



Department of Health
and Human Services

Maine People Living
Safe, Healthy and Productive Lives

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

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July 17, 2014

Richard Linehan, Director of Planning
MaineHealth
110 Free Street
Portland, Maine 04101-3908

RE: Acquisition and Control of Miles Memorial Hospital, St. Andrews Hospital and Cove's Edge (2008) by Lincoln County Health Care and Subsequent Acquisition of Control of Miles Memorial Hospital (2013) by LincolnHealth.

Dear Mr. Linehan:

I have reviewed the materials presented by the applicant in the form of a letter dated June 27, 2014, from Richard Linehan, Director of Planning for MaineHealth, requesting reconsideration of my May 27, 2014, Decision to grant of a Certificate of Need (CON), subject to conditions, that authorizes Lincoln County Healthcare to acquire control of Miles Memorial Hospital, St. Andrews Hospital and Cove's Edge, and the subsequent acquisition of Miles Memorial Hospital by St. Andrews Hospital (renamed as LincolnHealth). For the reasons set forth below, I have decided good cause has been demonstrated to reconsider Condition #3 of my Decision, which states:

The applicant will provide an urgent care service in the Boothbay community beginning within 3 months of approval of this application; this urgent care service must be staffed and available 24 hours daily, 7 days a week for a period of no less than:

- a. 3 years, or;*
- b. 2 years, if the then certificate holder has demonstrated that utilization has been less than adequate to offset marginal operating costs, less \$500,000 for the prior 12 months, or;*
- c. 18 months, if the then certificate holder has demonstrated that utilization has been less than adequate to offset marginal operating costs, less \$1,000,000 for the prior 12 months.*

Review of this consideration, if requested before three years will include public notice and a reduced 5 day comment period. Approval of a change in operating hours would occur no less than 60 days after expiration of the time frames considered above.

Good cause for a hearing is limited to three issues under 22 M.R.S. § 340(2) and Chapter 12 of the CON Procedures Manual. A request for reconsideration is considered to show good cause if it:

- a. Presents significant, relevant information not previously considered by the Department;

- b. Demonstrates that there have been significant changes in factors or circumstance relied upon by the Department in reaching its decision; or
- c. Demonstrates that the Department has materially failed to follow its adopted procedures in reaching its decision.

The applicant claims a single basis for reconsideration of the third condition included in my CON Decision regarding the operating hours of its urgent care center. The applicant states that there is significant relevant information not previously considered by the Department regarding urgent care demand, and revenue and expenses of the urgent care center. I find that good cause exists for a reconsideration hearing on this basis.

The applicant also argues, however, that CON “review and approval are not required for the 2008 and 2013 transactions or that the Department does not have authority under the CON statute to regulate termination of hospital services.” The applicant, however, expressly does not request a hearing on this basis but instead wishes only to “preserve [it] for future review.” Respectfully and to the contrary, this reconsideration process is precisely the place to present evidence and argument on whether the Department has materially failed to follow its adopted procedures in reaching its decision. However, since the applicant does not wish to pursue a hearing on this basis, I have not undertaken a review of whether good cause would exist to consider a request for reconsideration on this basis. I will not consider it further in these reconsideration proceedings.

The reconsideration hearing shall be held in accordance with Title 5, Chapter 375, Subchapter IV of the Administrative Procedure Act. The scope of the hearing shall be limited to reconsideration of the condition based on new information not previously considered by the Department regarding urgent care demand, and revenue and expenses of the urgent care center. After the close of the hearing, the hearing officer shall promptly forward the hearing record to the Commissioner for consideration in rendering a Decision. The Department’s Division of Administrative Hearings will coordinate this process with the applicant, the Department, and persons directly affected by a reconsideration.

Sincerely,



Mary C. Mayhew
Commissioner

MCM/klv

cc: Kevin Wells, General Counsel
Kenneth Albert, R.N., Esq. Director, DLRS
Sarah Taylor, Assistant Director, DLRS
Larry Carbonneau, Manager Health Care Oversight, DLRS
Janine Raquet, AAG
James Bivins, Chief Administrative Hearing Officer