.[16] Penobscot Bay Medical Center accounted for 69% of all inpatient mental health/substance abuse discharges (419 of 607) from the Rockland HSA in 2008. Waldo County General Hospital accounted for 0%, and Miles, 1%."[17]

"Data from the adjoining HSA's confirm that neither Waldo County General Hospital nor Miles Memorial Hospital are alternatives to Penobscot Bay Medical Center for inpatient mental health and substance abuse services.. In 2008, there were 264 mental health/substance abuse hospital discharges of residents from the Belfast HSA, where Waldo County General Hospital is located. Of these, 48% (126) were discharged from Penobscot Bay Medical Center, while only 2% (6) were discharged from Waldo County General Hospital."[18]

"In the same year, there were 100 mental health/substance abuse hospital discharges of residents from the Damariscotta HSA. Of the 100, Mid Coast Hospital had the largest share -- 25%, followed by Penobscot Bay Medical Center at 21%, MaineGeneral (Augusta and

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[16] Maine Medical Center, unlike Penobscot Bay Medical Center and Spring Harbor Hospital, does not provide mental health services to persons with a mental health-only diagnosis. MMC serves only dual diagnosis patients – i.e., patients with an underlying medical condition requiring hospitalization who also may require mental health services.

[17] No psychiatrists are listed on Miles Memorial Hospital's web site in the "find a physician" listing. http://www.mileshealthcare.org/lch_body.cfm?id=6115. Spring Harbor Hospital accounted for 8% of all inpatient mental health/substance abuse discharges from the Rockland HSA in 2008; MaineGeneral Hospitals, 4%; Riverview, 3%; Mercy Hospital, 2%; and Mid Coast Hospital, 2%.

[18] In 2008, 24% of the mental health/substance abuse hospital discharges of residents from the Belfast HSA were from Acadia Hospital in Bangor; 7% from MaineGeneral; 6% from Spring Harbor Hospital in South Portland; 3% from Riverview Psychiatric in Augusta; 3% from St. Mary's in Lewiston; 2% from Mid Coast Hospital in Brunswick; and 1% from Maine Medical Center in Portland.

Waterville) at 12%; Spring Harbor at 12%; Miles Memorial Hospital at 9%;Mercy Hospital at 8%; and St. Mary's at 7%.[19] There were none from Waldo County General Hospital."

"In short, the patient discharge data indicates that there is little or no competition between Penobscot Bay Medical Center and each of the nearest MaineHealth hospitals -- Waldo County General Hospital and Miles Memorial Hospital -- for inpatient mental health patients originating in the Belfast or Damariscotta HSA's.[20] Insofar as the range of alternatives for inpatient mental health services is geographically broader than an HSA, there are and will continue to be alternatives other than MaineHealth member hospitals for inpatient mental health services. Eastern Maine (Acadia Hospital), Maine General and Mid Coast Hospital provide alternatives to such patients. Accordingly, there are no material disadvantages likely to result any reduction in competition for inpatient mental health services as a result of the implementation of the Definitive Agreement."

"Concerning outpatient mental health services, there has been a recent change in service providers. Penobscot Bay Healthcare had been a provider of outpatient mental health services in Knox and Waldo through its Mid Coast Mental Health Services affiliate. Because of governmental funding cutbacks, this outpatient mental health program was operating at a loss -- including an $835,000 loss in FY 2010. MaineHealth, through its Maine Mental Health Partners affiliate, agreed to step in to maintain service levels in the area by acquiring the assets of the program. Maine Mental Health Partners also entered into an agreement with Waldo County Healthcare, Lincoln County Healthcare and Penobscot Bay Medical Center to subsidize the program and share the expected operating losses over the next three years."

"Because this outpatient mental program has already been consolidated (and in the process, has been saved from collapse), the Definitive Agreement between Pen Bay Healthcare and MaineHealth cannot eliminate any future competition for outpatient mental health services between Penobscot Bay Medical Center and any MaineHealth hospital in the Belfast, Rockland, and Damariscotta HSA's"

c. Home Health Care Services

[19] In Waldoboro, the town in which Penobscot Bay Medical Center and Miles Memorial Hospital have overlapping primary care practices, there were 29 discharges of residents from the town of Waldoboro where the principal discharge diagnosis was psychosis. Of the 29, 16 were discharges from Penobscot Bay Medical Center; 2 from Acadia Hospital in Bangor; 6 from Mid Coast Hospital in Brunswick; 3 from Mary's Hospital in Lewiston; and 2 from Spring Harbor in South Portland.

[20] The significance of this data as an indicium of competition should be further discounted for those discharges in which the payors are MaineCare and Medicare. MaineCare and Medicare set their respective rates of reimbursement by fiat as an implementation of government policy. MaineCare and Medicare reimbursement rates are not set by negotiation in a competitive market context. In general, these governmental sources are estimated to account for up to 2/3rd's of all such admissions.

"Penobscot Bay Medical Center has a home health care affiliate known as Kno-Wal-Lin Home Care & Hospice, headquartered in Rockport, and providing services in Knox, Waldo and Lincoln counties."

"Waldo County Home Health & Hospice, and affiliate of Waldo County Healthcare, Inc, is headquartered in Belfast and serves primarily a customer base in Waldo County."

"Miles & St. Andrews Home Health & Hospice, and affiliate of Lincoln County Healthcare, Inc, the parent organization of Miles Memorial Hospital and St. Andrews Hospital, is headquartered in Damariscotta, Maine, and serves primarily a customer base in Lincoln County."

"Although these three entities will all be affiliates of the MaineHealth system following the consummation of the MaineHealth/Penobscot Bay Healthcare transaction, the Applicants do not believe that there will be any adverse impact on payors or customers for home health services resulting from transaction. The vast majority of patients requiring home health services are beneficiaries of public payor programs for which reimbursement is fiated by the governmental payor rather than negotiated. Over 80% of the revenues earned by each of these entities is accounted for by Medicare and MaineCare, which fix a reimbursement rate.[21] By definition, the price for services will be the same for Medicare and MaineCare customers before and after the MaineHealth/Penobscot Bay Healthcare transaction."

"In addition, there are no major constraints on other larger multi-office home health providers in adjoining areas from extending their service area to the mid-coast Maine region if it became profitable to do so. Bangor Area Visiting Nurses already serves customers located Waldo County that border on Penobscot County. Hancock County Visiting Nurses serves the adjoining county east of Waldo County. Beacon Hospice serves Waldo and Knox County. CHANS, an affiliate of Mid Coast Hospital in Brunswick, includes in its service area towns such as Wiscasset and Dresden that are adjacent to Damariscotta. Arcadia Health Care and Gentiva Health Care are nationwide providers of home health services with multiple locations in Maine, with an ability to extend their geographic reach if it became profitable to do so."[22]

"Accordingly, the membership of Penobscot Bay Healthcare in the MaineHealth system will not have any likely adverse impact on the ability of health maintenance organizations,

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[21] For this reason, home health entities are usually, financially speaking, marginal operations. Kno-Wal-Lin Home Care & Hospice, the home health affiliate of Pen Bay Medical Center, is anticipating an operating loss of approximately $200,000 for the fiscal year ending March 31, 2010. The home health entity of Lincoln County Healthcare- known as Miles & St. Andrews Home Health & Hospice -- essentially functions as a break-even operation. For the most recent fiscal year, its operating margin – net revenues less operational and overhead costs -- was $9,824. Of the 128 clients currently served in the most recent year by Miles & St. Andrews Home Health & Hospice, 112 -- 88% -- are Medicare or MaineCare clients.

[22] Apria Healthcare, which offers home respiratory, infusion and enteral therapies, trains caregivers in the use of the equipment, and makes check-up home visits, operates from several offices in Maine, including Rockland.

preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with home health care providers."

d. Impact on Other Competitors or Vendors

"The Applicants believe there will be no significant disadvantages attributable to any reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that are likely to result directly or indirectly from the cooperative agreement. None of the existing referral patterns of residents from the Mid-Coast area (Belfast, Rockland and Damariscotta HSA's) is expected to change."

"The Applicants also believe that there will be no reduction in competition for the patronage of vendors who provide goods or services to Penobscot Bay Medical Center that would result from the implementation of the Definitive Agreement, and therefore no disadvantages attributable to any such reduction in hospital competition. Penobscot Bay Medical Center is already a member of the MaineHealth-sponsored joint buying group that achieves economies of scale savings for its members, and the Definitive Agreement does not change this status. The labor markets from which Penobscot Bay Medical Center and the nearby MaineHealth hospitals procure paraprofessional services are geographically broad in scope, and there are many entities – other hospitals, physicians' offices, clinics, insurance companies, nursing homes, and home health agencies, participating in these labor markets."

"Finally**, t**he Applicants believe that there will be no adverse impact on patients or clients on the price of health care services. This conclusion flows in part from the analysis set forth in the preceding sub-sections. There is no significant current rivalry between Penobscot Bay Medical Center and MaineHealth hospitals for patient patronage, as the data demonstrate, and there is no record to suggest that managed care payors are likely to stimulate price-related rivalry by threatening to exclude one of the institutions from the payor network or otherwise steer patients to the other institutions"

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are specific to the determination that the economic feasibility of the proposed services is demonstrated in terms of the:

- Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

- The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules.

ii. CON Analysis

CONU staff prepared a template (modified for mergers) that allowed financial information from the two applicants to be placed on the same template. The applicants are the two organizations: MaineHealth and PBMC. MaineHealth is a large organization with multiple subsidiaries and joint ventures. MaineHealth has succeeded in making these separate entities self-sufficient. The majority of inter-company activity is related to membership fees, purchase by buying groups, collective financing opportunities and legal and technical expertise. For this merger, CONU staff determined that for the project to be considered financially viable, CONU would look at the capacity of MMC as an example of MaineHealth's overall financial health because the revenues and capitalization of MMC accounts for a significant portion of MaineHealth. Showing that MMC is capable of supporting the operations of PBMC during the three years under consideration, CONU has sufficient information for a positive recommendation regarding this determination.

PBHC's audited financial statements indicate that they had revenues in excess of expenditures for 2008 and 2009 of $1,601,152 and $147,576 respectively. Their ratios were remarkably similar for the time periods in the audited financial statements as compared to the projected periods of 2011 through 2013. The auditor's opinion of the financial statements was unqualified. Cash and cash equivalents was $3,117,798 in 2009, which was 2.31% of the year's cash outlays indicating a days cash on hand from cash and cash investments of at least 8 days. Investments of $8.7 million give the organization a significant amount of liquidity if the need arose to convert to cash. Property, plant and equipment made up 49% of the balance sheet. Net assets of $62.8 million with only $122.3 million in assets indicate a well capitalized hospital. Long term debt in 2009 was $42.5 million, an increase of $4.2 million from the previous year end. The financial statements reinforce that PBHC is a financially viable operating entity.

The applicants did not provide a budget narrative and provided limited explanations for the financial projections. The CONU Financial Forecast Module completed by the applicant is consistent with comments made at the technical assistance meeting that savings from benefits would offset the administrative fee PBMC would pay to MaineHealth to become a member.

The savings presented by the applicants did not include reductions in staff related to this proposed transaction. Net savings for PBMC are limited to the difference between the reduced costs of employee benefits and other insurance savings and the annual fee for being a member of MaineHealth. Net patient service revenues in 2011, the first projected year for PBMC after the merger, are expected to be $127.8 million.

Twenty-three ratios were developed for the applicant's submission to help elucidate the current financial position for Maine Medical Center, MaineHealth's largest hospital, and the impact of the proposed project on Maine Medical Center's operating and financial feasibility. Additional financial ratios, as well as financial projections, are on file with CONU. The information contained in this section relies on the information presented by the applicant.

The years presented in the Financial Forecast Module show both hospitals alone and then combined for the sole purpose of showing that MaineHealth's major subsidiary (Maine Medical Center) has the capacity to support this merger.

There are four areas of financial ratio analysis related to the ability of the applicant (MaineHealth) to support the project (PBHC) financially. These ratios are profitability, liquidity, capital structure and activity ratios.

Profitability ratios attempt to show how well the hospitals do in achieving an excess of revenues over expenditures (providing a return). Generating revenue in excess of expenditures is important to secure the resources necessary to update property, plant and equipment, implement strategic plans, or respond to emergent opportunities for investment. Losses, on the other hand, threaten liquidity, drain other investments, and may threaten the long-term viability of the organization. The profitability ratios reported here include the operating margin, which measures the profitability from operations alone; the net margin (called total margin in some sources), which measures profitability including other sources of income; and the return on total assets. [23]

The following table shows projected financial ratios of PBMC in 2013, the third operating year after the agreement. For CON purposes, historical performance of PBMC is not germane to the question of whether MaineHealth has the capacity to financially support PBMC.

Financial Performance Indicators

Profitability	MMC 2007	MMC 2009	MMC 2013	PBMC 2013	Combined 2013
Operating Margin	7.94%	7.55%	6.83%	1.15%	6.09%
Net Margin	11.66%	8.38%	9.54%	1.99%	8.55%
Return on Total Assets	6.86%	5.70%	6.60%	1.97%	6.16%

All three margins indicate that if the proposed project occurs, that Maine Medical Center and PBMC would remain profitable. These margins indicate the ability of the applicant to take on additional expenditures based upon excess of revenues over expenditures.

Non-profit hospitals need to perform at financially sustainable levels in order to carry out their public missions. An adequate operating margin is a key indicator of the financial health of a hospital. Of great concern to CONU is the determination of the reasonableness of the methodology the applicant has used in determining the appropriateness of the timing and scope of the project. Over time, capital expenditures can and need to be made in order to meet the goals

[23] For the purposes of this analysis, CONU is using Maine Medical Center's financial data to demonstrate that MaineHealth is capable of fully supporting PBMC.

expressed in the State Health Plan. CONU evaluates the applicant's ability to organize and respond to its challenges in improving and maintaining the health care system.

Operating margins in the high performing hospital group have seen greater improvements in margins, while hospitals in the low performing group are sliding. High performing hospitals are doing better now than five years ago. Over the same time, lower performing hospitals are generally doing worse than five years ago. There is a widening gap between high and low performing hospitals. Improvement in operating profits for high-performing hospitals drives this widening performance gap. Small rural hospitals are in a worse financial position than any other sector of hospitals with many of these hospitals either closing or consolidating with larger hospitals. As a comparison, operating margins in the Northeast Region are considerably lower than in other regions.

The Maine State average for operating margin in 2007 was 4.3%. Maine Medical Center was at 7.94%. In 2013 PBMC is projected to be 1.15%. The impact on the combined operations would be a decrease in operating margin of 0.72% for MMC. This decrease is significantly less than the decreases seen in other projects that have been approved in the past year.

The trend for operating margin in the State of Maine has been improving from a low of 2.0% in 2003 to the present high of 4.3% in 2007. Maine Medical Center's margin for the past five operating years including 2007 averaged 6.0%; 2005 was 15.90%, which helped to offset the 4.41% that Maine Medical Center reported in 2004. PBMC was profitable during the same timeframe (2003-2005) but considerably less so.

The effect of this project on operating margins, as projected by the applicants, is not significant. This project is not expected to cause a significant impact on the operating margin on MaineHealth.

Financial Performance Indicators

Profitability	MMC 2007	MMC 2009	MMC 2013	PBMC 2013	Combined 2013
Operating Surplus	$46,577,000	$52,217,000	$58,603,000	$1,492,933	$60,095,933
Total Surplus	$68,394,000	$57,941,000	$81,881,000	$2,583,701	$84,464,701

This table validates that the applicant has the capacity to financially support this project, based upon profitability.

Liquidity: Current ratios and acid test ratios are indicators of the ability of a hospital to meet its short-term obligations. The acid test ratio is generally considered to be a more stringent measure because it recognizes only the most liquid assets as resources available for short-term debt; the current ratio assumes that inventory and accounts receivable can be liquidated sufficiently to meet short-term obligations. Days in accounts receivable and average payment period also are

used to monitor liquidity. Respectively, they indicate the average length of time the hospital takes to collect one dollar of receivables or pay one dollar of commercial credit. Together, they can provide a cursory indication of cash management performance.

Financial Performance Indicators

Liquidity	MMC 2007	MMC 2009	MMC 2013	PBMC 2013	Combined 2013
Current Ratio	2.42	2.74	3.14	2.77	3.10
Days in Patient Accounts Receivable	20.27 Days	25.05 Days	23.04 Days	56.32 Days	27.22 Days
Days Cash on Hand	247.04 Days	192.65 Days	254.76 Days	82.93 Days	230.23 Days
Average Payment Period	117.01 Days	75.86 Days	69.76 Days	54.40 Days	67.56 Days

In terms of liquidity, Maine Medical Center currently has substantial liquidity. This is caused, in part by, a significant delay in making payments to its vendors. It is interesting to note that the projection indicates a decreasing lag over the forecasted period. The average payment period for Maine Medical Center is significantly longer than most other hospitals reviewed by CONU. Forecasted average payment periods for MMC and PBMC combined in 2013 are a very conservative 68 days; because this is a continuation of recent trends, it strengthens the assurance that cash needs can be met. Days in accounts receivable decreases over the period by 2.1 days. Days cash on hand was in a range of 195-247 days in the 2007-2009 periods and is projected to increase to 254 days during the course of the project. This may be an indication that future projects may not be incorporated in the projection.

Liquidity measures a hospital's ability to manage change and provide for short-term needs for cash. This liquidity alleviates the need for decision making to be focused on short term goals and allows for more efficient planning and operations of a hospital.

Days Cash On Hand is a ratio that is an industry accepted, easily calculated, method to determine a hospital's ability to meet cash demands.

The year 2007 marked an improvement from 2006 of cash on hand nationally. The applicant's major member, Maine Medical Center, had gross patient service revenue closing in on $1 billion annually and cash on hand of 247 days in 2007, clearly MMC has significantly more cash on hand than the average hospital in its peer group. Interestingly, S & P Bond ratings showed no clear distinction between ratings and cash on hand for investment grade ratings. This may mean that high performing hospitals do attempt to control excess levels of cash on hand.

In 2007 the average days cash on hand for all sources for hospitals in the State of Maine was 87.2 days. Calculated days cash on hand for Maine Medical Center in 2007 was approximately

247 days, indicating that Maine Medical Center was in the 90th percentile. PBMC is expecting days cash on hand to be 93 days in 2013.

According to the same source, between 2003 and 2007 the average days cash on hand remained about 74 days. In 2005, cash on hand reached a four year low. Between 2007 and 2013 average days cash on hand for Maine Medical Center is projected to increase by 7 days. In 2005, hospitals in the State of Maine had 16% less days cash on hand than the Northeast Region at 81 days, 12 days more than the Maine average. In 2007, Maine hospitals had increased their cash on hand by 26% in two years to be 18 days above the regional average.

The impact of the proposed project is calculated to be a decrease of 24 days cash on hand in the third operating year as compared to the results predicted by Maine Medical Center if the agreement did not occur (with and without this project). This is a minor decrease in days cash on hand. The project does not entail combining the two hospitals' operations; however, consideration of the ability to financially support the smaller hospital requires the consideration of the combined results of the two hospitals. Based upon source information, the "combined hospital" is projected to be greater than the 90th percentile for days cash on hand, compared to today's industry averages, with or without the project. Therefore this project will not have a substantial impact on Maine Medical Center's operating ability to meet its cash demands. Even if actual cash on hand is lower, MaineHealth is projected to adequately support PBMC, based upon liquidity.

Activity and Capital Structure: Activity ratios indicate the efficiency with which an organization uses its resources, typically in an attempt to generate revenue. Activity ratios can present a complicated picture because they are influenced both by revenues and the value of assets owned by the organization. The total asset turnover ratio compares revenues to total assets. Total assets may rise (or fall) disproportionately in a year of heavy (dis)investment in property, plant and equipment, or decrease steadily with annual depreciation. Thus, it is helpful to view total asset turnover at the same time as age of plant. Debt service coverage (DSC) is reviewed in greater detail. DSC measures the ability of a hospital to cover its current year interest and balance payments.

Financial Performance Indicators

Solvency	MMC 2007	MMC 2009	MMC 2013	PBMC 2013	Combined 2013
Equity Financing	65.20%	54.71%	66.60%	56.75%	65.66%
Debt Service Coverage	10.86	7.15	11.92	1.09	9.49
Cash Flow to Total Debt	28%	23%	36%	14%	28.35%
Fixed Asset Financing	56%	78%	59%	81%	60.80%

Many long term creditors and bond rating agencies evaluate capital structure ratios to determine the hospital's ability to increase its amount of financing. During the past 20 years, the hospital industry has radically increased its percentage of debt financing. This trend makes capital structure ratios important to hospital management because these ratios are widely used by outside creditors. Values for these ratios ultimately determine the amount of financing available for a hospital. DSC is the most widely used capital structure ratio. DSC minimums are often seen as loan requirements when obtaining financing. DSC is the ratio of earnings plus depreciation and interest expense to debt service requirements. In 2007, the median Maine hospital's DSC was 3.34x.

Maine Medical Center had a DSC in 2007 of 10.86x, which places it in the range of 90th percentile. The trend has been statewide for 2003-2007 has been increasing with a low of 3.07 in 2003 and a high of 3.71 in 2004. The trend for Maine Medical Center has been decreasing for the last 4 years from 11.23x to 5.28x. The trend, as projected by Maine Medical Center, for this project 2009-2015 is that DSC is expected to partly rebound to 9.49% for the "combined hospitals".

Maine Medical Center has the capacity and the ability to have adequate DSC. If Maine Medical Center were to maintain its DSC at a ratio consistent with its recent history, a change of 2.43x (assuming all 2013 debt for PBMC with no income or revenue) would not significantly impact its ability to service its loans.

The 2009 Almanac of Hospital Financial and Operating Indicators commented: "Low performance hospitals have historically used more debt to finance net fixed assets than high performance hospitals. With the removal of capital cost pass through, long term debt will become most costly relative to equity. High performance hospitals are restructuring their capital positions to reflect this shift in the relative costs of debt and equity capital. However, we expect fixed asset financing ratios to continue to remain stable during the next 5 (five) years as hospitals curtail their growth in new capital expenditures and reduce their reliance on long term debt."

The Northeast has considerably higher rates in financing fixed assets than other regions. The 2007 average for hospitals in the State of Maine was 57% in regards to fixed asset financing. In 2007, Maine Medical Center was at 56%, which is the 50th-75th percentile for the State of Maine. The fixed asset financing ratio over the past 5 years has remained relatively consistent in the State of Maine.

Efficiency Ratios: Efficiency ratios measure various assets and how many times annual revenues exceed these assets.

Financial Performance Indicators

Efficiency	MMC 2007	MMC 2009	MMC 2013	PBMC 2013	Combined 2013
Total Asset Turnover	0.59	0.68	0.69	0.93	0.72

Fixed Asset Turnover	1.71	1.59	1.84	2.55	1.88
Current Asset Turnover	1.49	2.05	1.95	2.57	1.98

Total asset turnover (TAT) provides an index of the number of operating revenue dollars generated per dollar of asset investment. Higher values for this ratio imply greater generation of revenue from the existing investments of assets. Larger hospitals usually have lower values for turnover than smaller hospitals. This can be attributed to two factors: (1) larger hospitals are more likely to have newer physical plants; and (2) capital intensity is often greater in larger hospitals due to more special services and higher levels of technology.

In 2007, according to the source cited above, Maine hospitals had a TAT of 1.16. For 2007, Maine Medical Center had a TAT of .59. This is indicative of the relative age of the hospital and expected because of the significant hospital improvements over the past decade.

In the period of 2003 – 2007 there has been a slight increase in the TAT for Maine hospitals. The expected trend for Maine Medical Center is for TAT to remain the same during the time frame of this project 2009-2013. This is reflective of a hospital planning to spend approximately the same percentage of funds on capital improvements or investments in technology. The projected operating costs in the third operating year are expected to remain unchanged. For the Bureau of Insurance, this amount is adjusted to a current value of $0 in order to calculate the impact of this project on commercial insurance premiums. The impact on the Capital Investment Fund (CIF), if approved, would be $0. The third year operating costs include $861,000 in projected savings related to benefit costs legal/insurance costs and an increase of $575,000 in fees to MaineHealth. No decreases in operating costs due to State Health Plan initiatives are included.

In completing this section of the analysis, the CONU concludes that, as proposed, the applicants can financially support the project. Demands on liquidity and capital structure are expected to be adequate to support projected operations. Financing and turnover ratios show little impact on the organization as a whole from successfully engaging in this project. Maine Medical Center has shown current earnings, which are not expected to be significantly impacted by this project.

Changing Laws and Regulations

CONU staff is not aware of any imminent or proposed changes in laws and regulations that would impact the project, except for the federal health care reform. The impact of the health reform is not yet determinable. MaineHealth presently has the organizational strength to adjust to reasonable changes in laws and regulations.

iii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely gains in the cost efficiency of services provided by the hospitals or others;
- The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payers to negotiate optimal payment and service arrangements with hospitals or health care providers;
- The extent of any disadvantages attributable to reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that is likely to result directly or indirectly from the cooperative agreement; and
- The extent of any likely adverse impact on patients or clients in the price of health care services.

iv. COPA Analysis

On July 23, 2010 the Attorney General submitted comments relative to the Application for Certificate of Public Advantage. The applicant has provided relevant information and discussed issues related to competition with the Attorney General's office. Materials supplied to CONU regarding these discussions and therefore made part of this record are the July 23, 2010 comments from the Attorney General and the post-hearing comments from the applicant received by CONU on July 26, 2010. The Attorney General made several conclusions regarding the proposed Definitive Agreement which are included in the appropriate discussion sections of this preliminary analysis.

The Attorney General also engaged the services of a health care economics consulting firm. The consultant analyzed the present level of competition in the Rockland, Belfast and Damariscotta Hospital Service Areas (HSAs), as those HSAs are identified by the MHDO. The Attorney General commented that the patient origins from the hospital data suggested that these three HSAs comprise logical geographic markets. This approach to the geographic scope of the competition analysis is consistent with the Applicants approach according to the Attorney General. According to the Attorney General, the consultant specifically analyzed the degree of apparent overlap in services between Pen Bay and relevant existing MaineHealth hospitals, namely Miles Memorial Hospital, Waldo County General Hospital and Maine Medical Center. The Attorney General also conducted a number of confidential interviews of persons or businesses familiar with health care delivery and payment mechanisms in mid coast Maine. The Attorney General concluded that the existing level of competition between Pen Bay and MaineHealth is small. The Attorney General commented that "the varied scope of services at the individual hospitals analyzed and the well-established patterns of patients seeking available services at the closest community hospital lead to minimal overlap between and among Pen Bay and the nearby MaineHealth hospitals." The Attorney General points out that the "sole

community hospital" designation from the U.S. Department of Health and Human Services, indicated that Pen Bay has no meaningful competitors servicing its area population.

The CONU has previously researched this type of "membership" in MaineHealth by other applicants. In 2008, a COPA application was filed in the matter of Southern Maine Medical Center to become a member of MaineHealth.

Federal Anti-Trust Law allows the government to intervene if an impediment to competition occurs. The statute regarding Certificate of Public Advantage is less restrictive because impacts on competition need to be weighed against advantages provided in the agreement. In considering the cases cited below, the Department is determining, based on Federal case law, the reasonable assertions regarding the findings required in Federal cases to permit intervention. The Department has determined that it is necessary to determine a service area for the applicant hospitals and surrounding competitors. The applicants asserted that the relevant service area includes 80% of its hospital patients.

Under the Clayton Act, courts will define the relevant market in terms of product and geography and then assess the likely consequences of any changes in competition in that market. In this instance, the product market is acute inpatient services; however, the Department has determined that the analysis of federal courts under the Clayton Act serves as a useful tool in analyzing the project under the Maine statute. The Department has used the analysis to determine its own methodology to review relevant markets for this project.

Four federal court cases are considered below:

FTC v. Tenant Health Care Corporation 186 F. 3d 1045 (8th Cir 1989) A "service area" is generally defined as the area from which a hospital defines 90% of its inpatients. The court also found that in certain cases this is not binding but rather the product being provided is also important. The Department will report both 80% and 90% markets. This information proves useful in two ways, it buttresses the information provided by the applicants by way of expert analysis and provides the Commissioner with information not clearly defined elsewhere as to the geographic area where health care providers in the effected area draw their inpatients. The Department believes that a 90% service area is more appropriate and therefore is adopting a 90% service area as its base analysis because Pen Bay Medical Center would not be able to maintain operations if they did not maintain its consumers in these areas. Deriving inpatient revenue from only the 80% service area would not be sufficient to provide for operations.

State of California v. Sutter Health System, Alta Bates Medical Center and Summit Medical Center 130 F. Supp. 2d 1409 (N.D. Cal 2001) Ordering zip codes by market did not portray as accurately as ordering zip codes by the actual number of patients. Service areas that overlap indicate that patients could practically chose another hospitals in the event of a significant price increase.

The departmental methodology is therefore derived from zip codes and by the actual number of patients. It should be noted that the two applicants were consistent with their descriptions of the

areas they serve in comparison with the department's certificate of public advantage inpatient service area.

FTC v. Freeman 69 F. 3d 260 (8th Cir. 1195) Determination of a relevant market is that geographic area to which consumers can practically turn for alternative sources of the product. Definition of a geographic market is highly fact driven and is therefore different in each case. The importance for the department is that the methodology described here is relevant to this project. Other projects, if they occur, may require changes in the methodology. The case also provides guidance to the Department regarding the methodology needed to include or exclude zip codes. Overlapping service areas indicate practical alternatives for patients.

FTC v. Butterworth Health Corp. 946 F. Supp 1285 (W.D. Mich. 1996) This case addressed the governments need to show the likelihood of ultimate success under the Clayton Act where the merger would result in significant efficiencies. The Department realizes that as the regulatory body for the Hospital and Health Care Provider Cooperation Act it is held to certain standards, it is necessary to identify the scope and the basis for a decision. The Department has developed tables and maps indicating relevant markets.

The Department is utilizing the court findings in the cited cases because they provide a framework for the department to analyze the relevant market and determine the reliability of the applicants analysis and the likelihood of a different conclusion based on the data available.

The Department requested, from the Maine Health Data Organization (MHDO), a database containing information regarding inpatient utilization data. The goal was to define a service area for each individual hospital. The hospitals that were included are defined as all the hospitals with a primary service area inclusive of the primary service area for the two primary hospitals applying for the certificate of public advantage. These hospitals are:

Bridgton Hospital
Central Maine Medical Center
Eastern Maine Medical Center
Franklin Memorial Hospital
Goodall Hospital
Inland Hospital
MaineGeneral Medical Center – Augusta
MaineGeneral Medical Center– Waterville
Maine Medical Center
Mercy Hospital
Mid Coast Hospital
Miles Memorial Hospital
Parkview Adventist Medical Center
Penobscot Bay Medical Center
Rumford Hospital
Southern Maine Medical Center
Stephens Memorial Hospital

St. Joseph Hospital
St. Mary's Regional Medical Center
Waldo County General Hospital
York Hospital

The results from this analysis can be seen in the maps on file with CONU: 2006 Hospital Service Area by MHDO Discharge Data. This includes maps and charts depicting hospital service areas at 80% and 90% LIFO (LIFO stands for Little In From Outside, this means that relatively few inpatients for a hospital come from outside the area described in the following review)[24]. In the cases cited above, this methodology was used to include zip codes as part of the relevant service areas. The dataset used was 2006 (MHDO) hospital inpatient discharge data. In 2006, there were 163,705 hospital record counts in Maine.

MaineHealth and Penobscot Bay Medical Center have entered into a Definitive Agreement by which Penobscot Bay Medical Center would become a hospital member of the MaineHealth system. Under the Definitive Agreement, MaineHealth would become the sole member of the non-profit corporation known as Pen Bay Healthcare, and as such, the Definitive Agreement will effect a "merger" consistent with 22 M.R.S.A. §1843(1)(5). Under the agreement, Penobscot Bay Medical Center will maintain its existing corporate form. MaineHealth will be substituted for Penobscot Bay Medical Center's existing incorporators. A separate advisory committee would be formed by Pen Bay Medical Center comprised of the former incorporators.

Under the Definitive Agreement, the members of the Pen Bay Medical Center Board of Trustees will continue to hold office. New members of the Pen Bay Medical Center Board must be nominated by sitting members of Pen Bay Medical Center's Board. New Board members are subject to the approval of MaineHealth as the sole member. MaineHealth has agreed that it will not withhold approval of any Pen Bay Medical Center board member nominated by the Pen Bay Medical Center Board unless it has a rational basis for doing so.

Under the agreement, the Pen Bay Medical Center Board may nominate, for election, two trustees, to the MaineHealth Board, serving for initial three-year terms. Thereafter, the Pen Bay Medical Center Board may nominate one trustee to the MaineHealth Board. The board presently has 15 members including William Caron, President of MaineHealth. Under the agreement, MaineHealth has agreed that MaineHealth's Board of Incorporators, which has over 25 members, will be geographically diversified as necessary over three years.

Under the agreement, all property of Pen Bay Medical Center will remain property of Pen Bay Medical Center. Pen Bay Medical Center will retain its tax-exempt charitable status. Endowment funds of Pen Bay Medical Center, including funds held in trust will remain assets of Pen Bay Medical Center. Day to day operational control of Pen Bay Medical Center will reside with the Pen Bay Medical Center Board of Trustees and Pen Bay Medical Center management.

[24] Frech III, H.E., Langenfeld, James, McCluer, R. Forrest. "Elzinga-Hogarty Tests and Alternative Approaches for Market Share Calculations in Hospital Markets." Antitrust Law Journal No. 3 (2004): 921-947.

Under the agreement, the following activities and decisions of Pen Bay Medical Center will require approval by MaineHealth:

- Pen Bay Medical Center's annual operating and capital budgets;
- Business marketing and strategic plans;
- Disposition of assets of more than $250,000;
- Incurrence of indebtedness outside the ordinary course of business in excess of $500,000; and
- The initiation of new services or termination of existing services.

Service Area

The service area approximating 90%[25] (4,398 of 4,886) of PBMC discharges includes 30 distinct zip codes and 18,917 discharges in 2006. Nine hospitals account for 96.4% of the discharges from residents of this area (18,237 of 18,917). The following chart shows that Pen Bay Medical Center and EMMC account for nearly equal percentages of area discharges. Together 48% of discharges are through EMMC or PBMC.

Table 1

Discharges from PBMC 90% Service Area		
Penobscot Bay Medical Center	4,398	24%
Eastern Maine Medical Center	4,387	24%
MaineGeneral Medical Center	2,825	15%
Maine Medical Center	1,513	8%
Waldo County General Hospital	1,468	8%
St. Joseph's Hospital	1,444	8%
Miles Memorial Hospital	892	5%
Acadia Hospital	689	4%
Inland Hospital	621	3%
	18,237	**100%**

The nine hospitals in Table 1 accounted for 50% of the discharges in the state. On average the nine hospitals had 22% of their discharges from this service area. Table 2 displays the concentration of discharges inside the PBMC service area.

[25] FTC v. Tenant Health Care Corp 186 F. 3d 1045 (8th Cir 1989).

Table 2

Concentration of Discharges from PBMC 90% Service Area				
	Inside Area	Total		
Penobscot Bay Medical Center	4,398	4,886	90%	
Waldo County General Hospital	1,468	1,993	74%	
Miles Memorial Hospital	892	1,981	45%	
St. Joseph's Hospital	1,444	4,282	34%	
Inland Hospital	621	1,859	33%	
Acadia Hospital	689	2,324	30%	
Eastern Maine Medical Center	4,387	20,389	22%	
MaineGeneral Medical Center	2,825	14,423	20%	
Maine Medical Center	1,513	30,210	5%	
	18,237	**82,347**	**22%**	**Average**

Of the 31 distinct zip codes in the Pen Bay 90% service area the top five zip codes account for 64% (11,783 of 18,393) of all the inpatients from the area while 38% (1,672 of 4,398) of Pen Bay's inpatients come from these five zip codes. This is evidence that Pen Bay's service area is generally more rural than most of the other providers listed above. The area that provides 80% of the inpatients to Pen Bay reduce the number of distinct zip codes to 17 and reduce the whole number on inpatients in the service area to 37% (6,873 of 18,237) of the 90% service area. The following tables illustrate that the service area is significantly small and isolated; however, it is just as important to note that positive financial results occur from serving an area much larger than the 80% service area. The corresponding 90% service areas for Waldo, Miles and Pen Bay all overlap and again indicate the potential for future cost savings and integration or at least long term planning.

Table 3

Discharges from PBMC 80% Service Area		
Penobscot Bay Medical Center	3,976	58%
Waldo Country General Hospital	928	14%
Maine Medical Center	879	13%
Miles Memorial Hospital	452	7%
Eastern Maine Medical Center	375	5%
MaineGeneral Medical Center	118	2%
Acadia Hospital	82	1%
	6,873	**100%**

Table 4

Concentration of Discharges from PBMC 80% Service Area				
	Inside Area	Total		
Penobscot Bay Medical Center	3,976	4,886	81%	
Waldo County General Hospital	928	1,993	47%	
Miles Memorial Hospital	452	1,981	23%	
Acadia Hospital	82	1,859	4%	
MaineGeneral Medical Center	118	20,389	3%	
Eastern Maine Medical Center	375	14,423	2%	
Maine Medical Center	879	30,210	1%	
	6,810	**82,347**	**18%**	**Average**

Gains and Efficiencies

The implementation of the Definitive Agreement will likely produce gains in the cost efficiency of services provided by Pen Bay Healthcare. The integration of planning functions contemplated by the agreement will permit MaineHealth and Pen Bay Healthcare to avoid, or minimize, redundant investments in new services. This is an advantage because as the prior analysis shows there are very little redundant activities occurring.

The inclusion of Pen Bay Healthcare in MaineHealth's clinical programs should permit such programs to achieve better economies of scale by increasing the number of patients available for these programs.

The applicants have agreed on a goal of $3 million of savings in the 6 years following the date upon which Pen Bay Healthcare becomes a member of MaineHealth. In order to facilitate monitoring, the applicants have agreed that after 48 and 66 months MaineHealth will submit a report to the Department, describing the savings in administrative expenditures achieved, the extent to which such savings have produced community benefit, and plan for achieving the targeted savings. For these purposes, community benefit includes preservation and improvements in access to care, preservation or improvements in quality of care, reduction in operating losses, and containment of cost increases or reductions in the cost of care. The report will include an analysis of which savings have been, or can be, achieved in employee benefits, finance and accounting, and other sectors.

The applicants have agreed that at 48 and 66 months, following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth will report to the Department the savings in administrative expenditures achieved. The failure to achieve savings for Pen Bay Healthcare of at least $1 million for the initial 36 months, following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, if not substantially justified, may be treated as an "unanticipated circumstance" within the meaning of M.R.S.A. §1845 (3)(b). The Department will accept this condition due to the mutual agreement between the parties.

The supervisory conditions incorporated in this Certificate of Public Advantage provide further assurance of the likeliness that these savings will be realized. This is indicated by the following condition approved by the applicants.

A. Limitation on Operating Margin

1. Operating Margin Target Limits. During the term of the certificate, Pen Bay Healthcare will set its annual consolidated budgeted operating margin at a level less than or equal to 3% of its total operating revenue.

2. Notification. During the term of the certificate, if Pen Bay Healthcare's budgeted consolidated operating margin exceeds 3% of total operating revenue, Pen Bay Healthcare will notify the Department within 60 days thereafter, and provide an explanation for the reasons therefore.

3. Commercial Payor Reimbursement Limitations. During the term of the certificate, for any fiscal year beginning after the date upon which Pen Bay Healthcare becomes a member of MaineHealth, Penobscot Bay Medical Center's increase in payment rates under any contract with any commercial payor for the prior fiscal year; provided that MaineHealth and Penobscot Bay Medical Center may seek to negotiate increases greater than 4% in order to accommodate : i) expense increases resulting from projects for which the Department has approved a Certificate of Need; (ii) differences of more than 1% between the scheduled increases in the Medicare Program's payment rates and the expected impact of inflation on the costs of goods and services required by Penobscot Bay Medical Center, as measured by the CMS Market Basket Index; (iii) any reduction in the MaineCare Program's payment rates; and/or (iv) an increase in the CMS Hospital Market Basket Index greater than 3%. Commercial payor, for purposes of this provision, means any private insurer, benefit plan, or employer whose payments to Penobscot Bay Medical Center for hospital services in the preceding fiscal year exceeded $5 million.

4. Report. At 24 months, 48 months and 66 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, Pen Bay Healthcare will report to the Department the extent to which its consolidated operating margin during the period of the certificate, averaged to an annual basis, has conformed to the target, and the extent to which reimbursements to Penobscot Bay Medical Center has conformed to the limits on annual increases. At 48 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, if the average annual consolidated operating margin for Pen Bay Healthcare has exceeded the targeted level, and is not substantially justified by factors beyond the

control of Pen Bay Healthcare, the occurrence may be treated as an "unanticipated circumstance" within the meaning of 22 M.R.S.A. §1845(3)(b).

The Department was not presented any information regarding gains in efficiencies for patients. The applicants indicate that little will change in clinical settings. Membership of Pen Bay Healthcare in the MaineHealth system should provide the opportunity for coordinated, region-wide planning of health care services among Waldo County General Hospital, Pen Bay Healthcare and Lincoln County Healthcare. As previously indicated, it is likely and reasonable that each local health care system focuses on the needs of its own service area population.

Reduction in Competition

There was no evidence presented by the applicants or the public, indicating that there will be any disadvantages attributable to reduction in competition among covered entities or other covered entities. The Department does not identify any disadvantages attributable to this reduction in competition from the agreement.

The applicants did not describe, or suggest, that the agreement was designed to increase the ability of Pen Bay Healthcare or MaineHealth to negotiate optimal payment or service arrangements. The applicants did not state that they presently have experienced any situations where insurance companies or service payers have attempted to direct patients to other hospitals in order to get preferred rates. The applicants have concentrated their discussions regarding the ability to affect administrative savings and provide Pen Bay Healthcare with needed capital.

Impact on Pricing

There was no evidence presented by the applicants or the public, indicating that there will be any adverse impact on patients in the pricing of health care services. The Bureau of Insurance estimates a savings of -0.10% on private health insurance premiums in the Pen Bay Healthcare service area. Additionally, no comments were received from the insurance industry. The Department does not see any disadvantages attributable to an impact on pricing from the agreement.

v. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner determine that MaineHealth and Pen Bay Healthcare have met their burden to demonstrate: (1) the capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and (2) the applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules.

COPA RECOMMENDATION: CONU recommends that the Commissioner determine that the definite agreement demonstrates: (1) the likely gains in the cost efficiency of services provided

by the hospitals or others; (2) the extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payers to negotiate optimal payment and service arrangements with hospitals or health care providers; (3) the extent of any disadvantages attributable to reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that is likely to result directly or indirectly from the cooperative agreement; and (4) the extent of any likely adverse impact on patients or clients in the price of health care services.

IV. Public Need

A. From Applicant

i. CON From Applicant

"Public Need – Pen Bay's Board, Incorporators, Medical Staff and Management Team have determined that to meet the economic and clinical challenges it faces, it can best do so by gaining full access to the programs, resources, experience and expertise of MaineHealth. The benefits of membership will support Pen Bay in achieving its mission."

"In this section, applicants are required to demonstrate the need for the project which is typically a new service or the expansion of an existing service requiring a capital expenditure that exceeds the threshold for CON review. In this application, the "project" is the change in Pen Bay ownership, which requires CON review. As a result, this application addresses the need for the "project" in the context of the need for the change in ownership."

"Since its founding in 1983, Pen Bay Healthcare has operated as an independent entity to fulfill its mission of "caring for and improving the health and quality of life of the people of mid-coast Maine". Five years ago, the Pen Bay Board of Trustees concluded that it needed to assess whether it should continue to operate as an independent organization or align itself with another organization. In December 2007 Pen Bay Healthcare became a strategic affiliate of MaineHealth. That affiliation, which involved no changes in ownership, governance, management or operations, provided Pen Bay the opportunity to better understand how a system addresses major challenges in the environment and supports its members in achieving their missions. The choice of MaineHealth for a strategic affiliation was based on long standing clinical referral relationships between Pen Bay Medical Center and Maine Medical Center. During 2008, Pen Bay Healthcare became an active participant as a strategic affiliate in MaineHealth's health status improvement and clinical integration initiatives."

"In the fall of 2008, Pen Bay completed a three year strategic plan. As part of that planning process, Pen Bay assessed the changing health care environment and identified strategies and goals to move the organization forward in fulfilling its mission and vision of serving the mid-coast Maine communities. Pen Bay's mission is "to care for and improve the health and quality of life of the people of mid-coast Maine" and its vision is to be "an outstanding regional healthcare system where you are treated like family". The goals of the Pen Bay Strategic Plan included "to achieve the full potential of Pen Bay Healthcare's relationship with MaineHealth, to continue to grow the MaineHealth strategic affiliate relationship and to explore the benefits of membership."

"In December 2008, the Pen Bay Healthcare Board of Trustees voted to ask the Pen Bay Medical Center Joint Conference Committee to serve as a "special committee" to assess and make recommendations to the Pen Bay Board and Medical Staff on whether Pen Bay should become a full member of MaineHealth or remain a strategic affiliate. The Pen Bay Medical Center Joint

Conference Committee consists of fourteen leaders from the Pen Bay Healthcare Board, the Pen Bay Medical Center Medical Staff and the Pen Bay Healthcare Executive Team. Between January and November 2009, the Committee conducted an extremely thorough review of the membership in MaineHealth including:

- Identifying the decision criteria to be used in deciding whether to move from strategic affiliation to membership;
- Conducting multiple meetings with stakeholders and interested parties to discuss the membership, e.g., Pen Bay Boards, Medical Staff, Incorporators, the community at large and service clubs;
- Conducting site visits to four MaineHealth member organizations and to two MaineHealth strategic affiliates to discuss with the boards, medical staffs and executive leadership of those organization their experiences with MaineHealth
- Surveying the literature on the health care environment in general and on the trend of hospitals joining systems;
- Asking Pen Bay Board Committees (Planning and Facilities, Finance, Community Relations and the Pen Bay Foundation) to discuss the MaineHealth membership issue at their meetings;
- Conducting two special, extended education and discussion sessions with the Pen Bay Medical Center Medical staff;
- Developing a pros/cons list from the meetings with the four MaineHealth members and two MaineHealth strategic affiliates;
- Conducting two extended meetings with the executive leadership of MaineHealth to discuss the benefits of membership and the strategic goals of MaineHealth;
- Holding eleven meetings of the Committee to review the information obtained during the process and to formulate its recommendations;
- Working with MaineHealth to draft the Definitive Agreement for Pen Bay membership in MaineHealth."

"After eleven months of deliberation, the Committee concluded:

> "Together We're Stronger." After 11 months of discussion and analysis, the Committee concluded that Pen Bay could best fulfill its mission to the communities it serves and achieve its vision by becoming a full member of MaineHealth. While Pen Bay is relatively strong at present and meeting its objectives, it is expected that the future will be much more challenging. Because of the expected deterioration of healthcare reimbursement and a more difficult health care environment in the future, the Committee concluded that membership in a high quality healthcare system like MaineHealth would give Pen Bay a much better chance of fulfilling its mission, rather than remaining more autonomous. MaineHealth is a high-quality, large, financially successful system with a strong 11-year track record. Their core values are similar to those of Pen Bay and their vision and strategic plans are supportive of Pen Bay.

> The Committee believes that healthcare providers like Pen Bay need to work better together by collaborating more and increasing cooperation. Regional integration is more likely to preserve appropriate local access to high-quality clinical services and reduce healthcare costs than a more autonomous approach. While this approach does involve giving up some degree of local control and is concerning to some, it has the most promise of meeting the future needs of the communities Pen Bay serves."

"The Committee's recommendations were then presented for final review and approval:

- Pen Bay Medical Center Medical Staff (December 8, 2009)
- Pen Bay Healthcare Board (December 28, 2009)
- Pen Bay Healthcare Incorporators (January 12, 2010)"

"All three groups voted overwhelmingly to support Pen Bay Healthcare becoming a member of MaineHealth."

"As part of the process of analyzing, recommending and approving Pen Bay membership in MaineHealth, the following benefits were identified:

- **Commitment to Preserving Pen Bay's Services –** The Definitive Agreement sets forth MaineHealth's commitment to maintaining existing health care services in Knox County as part of the system and recognizes that the existing level and array of service provided by Pen Bay are appropriate within current standards of quality, cost, volume and reimbursement
- **Commitment to Regional Planning –** MaineHealth is committed to appropriately including Pen Bay in clinical services planning for the MaineHealth eleven county region, in planning for the Knox-Lincoln-Waldo Counties region in cooperation with other MaineHealth members Lincoln County Healthcare and Waldo County Healthcare and in planning for the Pen Bay Service Area. Ensuring cooperative planning at all three levels (11 county, 3 county subregion and Pen Bay service area) will improve quality and access and avoid duplication.
- **Support for Electronic Medical Record –** The Definitive Agreement sets forth MaineHealth's commitment to make capital contributions or provide credits to Pen Bay of $3,000,000 over a period up to five years to support implementation of an electronic ambulatory medical record system for members of the medical staff employed by Pen Bay Medical Center.
- **Telecommunications/Teleconferencing Equipment –** The Definitive Agreement sets forth MaineHealth's commitment to make a capital expenditure of $25,000 - $50,000 within six months of membership to obtain and install equipment to facilitate communications between Pen Bay and MaineHealth.
- **Access to MaineHealth's Borrowing Group.** Pen Bay will become a member of MaineHealth's borrowing group, which includes Maine Medical Center. Because

MaineHealth's guaranty stands behind borrowing by any member of the group, Pen Bay will have greater access to capital and access at a lower cost.

- **Continuation of Pen Bay's Community Representative Board.** Pen Bay will remain a hospital governed by Pen Bay's Board of Trustees, and no new member may serve on the Board unless nominated by Pen Bay's Board. This will insure the Board will be responsive to the local community needs.
- **Full Participation in MaineHealth's Quality, Health Status Improvement and Clinical Integration Initiatives.** As a member of the MaineHealth system, Pen Bay will participate (as all other members do) in the development and implementation of quality improvement, health status improvement and clinical integration initiatives which improve quality, access and safety of services
- **Access to MaineHealth's Management Resources.** As a member of the MaineHealth system, Pen Bay will have access to shared administrative resources including but not limited to legal, financial, strategic planning, program development and human resources.
- **Access to MaineHealth's Administrative Integration Programs.** As a member of the MaineHealth system, Pen Bay will have complete access to MaineHealth's health plan, workers compensation trust, purchasing program and vendor contracts, physician practice management services, professional liability trust, laundry services, investment advisory and banking services and audit services. These programs provide significant opportunities for cost savings for Pen Bay."

"As a result, Pen Bay's ability to meet community needs, to improve the community's health, to continue to provide access to services regardless of ability to pay and to continue to improve the quality of services will be enhanced significantly."

Positive Impact of Project on Health Status and Quality

"MaineHealth's mission is "Working together so our communities are the healthiest in America". As is described in detail in "Section VI State Health Plan", MaineHealth is leading the development in Maine of health status improvement and clinical integration initiatives. Pen Bay is already a participant in a number of MaineHealth's initiatives, including:

- Target Diabetes – a comprehensive diabetes education and care management program;
- Healthy Hearts – designed to improve the care of patients with congestive heart failure and to educate patients and families on their roles in self management;
- Raising Readers – a health and literacy project that provides books to all Maine children from birth to age five at their well child visits;
- Acute Myocardial Infarction/Primary Coronary Intervention Project – collaborative effort of 11 southern, central and western Maine hospitals, and their medical staffs that standardizes and improves the care of patients experience a heart attack;
- Stroke Program – assures that all patients with stroke receive the most up to date, high quality, efficient care; provides a coordinated system of care for stroke patients who must be transferred to another facility."

"As a member of MaineHealth, Pen Bay will be expected to continue to participate in these programs and will as appropriate, become a participant in the following additional MaineHealth initiatives:

- AH! Asthma Health – a comprehensive patient and family education and care management program targeting childhood asthma initially and now expanded to include adults;
- Caring for ME – designed to improve the ability of primary care providers to care for patients with depression and to educate patients and families on their roles in self management;
- Clinical Improvement Registry – a computer based system provided to primary care practices in the MMC Physician-Hospital Organization and several other hospital physician organizations. The Registry provides patients and physicians with data on the management of chronic illnesses including asthma, diabetes, cardiovascular disease, depression and heart failure;
- Care Partners – provides free physician and hospital care, drugs and care management to over 1,000 adults in Cumberland, Kennebec and Lincoln counties who do not qualify for federal and state programs;
- Emergency Department Psychiatric Care – follows a medical clearance protocol for patients seen in the ED who need hospitalization; follows medication recommendations for agitated patients; and decreases the need for restraints and seclusion, including training ED staff how best to work with agitated patients;
- Healthy Weight Initiative – addresses adult and youth obesity, including a 12 step action plan ("Preventing Obesity: A Regional Approach to Reducing Risk and Improving Youth and Adult Health");
- Oncology – designed to improve access to oncology service in the region and upgrade the quality of services provided."

"All of these initiatives have identified measurable outcomes. Pen Bay's leadership will significantly extend the geographic coverage and depth of these initiatives in Knox County."

Quality and Safety

"Pen Bay Medical Center is committed to providing a data driven quality assessment and performance improvement program involving all departments that focuses on indicators related to improved health outcomes, the prevention and reduction of medical errors and improved patient satisfaction and on identifying potential and actual loss occurrences. All indicators monitored and reported fall under one of PBMC's "Pillars of Excellence", i.e., Quality and Patient Safety, Treating People Well and Financial Stewardship. Pen Bay Medical Center will continue to develop and refine its quality and performance improvement plan with the support of the MaineHealth Center for Quality and Patient Safety. It will participate in MaineHealth's system wide quality and patient safety initiatives, e.g., blood transfusion and hand hygiene."

i. COPA From Applicant

"The Applicants believe that the Definitive Agreement will strengthen efforts to preserve the healthcare infrastructure in the Knox County communities traditionally served by Penobscot Bay Medical Center."

"First, Penobscot Bay Medical Center's membership in a larger health care system, through which it can access capital and participate in economies of scale of a larger enterprise, will reduce what otherwise would have been Penobscot Bay Medical Center's costs of providing equivalent services. This, in turn, will reduce the possibility for service-related cutbacks as revenue streams to hospitals come under increasing pressure from federal and state revenue sources."

"Second, the regional planning facilitated by Penobscot Bay Healthcare's membership in the MaineHealth system will enhance the attractiveness of physician specialist opportunities in the area, facilitating the recruitment of specialists in a period of expected shortages."

Physician Staffing and Deployment

"As noted in Section IV(A)(2), Pen Bay Healthcare's membership in the same health system as Waldo County General Hospital and Miles Memorial Hospital will set the stage for joint planning leading to the regional configuration of services. This is both a cost-saving opportunity and an access-promoting measure."

"Currently, as separate health care centers, Penobscot Bay Medical Center in Knox County, Waldo County General Hospital in Waldo County, and Miles Memorial Hospital in Lincoln County, are constrained in their physician recruiting by the relatively small size of their respective service areas,[26] which in some specialties can financially support only two clinicians within a specialty. Each hospital must staff its various services with enough specialists to make call responsibilities tolerable and therefore attractive to physician recruits. This can produce excess capacity, when the staffing required to make call tolerable is more than the optimal ratio to demand. The hospital's alternative is to pay high per diem rates to temporary "locum" physicians, or decrease or terminate services."

"Having all three hospitals in a single system allows for staffing to occur at a regional level. On-call responsibilities can be shared regionally between Penobscot Bay Medical Center

[26] According to Census data, Knox County, which is Penobscot Bay Medical Center's service area, in 2008 had an estimated population of 40,686; of which 18% were age 65 and older; Waldo County, where Waldo County General Hospital is located, had an estimated population in 2008 of 38,342, of which 15.1% were age 65 and older; and Lincoln County, which is Miles Memorial Hospital's service area had, an estimated population in 2008 of 34,628, of which 19.2% were age 65 and older. In two of the three counties – Knox and Waldo -- more than 12.5% of the population had incomes below the poverty line, and the median income was less than $20,000. http://quickfacts.census.gov/qfd/states/23/23015.html.

and the other two MaineHealth hospitals, reducing the need for each hospital to staff to a level that makes call tolerable for its own specialists."

"Besides the saving in staffing costs, the management of on-call responsibilities, the aggregation of service area of the three hospitals provides an opportunity for enhanced recruiting success. Specialty practice in the region will be more attractive to recruited candidates. The combination of lower per-physician call responsibilities, a larger patient base, and affiliation of Penobscot Bay Medical Center with a teaching and research hospital such as Maine Medical Center enhances the physician drawing and retention power of physician practice in the Mid Coast (Waldo, Knox and Lincoln County) area."

"Enhanced physician recruitment capability is a matter of considerable importance to Penobscot Bay Medical Center. As of January 2010 the Pen Bay's Medical Staff Development Committee listed 15 openings in 10 different specialties including : anesthesia (1); hospitalists (2) ; neurology (2); OB GYN (1) ; orthopedic surgery (1) ; primary care internists or family practitioners (2) ; adult inpatient psychiatry (1) ; adult outpatient psychiatry (3) ; child/adolescent psychiatry (1) ; and vascular surgery (1). Pen Bay has identified eight physicians who are likely to retire over the next five years in the following specialties: primary care, emergency medicine, psychiatry, general surgery, anesthesia and urology. In addition to retirement, assuming current turnover rates continue and do not rise, Penobscot Bay Medical Center will need to recruit an additional 15 physicians over the next five years. Combing openings with expected retirements and normal turnover, Pen Bay will be having to recruit 30% of its medical staff over the next five years."

"Pen Bay and other Maine hospitals will be having to meet their staffing objectives in a much more difficult milieu. There is a looming national shortage in physician supply.[27] The State's 2008-2009 Health Plan has recognized the problem for Maine:

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[27] Estimates of the absolute severity of the physician shortage vary, but the consensus view is that there will be significant shortages nationally if current trends continue. According to Cooper, "The Challenges of Expanding Physician Supply," Leonard Davis Institute of Health Economics, University of Pennsylvania (May 4, 2006), p, 4 (chart entitled "Demand and Effective Supply, 1929-2000 and Projected to ~2025) the demand for physicians nationally per 100,000 population in 2025 will be approximately 360 FTEs (full time equivalents), whereas the supply, assuming current trends, will be approximately 275 FTEs. (The presentation is available at http://www.aamc.org/workforce/pwrc06/cooper.pdf.) The Council on Graduate Medical Education (COGME) has recommended an annual increase of 3,000 medical school graduates by 2015 to meet rising demand and need. COGME, "Physician Workforce Policy Guidelines for the United States, 2000-2020" (January 2005). The mid-points of projected supply and demand scenarios outlined in the COGME report reflect a projected shortage of about 85,000 physicians in 2020 – equivalent to approximately ten percent of today's physician workforce. The U.S. Department of Health and Human Services, Health Resources and Services Administration ("HRSA"), Bureau of Health Professions' Report, "Physician Supply and Demand: Projections to 2020," (October 2006) projects a national shortfall of approximately 55,000 physicians in 2020. Assuming current trends, the full time equivalent physician supply is projected to grow to 866,400 by 2020, while demand for physicians will increase to 921,500 due to the growth and aging of the U.S. population.

> New England exceeds U.S. averages on available physicians, but Maine has fewer specialty physicians and primary care physicians than every New England state except New Hampshire. The issue of physician shortages is a national discussion from which Maine is not immune. In Maine, the Maine Medical Association reports significant recruiting challenges and distribution issues that result in underserved rural areas and notes the changing expectations and employment patterns of physicians creates more need for additional workforce. For some specialties, the issue is more exacerbated. Notably, one in three surgeons in Maine is over the age of 60, according the Maine Department of Labor's 2006 Healthcare Occupations Report."[28]

"Maine hospitals are at a disadvantage already in recruiting physician in a national recruiting market, because of adverse payor mix. The Maine Commission to Study Primary Care Medical Practice concluded in its December 2007 Report:

> During the Commission's hearings and deliberations many people expressed concern about the supply of primary care providers in Maine. Factors impacting supply include an aging workforce; fewer students choosing to go into the medical field and in particular, into primary care; limited clinical opportunities and residencies; competition for attracting doctors in a national marketplace; and the challenges of attracting doctors to rural and remote parts of Maine."[29]

"The low level of reimbursement available in Maine under publicly-financed health care programs, especially Medicaid (known in Maine as MaineCare) was cited by this Report as a particularly significant in contributing to Maine's comparative physician recruiting/retention disadvantage:

> In Maine, low Medicaid reimbursement rates amplify the problem due to the large percentage of the population in the program. One out of every five people in the state is covered by MaineCare, the State's Medicaid program. Thus, low

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[28] Governor's Office of Health Policy & Finance, Maine's 2008-2009 Health Plan (April 2008), pp. 23-24.

[29] Maine Commission to Study Primary Care Medical Practice, Final Report (December 2007), p. 8, reprinted at http://www.maine.gov/legis/opla/primarycarerpt.pdf This Report, p. 10, also noted:

> Recruiting challenges include competition in a national market, fewer graduates choosing primary care, the number of doctors in Maine nearing retirement age and specific regional issues. Physician recruitment in rural areas faces particular challenges including" .. .lower earning potential, longer hours and...a general shift in desired professional setting among physicians and salary levels.

> Medicaid reimbursement rates impact Maine providers to a greater degree than it would if they practiced medicine in other parts of the nation."[30]

"Penobscot Bay Medical Center is in this adverse payor mix situation. For the first 10 months of FY 2010 year, 60% of Penobscot Bay Medical Center's inpatient volume represented services to Medicare beneficiaries, and 15% represented services to MaineCare beneficiaries. This compares to a national median (measured by inpatient days) of 47% for Medicare beneficiaries and 10% for Medicaid. [31] According to its unaudited annual financial statements, Pen Bay Healthcare sustained an increase of $2.2 million in its bad debt/charity care in FY 2010, and will suffer an overall operating loss of approximately $2.5 million for FY 2010."

"Given the current and prospective physician staffing needs that Penobscot Bay Medical Center and the region will face, and the comparative disadvantage that such small population regions in Maine face in a national recruiting market, the importance of enhancing the prospects for successful recruiting by Penobscot Bay Medical Center and the adjoining MaineHealth hospitals cannot be overstated."

[30] Final Report, supra, p. 7. The Commission made the following findings: 1) Medicaid reimbursement rates through the State's MaineCare program are lower than many other comparable states; 2) Medicaid reimbursement rates have a greater impact on physicians in Maine than they may have in other states due to the large percentage of the population covered by the State's MaineCare program. . . .; 3) MaineCare reimbursement rates for the work of primary care physicians are inadequate and contribute to the loss of independent ownership of primary care medical practices and affect primary care physicians' ability to practice medicine in Maine; and 4) in addition to low reimbursement, MaineCare administrative requirements and restrictions hinder the ability of physicians to practice in Maine and contribute to practices closing their doors to new MaineCare. Id.

[31] Thomson Reuters, Comparative Performance of U.S. Hospitals, 2009 Sourcebook, , p. 184

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are specific to the determination there is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

- Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
- Whether the project will have a positive impact on the health status indicators of the population to be served;
- Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
- Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

ii. CON Analysis

The applicant has suggested that in order for Pen Bay Medical Center to remain a viable and sustainable healthcare resource for the people in the PBMC service area, that PBMC must become part of a larger healthcare system in order to access additional financial, operational and management resources. The applicants have stated that the benefits of joining a healthcare system include: access to capital; access to physicians and other healthcare professionals; recruitment and retention programs; and the ability to provide quality healthcare to all patients regardless of the ability to pay. By PBMC becoming a member in MaineHealth, MaineHealth will be able to fund electronic medical records systems for all of PBHC's physicians. PBMC will also have access to MaineHealth's management resources which include legal, financial, strategic planning, program development and human resources. The applicants have identified that the ongoing provision of all medical services in the area are threatened by Pen Bay not becoming a member of MaineHealth.

Effective May 1, 2010, PBMC entered into a health delivery and payment reform pilot project with the State Employee Health Commission that allows PBMC to be considered a preferred hospital for benefit purposes. Other members of MaineHealth that are currently preferred hospitals under the plan are: Maine Medical Center, Miles Memorial Hospital, Stephens Memorial Hospital, Waldo County General Hospital and Southern Maine Medical Center. By Pen Bay becoming a member of MaineHealth, Pen Bay will be more financially able to support the health needs of the area; therefore, providing a positive impact on the health status indicators for the population to be served.

This project enhances the ability of PBMC to accomplish their physician recruitment and retention plan. The applicant believes that physician retention will become increasingly difficult

as a single hospital operator because of the increasing demands from physician groups to improve revenue payments to physicians. This enhancement is achieved by employing additional physicians. PBMC will be able to ensure that a greater number of uninsured patients will have access to care. As hospital employees, physicians will be able to treat patients without regard to their ability to pay. The retention of physicians will meet the criteria to provide access to all of the residents of the area with physician services.

With Pen Bay becoming a member of MaineHealth, and MaineHealth's significant resources, as discussed further in Section VII, demonstrable improvements in community health should occur.

iii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely preservation of hospitals or health care providers and related facilities in geographical proximity to the communities traditionally served by those facilities; and

- The extent of any likely adverse impact on patients or clients in the availability of health care services.

iv. COPA Analysis

At the public hearing held on this proposal on June 28, 2010 (transcript on file with CONU), no party or member of the public expressed any opposition to the implementation of the Definitive Agreement, or to the Department issuing a Certificate of Public Advantage. The public hearing presented significant opportunity for comment from other health care providers and from local physicians. Also, no public comments were received during the 30-day open comment period.

The implementation of the Definitive Agreement will likely preserve medical services for the communities comprising Pen Bay Healthcare's service area. Pen Bay Healthcare and MaineHealth believe that the long term operation of Pen Bay Healthcare would be in doubt without the agreement. The financial forecast provided by the applicants does not reflect this growing concern; however, the three year timeframe involved in the financial presentation may not be a long enough time frame for the development and demonstration of serious financial difficulties for Pen Bay Healthcare. It appears that without the agreement, Pen Bay Healthcare is subject to greater financial risk.

As employees of a 501(c) organization, employed physicians will render care to all patients, regardless of insurance status or ability to pay. Pen Bay Healthcare is obligated under the Free Care Guidelines (10-144 C.M.R. Chap. 150 §1.02(c)) to provide necessary medical care to persons without insurance alternatives who qualify at or below 150% of the Federal Poverty Level guidelines. Pen Bay's policy for Free Care is comparable to Maine Medical Center's policies.

The Definitive Agreement will also provide Pen Bay Healthcare with access to the financial, administrative and clinical resources of MaineHealth. This should strengthen Pen Bay Healthcare's ability to maintain quality community hospital care services.

The applicants and the interveners have agreed to incorporate the following condition which increases the likelihood that access to care is not compromised. Accordingly, the Department supports this condition; however, it should be noted that the reports should include an analysis of the baseline conditions that presently exist at Pen Bay Healthcare.

Access to Primary Care for MaineCare and Uninsured Patients

1. Commitment: During the six years following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, Pen Bay Healthcare will require all physicians employed by Pen Bay Healthcare to accept patients without regard to the patient's insurance status or ability to pay, consistent with Pen Bay Healthcare's charity care policies. During the same period, Pen Bay Healthcare's charity care policy will provide, at a minimum, that person(s) whose incomes are below 175% of the then current DHHS federal poverty guidelines will receive free care.

2. Report: At 24 months, 48 months and 66 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, Pen Bay Healthcare will report to the Department the number of charity care patients and MaineCare patients served by Pen Bay Healthcare- employed physicians.

The applicants have not identified any likely adverse impacts on availability of health care services for patients or clients. The applicants have stressed there is a growing concern that Pen Bay Healthcare will not be able to ensure services are available in the service area without the completion of this Definitive Agreement. As separate health care centers, Penobscot Bay Medical Center in Knox County, Waldo County General Hospital in Waldo County, and Miles Memorial Hospital in Lincoln County, are constrained in their physician recruiting by the relatively small size of their respective service areas, which for some specialties means the area can financially support only two clinicians. Each hospital must staff its various services with enough specialists to make call responsibilities tolerable. This pressure for staffing can produce excess capacity, when the staffing required to make call tolerable is more than the optimal ratio to demand.

v. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner find that MaineHealth and PBHC have met their burden to show that there is a public need for the proposed project.

COPA RECOMMENDATION: CONU recommends that the Commissioner find that the definitive agreement: (1) promotes the preservation of hospitals or healthcare providers and related facilities in geographical proximity to the communities traditionally served by those facilities; and (2) the extent of any likely adverse effect on patients or clients and the availability of healthcare services is limited by the conditions approved by the applicants and recommended for inclusion.

V. Orderly and Economic Development

A. From Applicant

i. CON From Applicant

"As was described previously, there is no capital expenditure requiring CON review and no increase in operating expenses for the health care delivery system in Maine, for the State of Maine, for MaineHealth or for Pen Bay as a result of Pen Bay joining MaineHealth."

"Creating the opportunity for Pen Bay to join MaineHealth and take maximum advantage of the benefits described in detail in the previous section (access to capital for programs, facilities, and information technology; access to MaineHealth initiatives to improve health status, quality/safety and clinical integration; opportunities to reduce costs through economies of scale and access to specialized management support and expertise) is consistent with the orderly and economic development of the health care delivery system."

"In making the decision to join MaineHealth, Pen Bay evaluated two other alternatives: (1) maintain its status as a MaineHealth strategic affiliate; (2) discontinue its MaineHealth affiliation and not be affiliated with any health care system."

"MaineHealth can offer participation in its administrative integration programs (those with potential for significant economic benefit and savings) and in its obligated group for access to capital only to member organizations (not its affiliates). Participation in joint planning as a member with other MaineHealth members was assessed to have a greater potential for success than joint planning as a strategic affiliate with other MaineHealth members. Pen Bay concluded these benefits are so significant and critical to its ability to continue to meet the health care needs of its communities and to improve the communities' health that maintaining its status as an affiliate was not the preferred alternative. For essentially the same reasons, Pen Bay also concluded it could not operate most effectively as a "freestanding" organization."

ii. COPA From Applicant

"As noted previously, in addition to immediately achievable operational cost efficiencies, the membership of Penobscot Bay Healthcare in the MaineHealth systems will enable truly effective joint regional planning in the further configuration of new hospital services and technology. Going forward, the need for new or enhanced services or technology will be assessed on a regional basis, not a purely local one,"

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are specific to the determination that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

- The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

- The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

- The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available.

ii. CON Analysis

Total projected 3rd year incremental operating costs are projected to show no additional costs from the membership; therefore, no projected increase in MaineCare funds will be needed to fund this project through the 3rd year of operation (2013).

The applicants list a variety of potential savings from this project; however, the most significant and immediate savings comes from Pen Bay Medical Center being able to participate in MaineHealth's group health insurance plan for PBHC's employees. PBMC will be required to pay a membership fee to MaineHealth. The fee is currently calculated on the basis of 0.045% of a member's net operating expenditures. The fee for PBMC is projected to be $575,000 in the third year of operation (FY 2013) (Table 20 of the Financial Forecast Module). As discussed in the economic feasibility section of this application (section III), the projected 3rd year incremental operating costs show a net savings of $286,000. The membership fee will be offset by $861,000 in administrative savings for employee benefit and legal and insurance costs (FY 2013) (Table 20 of the Financial Forecast Module).

The applicants chose not to include expenditures related to updating electronic medical records for this project. These costs will be passed on to the payors of the services; however, it is the applicants' contention that these costs are currently too subjective and speculative to include in a forecast. The development of electronic medical records is a priority of the State Health Plan and is discussed in Section VI. In order to mitigate the costs, significant additional savings need to be realized. This is accomplished by some of the conditions approved by the applicants and recommended in the COPA portion of the analysis.

iii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely avoidance of duplication of hospital or other health care resources.

iv. COPA Analysis

The definitive agreement includes a provision for MaineHealth to provide assistance to Pen Bay for the implementation of electronic medical records. Electronic medical records have been linked to reducing medical errors (improvement in health quality) and reducing unnecessary duplicative medical testing (improving health resource efficiency). This will be accomplished by providing a platform for physicians to more efficiently share test results. This improved information flow will enable physicians to be aware of test results run by other physicians, for an individual patient, and will less likely need to run additional diagnostics. Electronic medical records will also have the advantage of making the results from these tests more readily available to diagnostic staff. The applicant proposes that the reduction in duplicative medical testing will eventually result in reducing health care resources once EMR is accepted and operable. Overall demand for medical testing equipment should decrease because a portion of that demand is from duplicative services.

Pen Bay becoming a member of MaineHealth will reduce cooperation barriers that non-associated hospitals often have. The applicant suggests that where the three hospitals (Miles, Waldo and Pen Bay) individually determine when there is enough need to support an individual doctor or medical equipment, collectively the three hospitals will be able to save resources by providing a doctor to cover two or three areas by measuring the need on a more regional basis. Regional planning should allow individual hospitals to save on investing in additional equipment by sharing the costs for equipment that might otherwise be utilized less often because each hospital would have duplicative equipment.

The applicants propose no changes regarding services. There has been much discussion between the three regional entities to achieve savings without much success. By becoming part of the same organization, the three area hospitals will need to receive approval from the MaineHealth board for significant programmatic decisions. This places the board in a position to monitor for savings opportunities. This new regional approach makes it unlikely that duplication will occur for basic physician staffing. The applicants stressed that no programs would be discontinued because of this agreement. No information was presented by the applicants related to the identification of duplicated health care resources.

Avoiding duplication of health care resources is supported by the agreed upon condition included by the applicants regarding clinical savings/efficiencies. This condition is discussed in Section VIII of this application.

v. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner find that MaineHealth and Pen Bay Medical Center have met their burden to demonstrate that the proposed project is consistent with the orderly and economic development of health facilities and health resources for the State.

COPA RECOMMENDATION: That the Commissioner find that the definitive agreement is likely to result in the avoidance of duplication of hospital or other health care resources.

VI. State Health Plan & Educational Opportunities

i. Introduction

This section includes information presented in the application relative to how the proposed project specifically relates to priorities in the 2008-2009 State Health Plan (SHP). The applicant's comments, as well as input received from the Maine CDC/DHHS, and CONU findings are incorporated under the respective priorities for the SHP.

Relevant criterion for inclusion in this section is specific to the determination that the project is consistent with the goals and priorities of the State Health Plan. It is important to note that priorities are further defined within the CON section of the SHP. The CONU review of consistency with the SHP follows and is organized by priority.

☒ The applicant is redirecting resources and focus toward population-based health and prevention.

a. Applicant's Discussion on Priority

"The mission of MaineHealth is "Working together so our communities are the healthiest in America". We have made financial and human resource commitments to this mission which are based on the following beliefs:

- Health care costs in Maine (and nationally) will continue to increase due to demographic, technological and normal inflation factors which are generally beyond our control;
- If healthcare is to remain affordable to the vast majority of our citizens, changes will need to be made to the manner in which we currently provide and finance that care;
- The long-term solution to reducing utilization is to improve the health of the people of Maine;
- The "health care challenge" requires short-term solutions which improve the quality (both care delivery and outcomes), cost-efficiency (both clinical and administrative) and access to health care."

"MaineHealth's approach to improving the health of its communities focuses on two major types of initiatives:

- Health status improvement initiatives which address a health issue which is amenable to intervention based on specific, scientifically based programs
- Clinical integration initiatives which seek to improve the delivery of coordinated, integrated services to selected populations, particularly those with chronic diseases or for conditions where clinical guidelines and protocols have been demonstrated to improve outcomes."

"Management of populations with chronic diseases has become a major focus of MaineHealth's clinical integration initiatives. In the next 15 years, the population in Maine over the age of 65 will double. Based on national studies we can expect that 60% of the population will have at least one chronic condition and 40% will have two or more. A recent study by researchers at Johns Hopkins, the US HHS Agency for Health Research and Quality and the University of Pennsylvania predicts that by 2030, 87% of the population will be overweight, 51% will be obese and the prevalence of overweight children will nearly double. For the past 10 years, MaineHealth has been building health status improvement and clinical integration initiatives to address these challenges, funding them through a combination of MaineHealth dues, investment income and grants. Below are the MaineHealth budgets for these initiatives for FY 2008, 2009 and 2010."

	FY 2008	FY 2009	FY 2010
Clinical Integration	3,325,000	4,597,000	4,733,000
Health Status Improvement	2,736,000	3,055,000	3,804,000
Community Education	1,041,000	1,242,000	2,537,000
Total	7,102,000	8,894,000	11,074,000
% of MaineHealth Total Budget	32%	32%	36%

"Beginning in FY 2006, MaineHealth began providing partial support for these initiatives through fund balance transfers from member organizations. At the time, a limit for such transfers was set at 0.4% of each organization's net assets. The actual amounts provided through this process increased from $385,000 in FY 2006 to $1,058,000 in FY 2007 and FY 2008 and $1,494,000 for FY 2009 (representing 0.06%, 0.14%, 0.12% and 0.22% respectively of members' net assets). For FY 2010 the budgeted amount is $2,395,000 (0.33% of members' net assets)."

"We have not asked members for more than we thought could be well used and we have continued to be successful in securing other support through grants. As part of MaineHealth's recently completed strategic planning process, MaineHealth adopted a strategy that recognized that, while it has been reasonably successful in its initiatives, MaineHealth must step up the scope and pace of these initiatives by committing over the next several years up to 1% of its net assets annually to support these initiatives. At present, 1% of member's net assets would represent a commitment of $7 million which would be added to commitments of dues revenue, investment income and grant support."

"Presented below are brief summaries of the major health status improvement and clinical integration initiatives supported by these resources. Exhibits VI-A, VI-B, VI-C, VI-D, VI-E, VI-F, VI-G, VI-H, VI-I, and VI-J provide detailed descriptions of the initiatives and the outcomes they have produced to date to improve the health of communities we serve."

"MaineHealth emphasizes collaboration in developing and implementing clinical integration and health status improvement initiatives; all provider organizations are welcome to join us and use our tools. There are no competitors. Our approach is based on bringing together providers

to design and implement evidence based approaches to the care of patients and on measuring results."

- "AH! Asthma Health – a comprehensive patient and family education and care management program targeting childhood asthma initially and now expanded to include adults;
- Target Diabetes – a comprehensive diabetes education and care management program;
- Caring for ME – designed to improve the ability of primary care providers to care for patients with depression and to educate patients and families on their roles in self management;
- Healthy Hearts – designed to improve the care of patients with congestive heart failure and to educate patients and families on their roles in self management;
- Clinical Improvement Registry – a computer based system provided to primary care practices in the MMC Physician-Hospital Organization and several other hospital physician organizations. The Registry provides patients and physicians with data on the management of chronic illnesses including asthma, diabetes, cardiovascular disease, depression and heart failure;
- MMC Physician Hospital Organization Clinical Improvement Plan – the Plan includes funding 23 practice based registered nurse care managers which support 265 physicians in 71 primary care practices; currently they are focusing on diabetes, depression and asthma;
- Raising Readers – a health and literacy project that provides books to all Maine Children from birth to age five at their Well Child visits;
- Care Partners – provides free physician and hospital care, drugs and care management to over 1,000 adults in Cumberland, Kennebec and Lincoln counties who do not qualify for federal and state programs;
- Center for Tobacco Independence – MaineHealth through a contract with the State manages the statewide smoking cessation program;
- Acute Myocardial Infarction/Primary Coronary Intervention Project – collaborative effort of 11 southern, central and western Maine hospitals, and their medical staffs that standardizes and improves the care of patients experiencing a heart attack;
- Stroke Program – assures that all patients with stroke receive the most up to date, high quality, efficient care; provides a coordinated system of care for stroke patients who must be transferred to another facility;
- Emergency Department Psychiatric Care – follows a medical clearance protocol for patients seen in the ED who need hospitalization; follows medication recommendations for agitated patients; and decreases the need for restraints and seclusion, including training ED staff how best to work with agitated patients;
- Healthy Weight Initiative – addresses adult and youth obesity, including a 12 step action plan ("Preventing Obesity: A Regional Approach to Reducing Risk and Improving Youth and Adult Health");
- Youth Overweight – MaineHealth and MMC have joined with several other organizations including Hannaford, United Way, Unum, Anthem and TD Banknorth, to design and implement a 5 year initiative on youth overweight;
- Blood Transfusion – system protocols to reduce blood transfusions
- Hand Hygiene - system plan to reduce hospital infections though hand hygiene monitoring."

"In addition to these established initiatives, MaineHealth launched in FY 2009 a new major initiative focusing on cancer. Goals for this new initiative include:

- For the five most prevalent cancers, adopt evidence-based clinical care guidelines, identify quality metrics and reporting methodology, and provide a range of educational support to promote consistent use of guidelines.
- Support each MaineHealth organization in attaining or maintaining the appropriate level of cancer care accreditation, including appropriate level of credentialing necessary for delivering care in accordance with desired accreditation
- Improve access to clinical trials.
- Improve access to genetic counseling services.
- Support the development of patient navigation and survivorship programs to improve patient access, engagement, and satisfaction.
- Improve the Network Registry to support increased access and data review for outcomes and quality metrics.
- Coordinate services regionally to provide maximum access to care (i.e. improve access to specialists.)"

"MaineHealth and its members are clearly committed to population based health and prevention and are redirecting resources to support those initiatives."

b. Maine CDC/DHHS Assessment

MaineHealth speaks to the resources that are ongoing projects but does not mention any new investments as a result of this membership as is asked for in the State Health Plan. However, implied in the application is that PenBay's membership as part of MaineHealth would mean PenBay would be contributing 0.4 % of its net assets (and up to 1 % in the future) for population-based health and prevention. Their focus, as presented in this application, is on health status improvement initiatives and clinical integration initiatives with a major focus on management of populations with chronic disease. These are initiatives that fit well into the State Health Plan's priority of population-based and prevention strategies.

Partnerships between hospitals are a possible way to meet this priority, provided that the hospitals present evidence of the effectiveness of their proposed and/or extant public health efforts. MaineHealth provided considerable documentation in regards to the clinical and administrative integration of programs and the benefits to the communities they serve. It appears MaineHealth members are asked to support existing initiatives by contributing additional funds as a percentage of their net assets towards such initiatives. Therefore, resources will be redirected in a more regionally efficient manner in order to focus resources on population based health and prevention as the priority requires.

c. CONU Discussion

The applicants provided a budget for these ongoing initiatives in 2009 which represents 32% of MaineHealth's total budget. This priority has been met as the applicants are providing 0.4 % of its net assets towards such initiatives.

☒ **The applicant has a plan to reduce non-emergent ER use.**

a. Applicant's Discussion on Priority

"Long term reductions in use of emergency services are directly related to: (1) the development of initiatives to improve the health status of the population and control chronic disease: and (2) ensuring there is convenient, timely and affordable access to primary care physicians. As described above, MaineHealth has developed and is implementing across the region a broad base of health status improvement and chronic disease management initiatives, to address such conditions as asthma, diabetes, depression, congestive heart failure and obesity. Expansion of these programs into all of MaineHealth's eleven county service area is a priority and will be funded through the net asset transfer mechanism described above. MaineHealth has also implemented its CarePartners Program which provides primary care, referrals to specialists and care management to low income adults who are not eligible for state and federal programs."

"The program currently serves residents of Cumberland, Lincoln and Kennebec Counties and has demonstrated its ability to reduce emergency services utilization. Planning is underway for expansion of the CarePartners program to other counties."

"Before developing an ED use reduction plan for Pen Bay, the first step is to understand the current pattern of use of ED services by residents of the Rockland Hospital Service Area as presented in "Analysis of 2006 Maine Emergency Department Use" prepared by the Muskie School of Public Service and the Maine Health Information Center."

Emergency Department Visits by Hospital Service Area

	Visits/1,000 Population	% Pop with OP ED Visit
Rockland HSA	483	28%
Belfast HSA	585	34%
Damariscotta HSA	490	31%
Boothbay HSA	620	36%
Brunswick HSA	367	24%
Portland HSA	359	24%
Bangor HSA	409	28%
Maine	402	30%
State Median	575	33%
Range of HSA's (A)	359-905	24-47%

(A) Excluding York HSA

"The Rockland HSA ranks in the second quartile (second lowest) for visits per 1,000 population and the first quartile (lowest) for percent of persons with any outpatient ED visits. To continue to improve, Pen Bay Medical Center and Pen Bay Healthcare have initiated a number of programs to reduce inappropriate use of the Emergency Department:

a. In the fall of 2009 Pen Bay Medical Center relocated its occupational health program (Health Connections) from a building one-half mile from PBMC to space adjacent to the PBMC ED. The purpose of this move was to provide less costly, more expedient treatment to patients presenting to the ED who did not need acute ED treatment. Patents are triaged, registered and referred to a nurse practitioner if clinically appropriate.
b. On February 8, 2010PBH opened its first Medical Home Model primary care practice. Pen Bay Pediatrics brought together 4 independent pediatricians into a group practice in one location and added a pediatric nurse practitioner. It intends to start extended evening hours 4 days a week and on weekends in March and provides open scheduling each day. This should help reduce the use of the ED. The practice will also provide enhanced management of chronic disease for its pediatric patients. This is the first pilot medical home model at PBH and will enable the staff to assess its benefits and applicability to internal medicine and family practice groups.
c. PBH continues to recruit primary care physicians in internal medicine and family practice to assure access to office practices on a timely basis."

"PBH participates in a number of wellness and prevention programs that help reduce unnecessary use of the ED. For instance, PBH led the very successful effort to increase the number of residents in its service area getting both H1N1 flu and regular flu vaccinations in the fall and winter of 2009 and 2010. Through its home health agency, Kno-Wal-Lin, PBH coordinated the H1N1 vaccination of 9,486 people, including 4,194 children in the Knox County Schools. It also gave over 7,950 seasonal flu shots. PBH has also very aggressively promoted the increase use of proper hand washing in its service area. These 2 initiatives are given partial credit for the reductions of ED use of 18% and 20% in December 2009 and January 2010 compared to similar periods in the prior year."

b. Maine CDC/DHHS Assessment

Under this priority, the applicant discussed their strategies for reducing non-emergent ED use including: (1) Pen Bay Medical Center relocated its occupational health program (Health Connections) adjacent to the ED; (2) In 2010 PBH opened its first Medical Home Model primary care practice; and (3) recruit primary care physicians in internal medicine and family practice to assure access. Ongoing work in this area in response to ED use analysis is desired.

c. CONU Discussion

This priority has been met as the applicant has a plan for reducing non-emergent ED use.

☒ **The applicant demonstrates a culture of patient safety, that it has a quality Improvement plan, uses evidence-based protocols, and/or has a public and/or patient safety improvement strategy for the project under consideration and for the other services throughout the hospital.**

a. Applicant's Discussion on Priority

Commitment to Quality

"MaineHealth is committed to being recognized by patients, payors and providers as the benchmark for quality and safety, patient and family experience and evidence based use of resources. On a quarterly basis the MaineHealth board reviews quality performance measures for all member and affiliate organizations, including:

- National Quality Forum hospitals measures
- Performance of participants in the MaineHealth Vital Network (electronic ICU monitoring system)
- Home health clinical measures
- Long term care clinical measures
- Patient satisfaction measures"

"In 2007, the MaineHealth Board adopted the following 10 year vision for quality and safety:

> "In 2017 MaineHealth will be a nationally recognized leader in health care quality and safe patient and family centered care. We will achieve that status not because we seek national prominence for its sake but rather it will be founded on an unwavering system level commitment to quality and safety and continuously improving the health of the communities we serve. Achieving and sustaining excellence starts with our belief that every single patient in the communities we serve deserves the highest quality health care services that we can provide in an efficient and cost effective manner. We will communicate publicly our quality, safety and cost information to aid patients and their families in making informed choices when seeking health care services. The core of our success will be our boards and management teams focusing at all levels on quality and safety as the critical elements driving strategic planning. Across the continuum of care our physicians, nurses, staff, patients and their families will collaborate to set high standards, monitor performance, openly share results and work together to continuously improve quality and safety.'"

"In order to implement that vision, MaineHealth has established its Center for Quality and Patient Safety under the direction of Dr. Vance Brown, MaineHealth Chief Medical Officer. The Center is focusing on:

- Board Engagement – All MaineHealth and member board members are completing a core curriculum in quality and safety developed by the Center. That training enables every board member to better understand quality, safety and performance improvement and enables them to take a greater role in ensuring quality and safety in their organization.
- Education and Consultation – Center staff provide support and expertise to member organizations in developing and implementing quality and safety initiatives. Responsibility for quality improvement and monitoring will remain at the local level.
- Performance Measurement and Reporting – Member organizations are overwhelmed at present by the number of organizations requesting quality and safety performance information. The Center provides support for data collection, measurement and reporting allowing members to focus on actual quality and performance improvement.
- Accreditation and Regulatory Support – The Center provides the support and expertise to ensure member organizations attain and maintain all appropriate licensure and accreditation standards.
- System Wide Performance Targets – Working with members, MaineHealth identifies annually system wide performance targets to ensure consistency and accountability for major clinical processes. Included in these efforts will be clinical decision support systems that facilitate the monitoring of performance."

"Please also refer to Exhibit IV-A: Pen Bay Patient Safety and Risk Reduction Plan"

b. Maine CDC/DHHS Assessment

MaineHealth has an active involvement with their members in monitoring quality performance measures. MaineHealth has established a Center for Quality and Patient Safety in order to implement their vision of becoming "a nationally recognized leader in health care quality and safe patient and family centered care."

PBHC submitted their FY09 quality assessment and performance improvement plan which includes the following framework:

"A. Quality
1. Participates in State and National mandated quality initiatives
2. Compares PBHC quality data to state and national benchmarks as available
3. Evaluates quality data collected internally for improvement opportunities

B. Safety
1. Participates in regional / national safety culture surveys, such as the Agency for Healthcare Research and Quality (AHRQ) Culture of Safety Survey
2. Collects and evaluates safety data collected internally

C. Customer Satisfaction
1. Participates in the Hospital Consumer Assessment of Health Providers and Systems (HCAHPS), a CMS survey of inpatient's perception of care.
2. Evaluates results of satisfaction surveys developed and administered internally."

Participating in state quality initiatives such as those sponsored by the Maine Quality Forum is also desired.

c. CONU Discussion

This priority has been met as the applicants have in place a Patient Safety and Risk Reduction Plan.

☒ The project leads to lower costs of care/increased efficiency through such approaches as collaboration consolidation, and/or other means.

a. Applicant's Discussion on Priority

"Pen Bay, its physicians and patients will continue to benefit from collaboration with MaineHealth and its members in the following ways:

- Pen Bay participates in MaineHealth's VitalNetwork – the system's electronic twenty-four hour critical care patient monitoring service;
- Pen Bay will have the opportunity to participate in MaineHealth/MMC PACs system (electronic archiving and access to imaging studies) reducing the need for duplication of studies.
- MaineHealth's Maine Mental Health Partners furnishes ancillary services for outpatient and emergency mental health and substance abuse patients at Penobscot Bay Medical Center, which enhance coordination of services between the organizations. and will enhance access for MaineCare, Medicare and uninsured patients;
- Maine Mental Health Partners manages Mid Coast Mental Health Service's outpatient program. and has developed and is implementing a proposal for improved regional access for Knox, Lincoln and Waldo Counties for outpatient mental health services, with support from MaineHealth members Lincoln County Healthcare, Waldo County Healthcare, Maine Mental Health Partners and MaineHealth.
- Pen Bay will be able to participate fully in MaineHealth-sponsored clinical integration and chronic disease management programs;
- Pen Bay will be able to participate fully in MaineHealth's group purchasing, and have more favorable access to capital and access to MaineHealth administrative services including financial and internal audit services, legal services, planning services, program development, marketing and human resource management."

- **Maine CDC/DHHS Assessment**

The applicant has demonstrated this priority via the Financial Forecast Module submission showing decreased administrative costs through participating in MaineHealth's insurance programs. MaineHealth also demonstrates how PBHC will benefit from a collaboration of clinical integration and chronic disease management programs. Inclusion in these clinical advancements should serve to improve the access to new and innovative therapies. The advancement of electronic medical records should reduce duplication of services in imaging and other studies, thereby reducing duplicative expenditures.

c. CONU Discussion

CONU concurs with the Maine CDC that enhancing electronic medical records should reduce duplication of services thus leading to lower cost of care.

☒ **The project improves access to necessary services for the population.**

a. Applicant's Discussion on Priority

"No change to the existing level and array of healthcare services provided by PenBay occurs as a result of Pen Bay becoming a member of MaineHealth. By enhancing Pen Bay's ability to invest in facilities and technology, membership in MaineHealth can mitigate what might otherwise be reduced access to care."

b. Maine CDC/DHHS Assessment

The applicant states that while they are not improving current access to services, they are ensuring the continued availability of current services to the population as a result of PBHC's membership in MaineHealth. Based on the inclusion of the goals for the PBHC physician retention and recruitment plan this priority has been met.

c. CONU Discussion

The applicants have met this priority by ensuring continued availability of current services for the population they serve.

☐ **The applicant has regularly met the Dirigo voluntary cost control targets.**

a. Applicant's Discussion on Priority

"Maine Health's member hospitals and Pen Bay have responded positively to Governor Baldacci's request that they voluntarily hold increases in their cost per adjusted discharge to the legislatively determined increase and hold their operating margins to less than 3:0%"

b. Maine CDC/DHHS Assessment

While the applicant has stated that they have accomplished the voluntary cost control targets, there was no data provided to demonstrate this.

c. CONU Discussion

CONU concurs with the Maine CDC that the applicant did not provide enough data to satisfy this priority.

☐ **The impact of the project on regional and statewide health insurance premiums, as determined by BOI, given the benefits of the project, as determined by CONU.**

a. Applicant's Discussion on Priority

"The Bureau of Insurance (BOI) and the Certificate of Need Unit (CONU) make this determination. MaineHealth and Pen Bay are happy to respond to any concern, issue, question or request for additional information to assist BOI and/or CONU in making this determination."

"MaineHealth and Pen Bay note that the proposed transfer of ownership involves no new capital expenditure or third year operating expense requiring a Certificate of Need as described in 22 M.R.S.A. § 329 (3). MaineHealth and Pen Bay believe that this project has no impact on regional and statewide health insurance premiums."

b. Bureau of Insurance Assessment

On July 20, 2010 the Bureau of Insurance submitted the following assessment:

"Pursuant to this requirement, I have reviewed the CON application submitted by MaineHealth on May 11, 2010, for its proposal to bring Pen Bay Healthcare in Rockport, Maine into full membership in MaineCare."

"The Bureau of Insurance applied the assessment model methodology previously developed internally with support from its consultant, Milliman, Inc., of Minneapolis, MN, to develop an estimate of the impact that the CON project of Pen Bay Healthcare's membership in MaineHealth is likely to have on private health insurance premiums in Pen Bay Healthcare's service area and in the entire state of Maine. I have worked with you and your staff at the Certificate of Need (CON) Unit, using data and support from the Maine Bureau of Insurance, the State Planning Office (SPO), the Office of Integrated Access and Support (OIAS), the CON Unit of the Department of Licensing and Regulatory Services, the U.S Census Bureau, the Centers for Medicare & Medicaid Services, and information submitted by the applicant through your agency to perform this assessment. I have relied on the data submitted by the applicant and the other identified sources, and I have not audited or verified this data. If the underlying data is inaccurate or incomplete, the results of this assessment may also be inaccurate or incomplete."

"The assessment compares the CON project's Year 3 incremental operating and capital costs per person (adjusted to the year ending December 31, 2010) to the estimated private health insurance average claims cost per person for the same period as a surrogate for the estimated impact of the project on private health insurance premiums. Based on the assessment, I estimate that the maximum impact of this CON project on private health insurance premiums in Pen Bay Healthcare's region for the project's third year of operation could be approximately 0.10% ($0.10 per $100) of premium in savings. I further estimate that this project, in its third year of operation, will have a negligible (savings) impact on statewide private health insurance premiums."

"The methodology does not take into consideration the possibility of the impact of this acquisition on health insurance premiums which might result from increased negotiating power with respect to economic considerations vis-à-vis insurance carriers or self-insurance entities. Should information become available which documents such economic considerations, this assessment may be subject to revision."

c. CONU Discussion

CONU concurs with the Bureau of Insurance that the impact on statewide and regionally will be minimal.

☒ Applicants (other than those already participating in the HealthInfoNet Pilot) who have employed or have concrete plans to employ electronic health information systems to enhance care quality and patient safety.

a. Applicant's Discussion on Priority

Electronic Ambulatory Medical Record

"In 2007, the MaineHealth Board approved a plan recommended by management to make available an electronic ambulatory medical record system to employed and independent physicians on the medical staffs of all MaineHealth member hospitals. The system is also being offered to physicians on the medical staffs of MaineHealth's strategic affiliate hospitals. The plan calls for bringing 400 physicians (180 employed and 220 independent) at Maine Medical Center, Miles Memorial Hospital, St. Andrews Hospital, Stephens Memorial Hospital and Spring Harbor Hospital on to the system by 2010. MaineHealth is investing $10.4 million, its member hospitals $2.5 million and the independent physicians $2.7 million ($15 million total) to bring these 400 physicians on to the system. Implementation is underway at several practice sites. MaineHealth is also providing support for the ambulatory EMR system at Southern Maine Medical Center."

"MaineHealth has selected Epic, one of the nation's leading information technology organizations, as its strategic partner to implement the MaineHealth electronic ambulatory medical record. Epic allows healthcare providers the ability to address a variety of information needs, and will help MaineHealth, and its member organizations build strong relationships with

patients, facilitate an exchange of information across episodes of care, and allow anytime/anywhere data access for physicians. Epic is consistently ranked as the top EMR in its category by respected industry evaluators. The system allows clinicians to improve care, protect patient safety and enhance financial performance. With Epic, providers have the right information at the right time."

"Under the Definitive Agreement MaineHealth has agreed to provide financial support of $3.0 million to Pen Bay over a period of up to five years for an electronic ambulatory medical record system for Pen Bay and its employed physicians."

Picture Archiving and Communications System

"MaineHealth has developed a PACS (imaging archiving and retrieval system) system for Maine Medical Center, Stephens Memorial Hospital, Miles Memorial Hospital, St. Andrews Hospital, St. Mary's Regional Medical Center, Southern Maine Medical Center and 12 other sites."

Vital Network (Electronic ICU Monitoring)

"In 2005, MaineHealth began offering to Maine hospitals an electronic system for monitoring real time patients in intensive care units. The system is staffed at a central location by critical care trained/certified physicians and nurses. The Leap Frog Group has determined that electronic monitoring systems satisfy its quality/safety standard for care of ICU patients by Board Certified critical care physicians. The system provides continuous monitoring of selected patient conditions and has a video system which allows the VitalNetwork Staff to view the patients. Because of its capabilities, the system has proved to reduce ICU mortality and morbidity. MaineHealth was the first health care system in New England to implement the system, and has invested well in excess of $4 million in the project."

"Currently, the VitalNetwork is operational for all critical care beds (except neonates) at Maine Medical Center, Miles Memorial Hospital, St. Mary's Regional Medical Center, Waldo County General Hospital, Pen Bay Medical Center, MaineGeneral Medical Center and Southern Maine Medical Center. Implementation is in the planning stages at Mercy Hospital and Franklin Memorial Hospital."

HealthInfoNet

"MaineHealth has supported HealthInfoNet since its inception:

- MaineHealth leaders were active participants in developing the HealthInfoNet.
- MaineHealth has contributed $250,000 over two years to underwrite the project.
- Bill Caron and Frank McGinty MaineHealth's President and Executive Vice President have served on the Board of Directors of HealthInfoNet.
- MaineHealth acted as the guarantor for the initial eighteen-month engagement of the HealthInfoNet's Executive Director.

- MaineHealth is negotiating to make its proprietary MaineHealth information system available to HealthInfoNet and serve as a pilot site."

"OneMaine Health (MaineHealth, MaineGeneral Health and Eastern Maine Health) selected and funded HealthInfoNet as the data bank for medical records to share statewide patient information such as medications, allergies and health problems regardless of where care is delivered"

b. Maine CDC/DHHS Assessment

The applicant is part of health information exchange (HIE). As stated by the applicant a benefit that PBHC will receive is $3 million in financial support from MaineHealth to upgrade electronic medical records at PBMC and its employed physicians.

c. CONU Discussion

The applicants satisfy this priority by enhancing the electronic medical records of Pen Bay through $3 million in financial support to improve Pen Bay's electronic medical records.

☒ Projects done in consultation with a LEEDS certified-architect that incorporate "green" best practices in building construction, renovation and operation to minimize environmental impact both internally and externally.

a. Applicant's Discussion on Priority

"Does not apply."

b. Maine CDC/DHHS Assessment

Since this is not a construction project, than this priority does not apply.

c. CONU Discussion

CONU concurs with the Maine CDC that because is not a construction project this priority does not apply.

ii. COPA From Applicant

"Beginning in 2009, Maine Medical Center inaugurated a joint degree program with Tufts University School of Medicine. The program will graduate 36 students a year – with 20 spots reserved for Maine students or those with close ties to Maine. This new program will allow Tufts medical students to spend their junior year and part of their senior year in rotation at MMC. The clinical part of this curriculum is designed to attract doctors to Maine, and will include programs to train physicians who intend to work in community hospital settings and rural areas. Students will receive a combined degree from Tufts and Maine Medical Center."

"MMC also has an active postgraduate medical education program, with over 220 physicians in 8 residencies and 10 fellowship programs. The residencies last from 3 to 5 years. Historically, approximately 25-30% of MMC's residents have remained in Maine as practicing physicians. In some specialties, such as psychiatry and geriatrics, approximately half of the residents of these programs at MMC have remained in Maine."

"No change in the MMC- medical school, residency and fellowship programs, or the MMC-Tufts School of Medicine relationship will occur as a result of the implementation of the Definitive Agreement."

"As a member of MaineHealth, Penobscot Bay Medical Center and its physicians will be in a position to derive benefits from these programs at MMC. Penobscot Bay Medical Center will be offered the opportunity to serve as a site for rotation of students."

iii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely continuation or establishment of needed educational programs for health care providers; and

- The extent of any likely adverse impact on the access of persons enrolled in in-state educational programs for health professions to existing or future clinical training programs.

iv. COPA Analysis

MaineHealth instituted an educational program with Tufts University School of Medicine located in Boston, Massachusetts. This specific educational program allows students to attend Tufts University School of Medicine and complete clinical training in community hospitals at Maine Health facilities. Much of Maine is served by community hospitals. The applicants state that there is a significant advantage when recruiting physicians if the physicians are trained locally. Therefore, the preservation of medical educational opportunities in Maine is very important.

Training medical students in Maine is predicted to enable Pen Bay to achieve the goals of the Pen Bay Healthcare medical staff development plan. Providing educational opportunities to train physicians in the State of Maine increases the likelihood that these trained physicians will take up residency and practice medicine in Maine. The Definitive Agreement will not have an adverse impact on the access of persons enrolled in in-state educational programs for health professionals.

v. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner find that the project is consistent with the State Health Plan priorities.

COPA RECOMMENDATION: CONU recommends that the Commissioner find that the definitive agreement is likely to: (1) continue needed educational programs for health care providers; (2) have no adverse impact of access on persons enrolled in in-state educational programs for health professionals.

VII. Outcomes and Community Impact

A. From Applicant

i. CON From Applicant

No Impact on Other Providers

"Approval of this project does not negatively affect the quality of care delivered by other existing service providers. This project primarily involves the day-to-day operation of Pen Bay in its current form. There are no changes to clinical services. The project should have no impact on other providers' volumes of services, quality of care or costs."

Ensures High Quality Services

"Pen Bay has in place its ongoing structures to improve safety, reduce risk and improve the quality of care (see Section IV). No changes in the commitments to those initiatives will occur with Pen Bay joining MaineHealth."

Improves the Health of the Community

"Through continued participation in MaineHealth's health status improvement and clinical integration initiatives (see Section VI), Pen Bay will be able to continue to impact positively the health of the communities it serves. A strengthened financial position should enhance its ability to do so."

No Impact on Pen Bay's Existing Service Delivery, Management or Finances

"This project primarily involves the day-to-day operation of Pen Bay in its current form. There are no changes to clinical services. The project should have no impact on service utilization. The current Pen Bay Healthcare Board of Trustees and Executive Management Team remain in place. As noted elsewhere in this application, Pen Bay finances should improve through cost reductions resulting from Pen Bay's access to MaineHealth's administrative integration initiatives, e.g., MaineHealth's health plan, workers compensation trust, purchasing program and vendor contracts, physician practice management services, professional liability trust, laundry services, investment advisory and banking services, and audit and compliance services."

ii. COPA From Applicant

"Quality of health care is a major motivation for Penobscot Bay Healthcare's interest in becoming a member of MaineHealth. In its current status as a stand-alone health facility, Penobscot Bay Medical Center's opportunities for developing health preservation, wellness and disease prevention and management programs is limited. Such programs generally require larger scale."

"As a member of MaineHealth, Penobscot Bay Medical Center will continue to participate in all of the programs in which it currently participates, and will also participate in wellness and prevention initiatives available only to MaineHealth members, such as the: chronic diseases management program. Its employed physicians will become participants in the MMC PHO and the PHO's care management and clinical improvement registries."

"The clinical improvement registry (CIR) provides a database system that provides a secure, web-based tool for physicians to consolidate and track clinical information for patients with specific chronic illnesses. Providers use information from the CIR both at the point of care to support provider and patient adherence to evidence-based guidelines, and periodically to review outcomes at the population level to improve practice systems supporting chronic care."

"In the chronic disease management program, MaineHealth furnishes chronic illness care managers, employed by the MMC PHO, who are available to patients identified as having difficulty reaching treatment goals. Working with the physician as a member of the practice team, these nurse care managers coordinate patient care by arranging access to healthcare services, providing patient education, and promoting self-management."

"In its Care Transitions program, MaineHealth offers support to adult patients and their caregivers as they return home from the hospital. A transition coach helps patients and caregivers increase their confidence about managing chronic health conditions, medications and talking with their health care providers."

"In addition to the benefits deriving from membership, the quality enhancement efforts of Penobscot Bay Medical Center and its medical staff will benefit immediately from MaineHealth's commitment of up to $3.0 million for the deployment of an electronic medical record system."

"Electronic medical records are recognized as a key strategy for the prevention of medical errors and associated morbidity and mortality. MaineHealth discussed the quality rationale for the deployment of electronic medical record systems in its Joint CON/COPA application for the MaineHealth/Southern Maine Medical Center definitive agreement, filed with the Department in October 2008, pp. 83-85."

"Since that time, CMS has taken steps to stimulate the more rapid deployment of electronic medical record technology, corroborating the importance of electronic medical record systems as a quality- and cost-reducing. Included among these measures are demonstration projects funded by CMS to illustrate the value of electronic medical record systems. Explaining its reasons for facilitating the deployment of this technology, CMS touted EHR (electronic health records) as providing the following quality and cost-saving benefits:

- Fewer adverse drug events, medical errors, and redundant tests and procedures because EHRs can ensure physicians have access to an accurate and complete health history;

- Faster diagnoses and treatment of serious illnesses with comprehensive information available at the touch of a screen;

- Timely provision of preventative care and services, such as health screenings, which can help reduce health care costs;

- Better communication between patients and physicians, giving patients enhanced access to timely information; and

- Shorter wait times for patients and lower operating costs for physicians through improved office efficiency." [32]

"Maine's 20008-2009 State Health Plan regards electronic medical record deployment in the same light. The Plan noted that "Electronic health records have long been identified as a successful strategy to improve patient care, lower the risk for medical error, and achieve efficiencies,"[33] and observed that the dissemination of such technology is "critical" to the achievement of a patient-centered medical home model of care."[34]

"The commitment of MaineHealth to provide up to $3.0 million to Penobscot Bay Medical Center for the implementation of electronic medical records for its employed physicians addresses this barrier head on."

"In addition to these direct quality enhancement measures, the assistance that MaineHealth will provide to Penobscot Bay Medical Center in its medical staff recruiting and retention efforts will also facilitate the achievement of quality enhancements. The Applicants believe that timely and ready access to health care often is a critical element of quality of care. This view is in accord with the State Health Plan, which noted the significant role of chronic disease in contributing to health care costs, and the importance of a timely attention to the management of chronic conditions by primary care providers in the treatment of chronic disease.[35] To the extent that the implementation of the Definitive Agreement preserves and

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[32] See, e.g., CMS announcement of August 17, 2009: http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/EHR_Fact_Sheet_Site_Selection.pdf.

[33] Governor's Office of Health Policy & Finance, Maine's 2008-2009 Health Plan (April 2008), pp. 64-65.

[34] Id., at 65. Maine's 2008-2009 Health Plan, *supra*, noted "that only about 15% of physician practices" use electronic medical records, and the cost was one of the barriers to more extensive deployment. Id. at 64.

[35] Governor's Office of Health Policy & Finance, Maine's 2008-2009 Health Plan (April 2008), p. 39.

> Nationwide, 45% of the population has a chronic illness, and half of these people have more than one such illness. The incidence of chronic disease is higher in older people; 83% of Medicare beneficiaries have one or more chronic conditions; 23% have five or more. Complications of chronic disease account for a large portion of hospital admissions and emergency room use. Many of the episodes causing

enhances timely access to health care for patients in Knox County to health care providers it preserves and enhances the quality of care."

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are specific to the determination that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

ii. CON Analysis

PBHC's clinical outcomes are predicted to improve over time from participation in MaineHealth's health status improvement, clinical integration and quality improvement initiatives/programs. In order to ensure that PBMC becoming a member in MaineHealth will provide anticipated improvements in quality and outcome measures, CONU recommends that the following condition be incorporated into the CON approval: Report improvements in quality outcomes as a result of this merger for a period of three years from merger date.

CONU received no comments of opposition from other service providers. This project involves the membership of PBHC into MaineHealth; therefore, it does not involve the addition of a new health service or the expansion of an existing service. CONU concludes that the project will not negatively affect the quality of care delivered by existing service providers.

iii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely enhancement of the quality of care provided to citizens of the State; and
- The extent of any likely adverse impact on patients or clients in the quality of health care services.

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these services are felt to be avoidable; that is, they could have been prevented with more adequate primary care. However, primary care practices have been hampered by increasing clinical and administrative demands and by declining compensation relative to other specialties. As a result, fewer medical school graduates are entering primary care fields. A reimbursement system that values the essential role of primary care physicians in preventive care is one means of addressing this shortage of primary care physicians.

iv. COPA Analysis

The applicants have asserted that the implementation of the Definitive Agreement will likely lead to enhancements in the quality of care for residents in Pen Bay Healthcare's service area. This is true for patients from the area that receives services from Pen Bay Healthcare. The applicants suggest that the quality of care will be enhanced through the successful retention and recruitment of primary care physicians. These physicians will be employees of Pen Bay Healthcare. Pen Bay will then be able to provide more timely care to residents in the service area. The applicants expect to implement programs to encourage non-emergent ambulatory care in a non-hospital setting. This is expected to increase the likelihood of effective follow-up visits. The quality of care provided to patients may improve because of additional doctors. The Department does not see any likely adverse impact on patients in the quality of health care services.

The quality of care will be improved by the deployment of electronic medical record systems that should reduce medical errors and duplicative medical testing. Quality of care will improve by Pen Bay Healthcare participating in MaineHealth's clinical integration programs. The State Health Plan includes a priority for the expansion of electronic medical records that should improve outcomes.

The applicants and the interveners have approved the following conditions which will serve to define the commitment of the parties to enhance the quality of care provided and to reduce the adverse impact on patients. It is recommended that the commissioner include the following conditions:

Ambulatory Electronic Medical Record System Deployment

Commitment: Consistent with the objectives of Maine's 2008-2009 State Health Plan (April 2008), as amended in 2010, which identifies the deployment and use of electronic medical record systems as a state health policy objective, MaineHealth will provide financial support of at least $3.0 million for the deployment and integration of ambulatory electronic medical record systems for use by employed members of Pen Bay Healthcare's medical staff in accordance with the Definitive Agreement. This amount will not be recovered by MaineHealth or Pen Bay Health Care as charges from patients or payers.

Target: Within 36 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will have at least fifty (50) physician members of the Pen Bay Healthcare medical staff using ambulatory electronic medical records.

Report: At 48 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will submit a report to the Department describing the level of electronic medical record system

deployment achieved, and the plan for achieving the targeted level, if not yet achieved. The failure to achieve the targeted deployment within 48 months, if not substantially justified, may be treated as an "unanticipated circumstance" within the meaning of 22 M.R.S.A. §1845(3)(b). In order to help ensure that quality care continues and the agreement assists in reaching these goals the applicants agree to the following condition.

Quality Improvements

Commitment: During the 6 years following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, Pen Bay Healthcare will continue its current level of participation in MaineHealth-sponsored clinical integration programs (identified in its Joint Application for a Certificate of Need and Certificate of Public Advantage, and Pen Bay Healthcare will participate in any new clinical integration programs hereafter established by MaineHealth for all of its hospital members. Pen Bay Healthcare will publish the results of its participation in such programs in the same manner and to the same extent as other hospital members of the MaineHealth system.

Report and Plan: At 24, 48 and 66 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will report to the Department on the extent of Pen Bay Healthcare's participation in MaineHealth's clinical integration programs, and any gains in quality achieved by Pen Bay Healthcare during the period covered by the report.

iii. Conclusion

CON RECOMMENDATION: CONU recommends that the Commissioner find that PBHC and MaineHealth have met their burden to demonstrate that this project will ensure high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

COPA RECOMMENDATION: CONU recommends that the Commissioner find that the definitive agreement is likely to: (1) result in the enhancement of the quality of care provided to the citizens of the State; and (2) the extent of any likely adverse impact on patients or clients and the quality of healthcare services is limited by the condition approved by the applicants and the interveners and recommended for inclusion.

VIII. Service Utilization

A. From Applicant

i. CON From Applicant

"Pen Bay joining MaineHealth will have no adverse impact on the utilization of services by residents of its service area. Participation in MaineHealth's health status improvement, clinical integration and quality improvement initiatives should over time positively impact (reduce) utilization."

ii. COPA From Applicant

"As noted in prior sections, the regional planning made possible by Penobscot Bay Healthcare's membership in the MaineHealth system provides the opportunity to avoid duplication or over investment in services and equipment going forward."

"In addition, MaineHealth assistance to Pen Bay Healthcare in the deployment of electronic medical record systems for its physicians should reduce duplicative testing that can arise when previous test results were either unknown or inaccessible; reduce medical errors; and provide medial diagnosis in a timelier manner."[36]

B. CONU Discussion

i. CON Criteria

Relevant criterion for inclusion in this section are specific to the determination that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

ii. Maine Quality Forum Analysis

"The advantages of the proposed acquisition of Pen Bay Medical Center by MaineHealth are amply described in the combined certificate of need/certificate of public advantage (CON/COPA) application. From a health care quality perspective, integration initiatives can be described as having quality advantages in a number of ways, including:

- Information transfer
  - PACS systems
  - EMR systems

[36] According to the American Electronic Association's newsletter AeA Competitiveness Series, Vol. 13 (December 2006) the annual savings to be garnered nationally by electronic medical records from increased efficiencies and reduced duplication of procedures is $77 billion.

- Clinical integration
  - Disease management protocols
  - Clinical registries
  - Remote ICU monitoring
- Specialist services rationalization
- Physician recruitment
- System wide quality targets and technical assistance"

"Among the six domains of quality care, including safety, timeliness, effectiveness, efficiency, equity, and patient-centeredness, these advantages mainly speak to timeliness and effectiveness, although there are certainly aspects of safety and effectiveness that are served by integration as well. Timeliness would be better achieved through less providers and specialist leading to more appropriate and faster referrals when necessary, as well as improved access as a result of more successful recruitment of clinicians. Effectiveness is enhanced by involvement of the Pen Bay provider community in performance measurement and quality improvement efforts that are part of a larger integrated network and learning community."

"Since there is no hospital competition in the Rockland hospital service area (HSA) served by Pen Bay Healthcare, and since the majority of referrals from Pen Bay Medical Center have been to Maine Medical Center, there are no anticompetitive issues with this proposal that would impact health care quality. Arguably, the coming together of three hospitals in contiguous HSAs (Miles, Pen Bay, and Waldo County) under one system could lead to more rational health planning."

iii. CON Analysis

This application involves the membership of PBHC into MaineHealth. It does not involve the addition of new health services or the expansion of existing service. As previously cited, according to the Maine Quality Forum, the approval of PBHC membership into MaineHealth combined with its health status improvement, clinical integration and quality improvement initiatives and programs will not create an inappropriate increase in service utilization and is expected to have a positive impact on patient care.

iv. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The likely improvements in the utilization of hospital or other health care resources and equipment.

v. COPA Analysis

The implementation of electronic medical records is intended to reduce utilization by eliminating unnecessary duplicative testing. By providing physicians an electronic platform, they will be

more likely to share results of tests. Results of these tests will be communicated to diagnostic staff more timely because of integrated electronic medical records.

Further improvements in the utilization of hospital resources and equipment may occur. Through the execution of Pen Bay Healthcare's medical staff development plan, and more coordinated efforts with regional providers/members Waldo and Miles, Pen Bay Healthcare could combine equipment resources in a more effective manner.

In order to provide additional assurance that clinical efficiencies are reached, the applicants agree to the following condition.

Clinical Efficiencies/Savings

Report and Plan: At 24 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will report to the Department the results of their efforts to date to identify any unnecessary redundancies in current clinical services, and describe any measures deployed to reduce or avoid such redundancies in future clinical services. The report will address measures for regional planning of health care services in Waldo, Knox and Lincoln counties, including as appropriate joint configuration and staffing of home health, mental health and substance abuse, oncology, general surgery, orthopedic surgery, urology, and nephrology services in the region, and will estimate the financial savings (including cost avoidance) associated with such measures. The report will propose an appropriate plan for achieving savings associated therewith, within 48 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, and benchmarks by which to measure the success of such a plan. The Department may thereafter modify the conditions of the certificate to incorporate the plan proposed.

Follow-up Reporting: At 48 months and 66 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will report to the Department the extent to which benchmarks identified in the plan have been achieved, and the extent to which such savings have produced community benefit. For these purposes, community benefit includes preservation and improvements in access to care, preservation or improvements in quality of care, reduction in operating losses, and containment of cost increases or reductions in the cost of care. The failure to achieve the additional benchmarks starting with 48 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, if not substantially justified, may be treated as an "unanticipated circumstance" within the meaning of 22 M.R.S.A. §1845(3)(b).

vi. Conclusion

CON RECOMMENDATION: The CONU recommends that the Commissioner find that the applicants have met their burden to demonstrate that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

COPA RECOMMENDATION: The CONU recommends that the Commissioner find that the definitive agreement is likely to result in improvements in the utilization of hospital or other healthcare resources and equipment by including the condition approved by the applicants and the interveners.

IX. Funding in Capital Investment Fund

A. From Applicant

i. CON From Applicant

"MaineHealth and Pen Bay note that there is no new capital expenditure requiring a Certificate of Need as described in 22 M.R.S.A. § 329 (3) involved in making Pen Bay a subsidiary corporation of MaineHealth (Membership)."

"There are no incremental third year operating costs associated with this project."

"The project does not involve a debit against the amount credited to the Capital Investment Fund for the current annual effective period."

B. CONU Discussion

i. CON Criteria

Relevant criteria for inclusion in this section are related to the needed determination that the project can be funded within the Capital Investment Fund.

ii. CON Analysis

The financial forecast module completed by the applicants shows no additional third year incremental operating costs. There are no qualifying additional costs to the healthcare system as a result of PBHC's membership in MaineHealth.

iii. COPA Criteria

This section does not apply to a Certificate of Public Advantage.

iv. Conclusion

CON RECOMMENDATION: CONU has determined that there are no incremental operating costs to the healthcare system and there will be no Capital Investment Fund (CIF) dollars needed to implement this application.

COPA RECOMMENDATION: No COPA determination is required for this criterion.

X. Less Restrictive Alternatives

A. From Applicant

i. CON From Applicant

This section does not apply to a Certificate of Need.

ii. COPA From Applicant

"The Applicants believe there are no practicable alternative arrangements that would be less restrictive of competition and yield a higher level of net benefit."

"Pen Bay Healthcare is already an affiliate of MaineHealth. Its board of trustees and management concluded after studies that lasted 11 months that membership in MaineHealth offered the best opportunity for the optimal balance of continued significant local control over health care decisions and access to the resources, technical and financial, of a larger healthcare system. Affiliate status within MaineHealth will not allow Penobscot Bay Medical Center to access the capital, planning and management resources available to members of MaineHealth, which Penobscot Bay Medical Center has determined that it will need in order to maintain and improve the quality of its service offerings in the near and medium term."

"The process pursued by Pen Bay Healthcare in making this decision was an open and public one, demonstrated by the fact that the work product of the study is publicly available on Pen Bay Healthcare's website."[37]

"In December 2008, the Pen Bay Healthcare Board of Trustees voted to appoint a special committee to formally assess and make recommendations to the board and medical staff on whether or not Pen Bay Healthcare should become a full member in MaineHealth or remain an affiliate strategic affiliate. The Committee comprised fourteen persons from the Penobscot Bay Healthcare Board, the Penobscot Bay Medical Center Medical Staff and the Penobscot Bay Healthcare Executive Team. This Joint Conference Committee conducted a thorough analysis of the pros and cons of potential MaineHealth membership. It engaged multiple stake-holders in an open and transparent process, which included cost-benefit analyses, and research into the likely impacts of national healthcare reform. It established specific decision-making criteria and clear priorities for any potential agreement. It talked with hundreds of people and spent many hours on discussions and analysis. It made visits to MaineHealth hospitals and other affiliates."

"After 11 months of these study activities, the committee concluded that Pen Bay Healthcare could best fulfill its mission to the communities it serves and achieve its vision by becoming a full member of MaineHealth. Continued stand alone status was an inferior alternative. The committee believed that because of the expected deterioration of healthcare

[37] http://www.penbayhealthcare.org/penbayhealthcare/service/MaineHealth_Assessment:_Documents_/.

reimbursement and a more difficult healthcare environment in the future, membership in MaineHealth would give Pen Bay Healthcare a better chance of fulfilling its mission, rather than remaining more autonomous. The committee also concluded that healthcare providers like Pen Bay Healthcare need to work better together by collaborating more and increasing cooperation, and that regional integration is more likely to preserve appropriate local access to high-quality clinical services and reduce healthcare costs than a more autonomous approach. Given the proximity of the smaller MaineHealth hospitals to the north and south of Penobscot Bay Medical Center, membership in MaineHealth provided the only opportunity for system membership that would lead to region wide planning. The committee's report is attached as Attachment C to this Application, and was accepted and approved by the Pen Bay Healthcare Board in January 2010."

"There is no significant counterweight offsetting these benefits. For the reasons noted above, there will be no substantial diminishment of competition between Penobscot Bay Medical Center and the two nearest MaineHealth hospitals for the simple reason that there is no substantial competition between the three institutions at present."

B. CONU Discussion

i. CON Criteria

This section is not relative for a Certificate of Need. No analysis is required.

ii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

iii. COPA Analysis

There has been no information provided by the public or the applicants that would indicate there are any less restrictive alternatives.

It appears unlikely that the modest net revenues of Pen Bay Healthcare would allow them to reach their stated goals of providing improved quality of care if Pen Bay continued to operate independently. While Pen Bay Healthcare's current operations generate more revenue than expenditures, the hospital cannot currently be described as a high performing hospital and has considerably fewer resources than MaineHealth. Administrative costs are significantly higher on a percentage basis than Maine Medical Center. The applicants have agreed to conditions to the certificate of public advantage that should ensure that administrative costs as a percentage of revenue are reduced at Pen Bay Healthcare. Pen Bay Healthcare would not be expected to achieve these administrative savings while operating independently.

Short of MaineHealth changing its policies regarding affiliation and membership, it seems unlikely that any less restrictive alternatives exist. Other alternatives include the possibilities of membership with out-of-state hospital groups; however, that would most likely not improve regional cooperation as it would by being a member of MaineHealth. The risk of increasing competition at the local level would therefore be greater if any real opportunities existed regarding out-of-state affiliations.

The Attorney General and the Governor's Office of Health Policy and Finance have supported the implementation of the Definitive Agreement with specified conditions that have been approved by the applicants. This agreement, it is argued by the applicants, can be considered corroboration that there are no arrangements less restrictive of competition that would likely achieve a more favorable balance of benefits. The agreement to the arrangement indicates that the Attorney General's and the Governor's Office of Health Policy and Finance's position is that they agree to the agreement with the proposed conditions. There are no existing alternative arrangements that the parties have agreed to that would achieve nearly the same benefits.

The applicant submits that the record contains no evidence that there will be any disadvantages attributable to any reduction of competition likely to result from the implementation of the Definitive Agreement. The Department notes that there is nothing in the record that indicates the existence of alternative arrangements that would provide a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

iv. Conclusion

CON RECOMMENDATION: No CON determination is needed for this criterion.

COPA RECOMMENDATION: CONU recommends that the Commissioner find that there are no arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

XI. Likely Benefits v. Likely Disadvantages

A. From Applicant

i. CON From Applicant

This section does not apply to a Certificate of Need.

ii. COPA From Applicant

"The benefits to Penobscot Bay Medical Center have been outlined in Sections III through VI above. The Definitive Agreement will increase efficiencies through the sharing of administrative and support resources. It will provide Penobscot Bay Medical Center with access to lower-cost capital, and facilitate the further development of a region-wide integrated health care system. It will accelerate the deployment of electronic medical records among Penobscot Bay Medical Center-affiliated physicians and enhance Penobscot Bay Medical Center's prospects for success in recruiting and retaining physicians to address the demand for hospital and medical services in its service area. It will result in greater access to non-reimbursable community health initiatives, not currently available in the Penobscot Bay Medical Center service area, and allow Pen Bay Healthcare to participate in the alternatives models of health care delivery resulting from payment reform. It will facilitate the regionalization of health care resources, and attendant cost avoidance."

"For the reasons described in Section III, there will be no significant disadvantages resulting from any reduction in competition to be weighed against these advantages. This is because Penobscot Bay Medical Center and MaineHealth's member hospitals generally do not actively compete against each other for patient patronage."

"Accordingly, the Applicants request that the Department determine that in the aggregate the likely benefits from the enclosed Definitive Agreement outweigh any disadvantages attributable to any reduction in competition likely to result from the Definitive Agreement."

"As a further assurance for this determination, the Applicants propose that the conditions listed in Attachment A be incorporated into the Certificate of Public Advantage, and form part of the basis for supervisory proceedings contemplated under the Act:"

B. CONU Discussion

i. CON Criteria

This section is not relevant for a Certificate of Need. No analysis is required.

ii. COPA Criteria

Relevant criteria under the COPA law that are discussed in this section are:

- The Commissioner shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by a preponderance of the evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement.

iii. COPA Analysis

Consideration of other information and discussion of other agreed upon conditions

A concern for the Department is the potential harm to patients from the agreement. At the public hearing on June 28th, counsel for the applicants stated "There is no evidence in the record of any disadvantages attributable to a reduction in competition that likely would occur from the implementation of the Definitive Agreement." CONU agrees that there is no information in the record provided by the applicants or third parties regarding specific claims of harm if the agreement is implemented.

Hospital systems need to make reasonable returns in order to provide quality services. The long-term continuation of clinical programs that are ineffective, marginalized or costly is not sustainable. Smaller hospitals such as PBMC have less financial resources available to weather adverse economic conditions. Based on today's economic climate and the benefits associated with membership in MaineHealth, it is understandable that Pen Bay Healthcare is motivated to become a member of MaineHealth.

Supervisory conditions

The applicants have agreed to incorporate three additional considerations into the COPA. The applicants have agreed to incorporate these as supervisory conditions. These three conditions reduce concerns regarding the likelihood of harm occurring to individuals through the approval of this agreement; therefore, it is recommended that the Commissioner include the following:

Report: Any report submitted by MaineHealth or Pen Bay Healthcare under the terms of this Agreement on Conditions shall be simultaneously provided to the Attorney General and the Governor's Office of Health Policy & Finance.

Review: Supervisory review by the Department will occur at 27 months and at 54 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth. The Department may conduct additional supervisory reviews as necessary in response to reports filed by the applicants in accordance with these conditions.

Term: The certificate will expire in 6 years.

In a certificate of public advantage, the Department may include a condition requiring the certificate holders to submit fees sufficient to fund expenses for consultants or experts necessary for the continuing supervision required under section 1845. These fees must be paid at the time of any review conducted under the agreement. It is recommended that the commissioner include the following condition: Upon providing the required review materials to the Department, at 27 and 54 months following the date of when Pen Bay Healthcare becomes a member of MaineHealth, an amount of $5,000 must be submitted by the applicant to be used by the Department to fund expenses for consultants or experts necessary for the continuing supervision of the agreement.

CONU finds that the conditions submitted for approval by agreement of the applicants and the Attorney General and the Governor's Office of Health Policy and Finance and Policy as well as the "four" conditions included by CONU are reasonably enforceable subject to the future measurement or evaluation of the order to assess compliance with those conditions.

Benefits of the agreement

Consideration of the standards for approval indicates that, by a preponderance of the evidence, the benefits outweigh the disadvantages. The following 10 benefits have been accepted by the Department.

- *Continuation of Independent Boards*
  As part of this agreement the two separate boards will continue to operate independently. This serves to not limit competition by providing for independent counsel for the two organizations.

- *Administrative Savings*
  The agreement anticipates savings of $3 million in administrative costs over the first six years.

- *Access to Funding Resources*
  The agreement will provide Pen Bay Healthcare the opportunity to access financial resources to execute its current plans for the deployment of electronic medical records equal to $3.0 million over three years.

- *Changes to Provided Services*
  No changes to the existing level and array of health care services provided by Pen Bay Healthcare can occur unless it is initiated by Pen Bay Healthcare and approved by MaineHealth.

- *Access to Primary Care for MaineCare and Underinsured Patients*
  By increasing its employed physicians, Pen Bay Healthcare will provide access to care to all MaineCare and underinsured patients by requiring all employed physicians to accept

patients without regard to the patients' ability to pay.

- *Development of Electronic Medical Records*
  The agreement will allow faster implementation of electronic medical records for employed Pen Bay Healthcare physicians.

- *Avoidance of Duplication of Limited Health Care Resources*
  The deployment of electronic medical records will allow for faster reporting of laboratory results and diagnostic tests.

- *Reduction of Medical Errors*
  Implementation of electronic medical records should reduce medical errors.

- *Enhancement of Quality of Care*
  The implementation of an electronic medical records system should enhance the quality of care.

- *Improvements in Utilization of Hospital Resources and Equipment*
  Implementation of electronic medical record system should reduce utilization by eliminating duplicative testing.

The following disadvantage of the agreement has been identified:

- *Reduction of Private Practice Physicians*
  Private practice physician groups may be at a competitive disadvantage due to the support of Pen Bay Healthcare's recruiting efforts by MaineHealth.

Prior to the public hearing, the Applicants engaged in negotiations with both the Department of the Attorney General and the Governor's Office of Health Policy and Finance. Conditions were agreed to by the applicants and those interveners. It is recommended that the Commissioner accept the nine agreed upon conditions for the reasons previously stated. In addition, CONU recommends including the following two conditions as they are also necessary to ameliorate any likely disadvantages. These conditions are:

1. Reporting of free care
   Reporting of free care will demonstrate the commitment to provide continued access to services to patients regardless of ability to pay.

2. Submitting all tax returns for all entities under the control of MaineHealth
   Submitting tax returns will show the commitment to the benchmarks agreed upon by the applicants. It will also ensure the department has necessary financial information to monitor the results of this agreement.

Likely Advantages vs. Disadvantages

The prior discussion demonstrates that there are significantly more advantages than disadvantages as a result of this proposal. The agreed upon conditions, as well as additional conditions proposed by CONU, contribute to the recommendation to the Commissioner that by a preponderance of the evidence, the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement.

The Attorney General and the Governor's Office of Health Policy and Finance have concluded that with the incorporation into a Certificate of Public Advantage the provisions set forth in the Agreement on Conditions, the likely benefits resulting from the membership of Pen Bay Healthcare in MaineHealth would outweigh any disadvantages.

The opportunity existed for individuals, suppliers and payors of these hospitals to express their concern regarding the implementation of this agreement. No concerns were expressed; therefore, the record contains no evidence that there will be any disadvantages attributable to any reduction of competition likely to result from the implementation of the Definitive Agreement. Also, the record contains no evidence that managed care payers have sought to negotiate favorable terms from Pen Bay Healthcare based on a "threat" to provide an incentive to patients and their physicians to patronize other hospitals instead of Pen Bay Healthcare. Further, there is no evidence that the implementation of the Definitive Agreement will likely have any adverse impact on any competition with any other hospital that competes with Pen Bay Healthcare or MMC. No evidence was provided to show that the implementation of the Definitive Agreement will likely have any adverse impact on any competition among persons furnishing goods or services to hospitals.

The conditions set forth in the Agreement on Conditions, and incorporated into this Certificate, are the product of negotiations between the Department of Attorney General, the Governor's Office of Health Policy and Finance and the Applicants. The Attorney General and the Governor's Office have supported the implementation of the Definitive Agreement with the specified conditions that have been approved by the applicant.

iv. Conclusion

CON RECOMMENDATION: No CON recommendation is required for this criterion.

COPA RECOMMENDATION: CONU recommends that the Commissioner find that the applicants have demonstrated, by a preponderance of the evidence, that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement.

XII. Timely Notice

A. From Applicant

"Application Guideline"

"Provide a timetable for implementing all components of the cooperative agreement."

"MaineHealth and Penobscot Bay Healthcare expect to consummate their agreement within 60 days of receiving all required regulatory approvals and notifications."

"The required approvals are as follows:

1. Issuance of a certificate of need by Maine DHHS."

"The required notifications are as follows:

1. Notification to the Federal Trade Commission under the Hart-Scott-Rodino Act"

B. CONU Discussion

Letter of Intent filed:	Jan 13, 2010
Technical Assistance meeting held:	Feb 3, 2010
CON application filed:	May 12, 2010
CON certified as complete:	May 12, 2010
Public Information Meeting Held:	June 28, 2010
Public Hearing held:	June 28, 2010
Public comment period ended:	July 28, 2010

C. COPA Discussion

Letter of Intent filed:	Jan 13, 2010
COPA application filed:	May 12, 2010
COPA application included signed copy of Definitive Agreement:	May 12, 2010
Notice of Public Hearing published:	May 24, 2010
Additional notice by mail to persons requesting notification:	May 24, 2010
Attorney General and Governor's Office of Health Policy and Finance notified and copies of application and agreement provided:	May 13, 2010
Public Hearing held:	June 28, 2010
Public comment period ended:	July 28, 2010

XIII. CON Findings and Recommendations

Based on the preceding analysis, including information contained in the record, the CONU recommends that the Commissioner make the following findings and recommendations subject to the conditions below:

A. That the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

B. The economic feasibility of the proposed services is demonstrated in terms of the:

1. Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

2. The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;

C. The applicant has demonstrated that there is a public need for the proposed services as demonstrated by certain factors, including, but not limited to;

1. The extent to which the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

2. The project has demonstrated that it will have a positive impact on the health status indicators of the population to be served;

3. The project will be accessible to all residents of the area proposed to be served; and

4. The project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project;

D. The applicant has demonstrated that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

1. The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

2. The availability of State funds to cover any increase in state costs associated with utilization of the project's services; and

3. The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available was demonstrated by the applicant;

In making a determination under this subsection, the commissioner shall use data available in the state health plan under Title 2, section 103, data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner. Particular weight must be given to information that indicates that the proposed health services are innovations in high quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

E. The applicant has demonstrated that the project is consistent with and furthers the goals of the State Health Plan;

F. The applicant has demonstrated that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;

G. The applicant has demonstrated that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum; and

H. That the project need not be funded within the Capital Investment Fund.

CON RECOMMENDATION: For all the reasons contained in this preliminary analysis and based upon information contained in the record, CONU recommends that the Commissioner determine that this project should be **approved with the following conditions:**

1. This Certificate of need approval is subject to the determination of approval from the Department of Juctice/Federal Trade Commission. The applicants will be required to submit a copy of all correspondence of acceptance or denial from the Department of Jusctice/Federal Trade Commission.
2. Comply with the conditions set forth in the Certificate of Public Advantage (COPA).
3. Report cost savings attributable to this merger for a period of three years from merger date.
4. Report improvements in quality outcomes as a result of this merger for a period of three years from merger date.

XIV. COPA Findings and Recommendations

CONU recommends the Commissioner issue a certificate of public advantage for a cooperative agreement because the applicants have demonstrated by a preponderance of the evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement. CONU recommends the Commissioner make the following findings subject to the conditions specified in Attachment A.

The following benefits are likely to result from the cooperative agreement:

(1) Enhancement of the quality of care provided to citizens of the State;
(2) Preservation of hospitals or health care providers and related facilities in geographical proximity to the communities traditionally served by those facilities;
(3) Gains in the cost efficiency of services provided by the hospitals or others;
(4) Improvements in the utilization of hospital or other health care resources and equipment;
(5) Avoidance of duplication of hospital or other health care resources; and
(6) Continuation or establishment of needed educational programs for health care providers.

The following disadvantages are not likely to result from the cooperative agreement:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals or health care providers;
(2) The extent of any likely adverse impact on patients or clients in the quality, availability and price of health care services; and
(3) The extent of any likely adverse impact on the access of persons enrolled in in-state educational programs for health professions to existing or future clinical training programs.

The following disadvantages are likely to result from the cooperative agreement:

(1) The extent of any disadvantages attributable to reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that is likely to result directly or indirectly from the cooperative agreement; and
(2) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

The likely disadvantages may be ameliorated by the enforceable conditions included Attachment A, as well as the following conditions recommended by CONU:

1. Reporting of free care; MaineHealth and Pen Bay Medical Center will report free care as required by 22 M.S.R.A. §1716.
2. Submitting all tax returns for all entities under the control of MaineHealth for the term of the Certificate of Public Advantage.