



Department of Health  
and Human Services

Maine People Living  
Safe, Healthy and Productive Lives

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services  
Commissioner's Office  
221 State Street  
# 11 State House Station  
Augusta, Maine 04333-0011  
Tel: (207) 287-3707; Fax (207) 287-3005  
TTY: 1-800-606-0215

March 12, 2009

Mr. William L. Caron, Jr., President  
MaineHealth  
465 Congress Street, Suite #600  
Portland, ME 04101-3537

Mr. Edward McGeachey, President  
Webber Hospital Corp. d/b/a Southern Maine Medical Center  
One Medical Center Drive  
Biddeford, ME 04005

**RE: Certificate of Public Advantage**

Dear Mr. Caron and Mr. McGeachey:

On this date, I have decided to **grant with conditions** this Certificate of Public Advantage (COPA) that authorizes Webber Hospital Corporations d/b/a Southern Maine Medical Center to become a subsidiary of MaineHealth.

This COPA is conditioned on the following:

- 1) MaineHealth and SMMC will report free care as required by 22 M.S.R.A. §1716;
- 2) MaineHealth will submit all tax returns for all entities under their control for the term of the Certificate of Public Advantage;
- 3) MaineHealth will report any changes to the agreement with UNE regarding training of medical students for the term of the Certificate of Public Advantage;
- 4) Upon each submission of the required review materials to the Department, at 27 and 54 months (per the 2008 Agreement on Conditions signed by the Applicants and the Intervenors) following the date of when SMMC becomes a member of MaineHealth, the aggregate sum of \$5,000 shall 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; and
- 5) The conditions set forth in the Agreement on Conditions, dated December 16, 2008, attached hereto and incorporated by reference. These conditions are reasonably enforceable and are subject to future measurements to assess compliance with this Certificate.

I am issuing this COPA with conditions because I have determined that the applicants meet the criteria set forth in the Hospital and Health Care Provider Cooperation Act 22 MRSA §1844(5) and the Department's Hospital Cooperation Act Program Manual. The specific details of the project, for which I have granted this COPA, are contained in an application certified complete by the applicants on October 24, 2008. This application included a Definitive Agreement dated February 28, 2008.

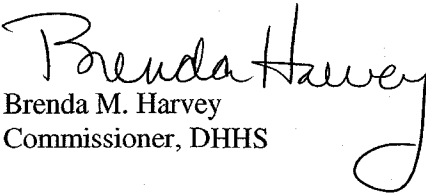
This COPA is based on the record compiled on this matter as described in the Hospital and Health Care Provider Cooperation Act. The proposal must be implemented consistent with the approval and conditions stated in the COPA, as informed and clarified by the analysis and findings summarized in the following Department staff reports, which I hereby adopt:

- 1) PRELIMINARY ANALYSIS: Report from Phyllis Powell, CON Manager, Steven Keaten, HCFA, CONU and Larry Carbonneau, HCFA, CONU, dated February 9, 2009; and
- 2) FINAL REPORT: to Brenda M. Harvey, Commissioner, DHHS, dated March 4, 2009.

It is important that you work closely with my staff in the CONU to assure this project is implemented in accordance with the provisions of this Certificate and applicable law and regulations.

My staff will work with you as necessary.

Sincerely,

  
Brenda M. Harvey  
Commissioner, DHHS

BMH/klv

Attachment: Agreement on Conditions

cc: Catherine Cobb, DLRS Director  
Phyllis Powell, CONU Manager  
Christina M. Moylan, AAG  
Janine Raquet, AAG  
Trish Riley, GOPHF  
Robert Frank, Esq. Harvey and Frank

### Agreement on Conditions

(to be incorporated in a Certificate of Public Advantage  
to be issued by the Maine Department of Health and Human Services  
to MaineHealth and Southern Maine Medical Center  
pursuant to the Hospital and Health Care Provider Cooperation Act, 22 M.R.S.A. Ch. 405-A)

The parties and signatories to this Agreement – the Applicants MaineHealth and Southern Maine Medical Center; and the Intervenors Attorney General and Governors Office of Health Policy & Finance -- agree that that the Maine Department of Health and Human Services (the “Department”) may incorporate the conditions set forth below in a Certificate of Public Advantage to be issued to MaineHealth and Southern Maine Medical Center for their Definitive Agreement, by which Southern Maine Medical Center would become a member of MaineHealth.

The Intervenors agree that with the conditions set forth below incorporated into the Certificate, the likely benefits resulting from the membership of Southern Maine Medical Center in the MaineHealth system as contemplated by the Definitive Agreement outweigh any disadvantages attributable to any reduction in competition likely to result from the agreement.

### CONDITIONS

#### A. Administrative Savings

1. Commitment: During the initial 24 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC will achieve administrative expense savings for SMMC of at least \$1 million.
2. Target: MaineHealth and SMMC have established a target of \$5 million savings in administrative expenses for SMMC in the 6 years following the date upon which SMMC becomes a member of MaineHealth. At 18 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth will

submit a report to the Department, describing the savings to date, and the plan for achieving the target. The study will include an analysis of the extent to which savings have been or can be achieved in information technology, employee benefits, finance and accounting, and other sectors. The Department may thereafter modify the conditions of the certificate to incorporate the plan proposed by MaineHealth.

3. Report: At 48 months and 66 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth will report to the Department the savings in administrative expenses then achieved. The failure to have achieved savings for SMMC of at least \$2 million for the initial 48 months following the date upon which SMMC 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).

B. Ambulatory Electronic Medical Record System Deployment

1. Commitment: Consistent with the objectives of Maine's 2008-2009 State Health Plan (April 2008), 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 \$2.2 million for the deployment and integration of ambulatory electronic medical record systems for use by employed and non-employed members of SMMC's medical staff during the 6 years following the date upon which SMMC becomes a member of MaineHealth. This amount will not be recovered by MaineHealth or Southern Maine Medical Center as charges from patients or payors.
2. Target: Within 48 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC will have at least fifty (50) physician members of the SMMC medical staff using ambulatory electronic medical records.
3. Report: At 48 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC 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).

C. Access to Care

1. Medical Staff Recruitment and Retention

- i. Commitment: MaineHealth will assist SMMC in its efforts to secure the administrative and financial resources needed to implement its 5-year (2008-2013) medical staff recruitment and retention plan, as modified and approved by the SMMC Board, and as provided in Section 2.7.1 of the Definitive Agreement.
- ii. Reporting: At 24 months, 48 months and 66 months following the date upon which SMMC becomes a member of MaineHealth, SMMC will report to the Department on its progress to date in achieving its medical staff recruitment and retention plan.

2. Access to Primary Care for MaineCare and Uninsured Patients

- i. Commitment: During the six years following the date upon which SMMC becomes a member of MaineHealth, SMMC will require all physicians employed by SMMC to accept patients without regard to the patient's insurance status or ability to pay, consistent with SMMC's charity care policies. During the same period, SMMC's charity care policy will continue to provide that person(s) whose incomes are below 175% of the then current DHHS federal poverty guidelines will receive free care.
- ii. Report: At 24 months, 48 months and 66 months following the date upon which SMMC becomes a member of MaineHealth, SMMC will report to the Department the number of charity care patients and MaineCare patients served by SMMC- employed physicians.
- iii. Feasibility Study: At 18 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC will submit to the Department a report analyzing the feasibility of extending the Care Partners program to eligible residents within SMMC's primary service area. The report will propose, as appropriate, a plan for improving and extending the availability of the Care Partners program to eligible residents within SMMC's primary service area. The Department may thereafter modify the conditions of the certificate to incorporate the plan proposed.

3. Emergency Department Use

- i. Target: By 48 months following the date upon which SMMC becomes a member of MaineHealth, SMMC will offer the services of a primary care physician or physician extender for follow-up care to each patient discharged from SMMC's emergency department who received non-emergent ambulatory care and who does not already have a regular primary care provider.
- ii. Interim Program and Report: Beginning 3 months following the date upon which SMMC becomes a member of MaineHealth, SMMC will implement a program utilizing the available capacity of current SMMC-employed primary care physicians to offer follow-up appointments with and assignments to primary care physicians for those patients discharged from the SMMC emergency department who lack a regular primary care provider. At 18 months following the date upon which SMMC becomes a member of MaineHealth, SMMC will report to the Department the numbers and percentage of patients discharged from the SMMC emergency department who were offered primary care provider access through this program, and changes in emergency department use at SMMC during the interim program.
- iii. Feasibility Study. MaineHealth and SMMC will conduct a study to determine the feasibility of longer-term measures by which emergency department demand at SMMC can be re-routed to lower cost alternatives without compromise in patient care, and the practicality of benchmarks to measure the success of such a plan. At 36 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC will report to the Department the results of their study and on changes in emergency department use at SMMC during the preceding 36 months. The report will propose, as appropriate, a plan for achieving any further re-routing of demand beginning no later than 48 months following the date upon which SMMC becomes a member of MaineHealth, and any 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.

#### D. Quality Improvements

1. Commitment: During the 6 years following the date upon which SMMC becomes a member of MaineHealth, SMMC will continue its current level of participation

in MaineHealth-sponsored clinical integration programs (identified in its October 24, 2008 Joint Application for a Certificate of Need and Certificate of Public Advantage, pp. 55-56), and SMMC will participate in any new clinical integration programs hereafter established by MaineHealth for all of its hospital members. SMMC 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.

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

#### E. Clinical Efficiencies

1. Report and Plan. At 24 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC 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 propose, as appropriate, a plan for pursuing additional clinical efficiencies within 48 months following the date upon which SMMC 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.
2. Follow-up Reporting. At 48 months and 66 months following the date upon which SMMC becomes a member of MaineHealth, MaineHealth and SMMC will report to the Department the extent to which benchmarks identified in the plan have been achieved. The failure to achieve the additional benchmarks starting with 48 months following the date upon which SMMC 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).

#### F. Limitation on Operating Margin

1. Target. During the term of the certificate, SMMC 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 SMMC's budgeted consolidated operating margin exceeds 3% of total operating revenue, SMMC will notify the Department within 60 days thereafter, and provide an explanation for the reasons therefore
3. Report. At 24 months, 48 months and 66 months following the date upon which SMMC becomes a member of MaineHealth, SMMC 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. At 48 months following the date upon which SMMC becomes a member of MaineHealth, if the average annual consolidated operating margin has exceeded the targeted level, and is not substantially justified by factors beyond the control of SMMC, the occurrence may be treated as an "unanticipated circumstance" within the meaning of 22 M.R.S.A. §1845(3)(b).

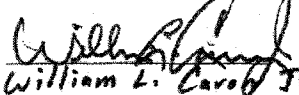
G. Report: Any report submitted by MaineHealth or SMMC under the terms of this Agreement on Conditions shall be simultaneously provided to the Attorney General and the Governor's Office of Health Policy & Finance.

H. Review. Supervisory review by the Department will occur at 27 months and at 54 months following the date upon which SMMC 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.

I. Term: The certificate will expire in 6 years.

Date: 12/16/08


MAINEHEALTH (APPLICANT)

By   
William L. Carob IV.

Title : Chief Executive Officer

Date: 12/15/08

SOUTHERN MAINE MEDICAL CENTER  
(APPLICANT)

By 

Title : Chief Executive Officer



Date: 12-16-08

ATTORNEY GENERAL (INTERVENOR)

By Christina M. Maylor

Title : Assistant Attorney General

Date: 12-16-08

GOVERNOR'S OFFICE OF HEALTH POLICY &  
FINANCE (INTERVENOR)

By Patricia A. Kelly

Title : Director

## Timetables

| # of Months after SMMC becomes a member of MaineHealth | Activity  |
|--|---|
| 3 months   | <ul style="list-style-type: none"> <li>• SMMC to begin interim program to provide primary care physicians for ED patients (C.iii.2)</li> </ul>  |
| 18 months  | <ul style="list-style-type: none"> <li>• MaineHealth submission of plan for additional administrative savings (A.1)</li> <li>• MaineHealth and SMMC report on feasibility of extending Care Partners program (C.2.iii)</li> <li>• SMMC report on the numbers and percentage of patients discharged from the SMMC emergency department who were offered primary care provider access under interim ED program. (C.3.ii)</li> </ul>   |
| 24 months  | <ul style="list-style-type: none"> <li>• SMMC report on status of physician recruitment plan (C.1.ii)</li> <li>• SMMC report on the number of charity care patients and MaineCare patients served by SMMC- employed physicians (C.2.ii)</li> <li>• MaineHealth and SMMC report on SMMC participation in clinical integration programs (D.2)</li> <li>• MaineHealth and SMMC report and plan concerning clinical efficiencies (E.1)</li> <li>• SMMC report on operating margins (F.3)</li> </ul> |
| 27 months  | <ul style="list-style-type: none"> <li>• <u>DHHS supervisory review</u></li> </ul>  |
| 36 months  | <ul style="list-style-type: none"> <li>• MaineHealth and SMMC feasibility report and plan for optimal emergency department use (C.3.iii)</li> </ul>   |

| # of Months after SMMC becomes a member of MaineHealth | Activity   |
|--|--|
| 48 months  | <p><u>Reports:</u></p> <ul style="list-style-type: none"> <li>• MaineHealth report on additional administrative savings achieved (A.3)</li> <li>• MaineHealth and SMMC report on level of electronic medical record deployment, and plan for achieving targeted level (B.3)</li> <li>• SMMC report on status of physician recruitment plan (C.1.ii)</li> <li>• SMMC report on the number of charity care patients and MaineCare patients served by SMMC- employed physicians (C.2.ii)</li> <li>• MaineHealth and SMMC report on SMMC participation in clinical integration programs (D.2)</li> <li>• MaineHealth and SMMC follow-up report on clinical efficiencies (E.2)</li> <li>• SMMC report on operating margins (F.3)</li> </ul> <p><u>Targets:</u></p> <ul style="list-style-type: none"> <li>• At least fifty (50) physician members of the SMMC medical staff using ambulatory electronic medical records (B.2)</li> <li>• SMMC will offer the services of a primary care physician or physician extender for follow-up care to each patient discharged from SMMC's emergency department who received non-emergent ambulatory care and who does not already have a regular primary care provider (C.3.i)</li> <li>• SMMC average annual operating margin for proceeding four years at less than or equal to 3% (F.1)</li> </ul> |
| 54 months  | <ul style="list-style-type: none"> <li>• <u>DHHS supervisory review :</u></li> </ul> <p><u>Applicable Benchmarks:</u></p> <ul style="list-style-type: none"> <li>○ administrative savings achieved of at least \$2 million(A.3)</li> <li>○ electronic medical records deployment - at least 50 physicians (B.3)</li> <li>○ clinical efficiencies (E.2)</li> <li>○ average operating margin (F.3)</li> </ul>  |

| # of Months after SMMC becomes a member of MaineHealth | Activity   |
|--|--|
| 66 months  | <ul style="list-style-type: none"> <li>• MaineHealth report on additional administrative savings achieved (A.3)</li> <li>• SMMC report on status of physician recruitment plan (C.1.ii)</li> <li>• SMMC report on the number of charity care patients and MaineCare patients served by SMMC- employed physicians (C.2.ii)</li> <li>• MaineHealth and SMMC report on SMMC participation in clinical integration programs (D.2)</li> <li>• MaineHealth and SMMC follow-up report on clinical efficiencies (E.2)</li> <li>• SMMC report on operating margins (F.3)</li> </ul> |
| 72 months  | Expiration of Certificate of Public Advantage (H)  |