

# MaineHealth

*110 Free Street - Portland, Maine - 04101  
Phone: 207-661-7001*

June 17, 2015

Mary Mayhew, Commissioner  
Department of Health and Human Services  
State House Station # 11  
Augusta, Maine 04333-0011

Re: Merger of Pen Bay Healthcare and Waldo County Healthcare

Dear Commissioner Mayhew:

We are sending this letter on behalf of MaineHealth. This letter will serve as a letter of intent within the meaning of Maine's Certificate of Need Act, specifically 22 M.R.S.A. § 337(1). The proposed action, summarized in this letter under the heading "Proposed Action," is the merger of two MaineHealth subsidiaries, Pen Bay Healthcare and Waldo County Healthcare. Pen Bay Healthcare is the corporate parent of the health care facility known as Pen Bay Medical Center. Waldo County Healthcare is the corporate parent of the health care facility known as Waldo County General Hospital.

In accordance with 22 M.R.S.A. § 337(1) and the Department's CON Manual, MaineHealth requests a formal ruling from the Department regarding the applicability of the Certificate of Need Program to the proposed action.

The proposed action is not expected to result in any capital expenditures, or any increment to third year operating costs for the subsidiary health facilities, or any changes in the utilization of the subsidiary health care facilities. The transaction is simply an intra-corporate reorganization of holding companies within the MaineHealth family of companies.

The anticipated date of submission of an application, if one is required, is July 17, 2015, or earlier.

MaineHealth requests a technical assistance meeting. Specifically, in accordance with 22 M.R.S.A. § 337(2), MaineHealth requests that the Department meet with MaineHealth representatives within 15 days of the receipt of this letter for the following purposes: (1) to assist

the Department in understanding the action proposed; (2) to determine if the CON statute requires CON review of the proposed action; (3) for MaineHealth to receive technical assistance concerning the nature, extent and format of the documentary evidence, statistical data and financial data required for the Department to evaluate the proposed action; and (4) if the CON law were determined to be applicable, to provide MaineHealth with the basis, rationale and methodology for calculating any application fee.

MaineHealth has previously communicated with the Department about this matter in a letter of March 11, 2015. The Department responded to this letter on June 8, 2015, indicating that the transaction may be subject to CON review. MaineHealth understands that a formal determination of the applicability/non-applicability of the Act to the proposed action will follow upon the technical assistance meeting.

Also in accordance with 22 M.R.S.A. § 337(2), MaineHealth requests the Department to issue a letter or checklist, or both, to MaineHealth that stipulates and clarifies what will be required in any CON application, if an application is necessary. MaineHealth suggests that such a letter or checklist promptly follow the technical assistance meeting, so that the information can be appropriately tailored to the requirements for review of the specific proposed transaction.

### **Proposed Action**

The transaction concerns two MaineHealth subsidiaries, Pen Bay Healthcare and Waldo County Healthcare.

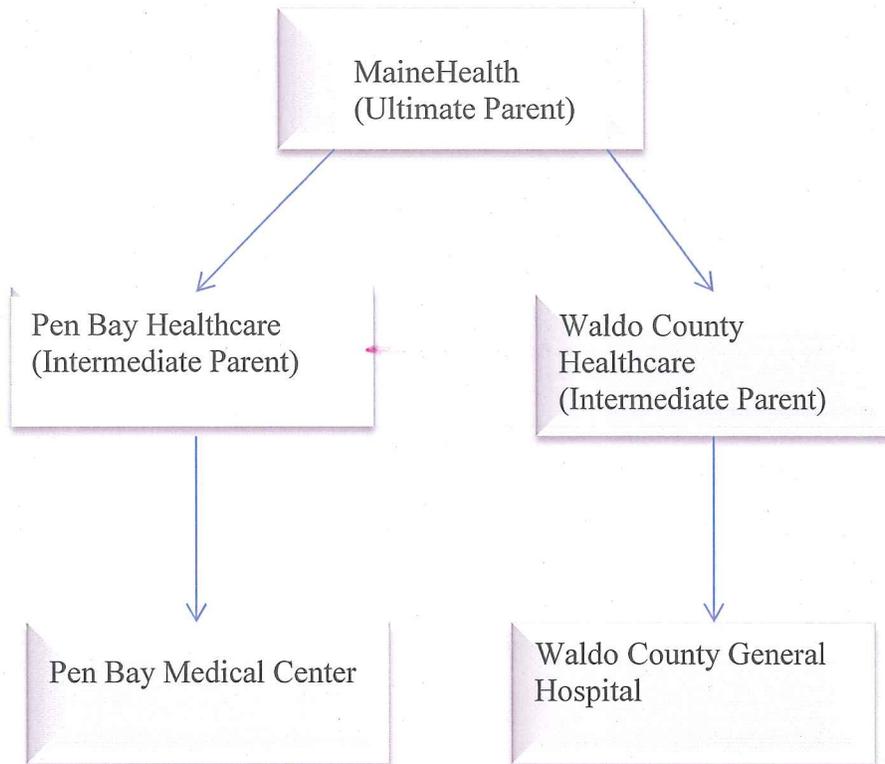
In 2008, MaineHealth sought and obtained a certificate of need to acquire control of Waldo County Healthcare and (through Waldo County Healthcare) its subsidiary Waldo County General Hospital, and paid a CON application fee that reflected the book value of the assets of Waldo County General Hospital.

In 2010, MaineHealth sought and obtained a certificate of need to acquire control of Pen Bay Healthcare and (through Pen Bay Healthcare) its subsidiary Pen Bay Medical Center, and paid a CON application fee that reflected the book value of the assets of Pen Bay Medical Center.<sup>1</sup>

---

<sup>1</sup> At the same time, MaineHealth sought and obtained a Certificate of Public Advantage (COPA) under the Hospital Cooperation Act.

The following describes the current configuration of these companies:



Currently, MaineHealth elects 100% of the Board of Pen Bay Healthcare and 100% of the Board of Intermediate Parent Waldo County Healthcare.

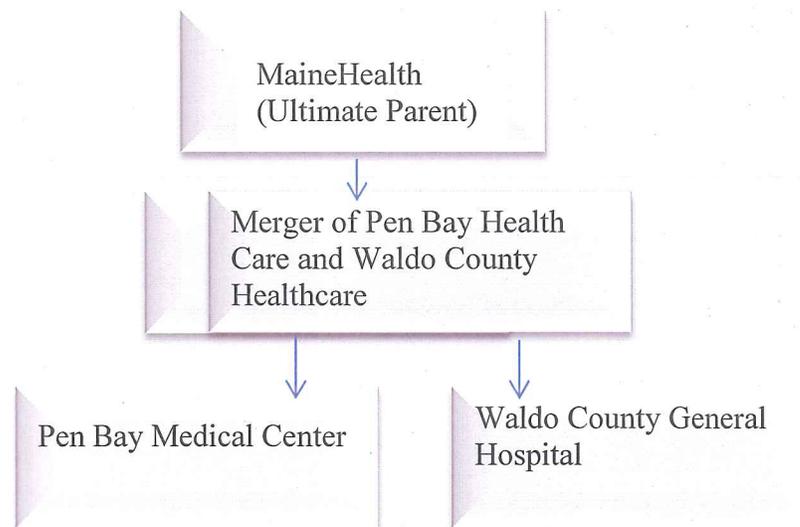
Currently, Pen Bay Healthcare's Board elects 100% of Pen Bay Medical Center's Board.

Currently, Waldo County Healthcare's Board elects 100% of Waldo County General Hospital's Board.

MaineHealth, Pen Bay Healthcare and Waldo County Healthcare believe that it is desirable to increase the current level of operational and clinical integration between and among the intermediate parents and the hospitals. The hospitals are 25 driving miles from each other. Currently, certain administrative positions at each hospital (including the CEO) are shared, and certain clinical positions are also shared. Because of changes in health care demand and resources, MaineHealth believes that the persons responsible for both the strategic and major operating decisions for these institutions should approach their task from a regional perspective.

MaineHealth intends to constitute the boards of trustees of these institutions to reflect a regional outlook.

To facilitate these objectives, MaineHealth, Waldo County Healthcare and Pen Bay Healthcare propose to merge Waldo County Healthcare and Pen Bay Healthcare, as reflected in the diagram below. (The parties have not determined whether Pen Bay Healthcare or Waldo County Healthcare will be the surviving entity; and which entity is the surviving entity is not material to the analysis). The board of the surviving would then elect the same persons as members of the boards of both Pen Bay Medical Center and Waldo County General Hospital.



The transaction does not entail a merger of licensed hospitals - Pen Bay Medical Center and Waldo County General Hospital. There is no transaction by which title to the assets of one licensed hospital is transferred to another licensed hospital.

There is also no change of control of either Waldo County Healthcare or Pen Bay Healthcare, or their subsidiaries. Currently, MaineHealth elects the boards of Waldo County Healthcare and Pen Bay Healthcare. Through that power, MaineHealth indirectly but effectively controls the election of the board of trustees of their respective subsidiaries, including Pen Bay Medical Center and Waldo County General Hospital. MaineHealth currently has the power to elect the same slate of persons to serve as the board of trustees for both Pen Bay Healthcare and for Waldo County Healthcare. MaineHealth thus has currently the power to have the very same persons - all elected by MaineHealth - in turn to elect 100% of the board of each of Pen Bay Medical Center and Waldo County General Hospital.

Under the proposed action, the same power continues. Although there would be a *nominal* change in the identity of the intermediate parent post-transaction for one of the hospital subsidiaries, MaineHealth will continue to control the surviving entity (Waldo County Healthcare or Pen Bay Healthcare), maintaining the same power that it currently has to elect 100% of its board of trustees and through it, to control the election of the board of each of Pen Bay Medical Center and Waldo County General Hospital.

For these reasons, MaineHealth believes the proposed action entails neither a change of ownership nor a merger of a hospital facility, nor a change of control of a hospital or other facility, and the proposed action should be regarded as not required to be reviewed under the CON law.

In responding to this letter of intent, the Department has the opportunity to articulate a coherent set of principles regarding CON applicability/non-applicability to intra-corporate family transactions of this type, in a manner that reflects the underlying functional purposes and policies of the CON statute. MaineHealth believes that the Department should embrace this opportunity, because the Department's approach to the applicability of the CON law to intra-corporate family transactions has not been consistently clear. For example, compare Letter, December 30, 2010 from Benjamin P. Townsend, Esq. to Phyllis Powell, re Down East Health System Corporate Restructuring (no CON was required for a transaction in which a hospital's parent holding company was merged into the hospital), with Letter, November 7, 2013 from Kenneth Albert to William Caron, Jr., et al re Formation of Lincoln County Health Care, etc. (holding company formation of wholly controlled subsidiary to serve as intermediate holding company determined to be CON reviewable).

Thank you for your consideration.



Mark Harris  
Senior Vice President/Planning  
MaineHealth



Robert S. Frank, Esq.  
Senior Vice President/General Counsel  
MaineHealth

Cc:

Mary Mayhew, Commissioner  
Re: Merger of Pen Bay Healthcare and Waldo County Healthcare  
June 17, 2015  
Page 6 of 6

Phyllis Powell  
Interim Director  
Division of Licensing and Regulatory  
Services  
Department of Health and Human Services  
State House Station # 11  
Augusta, Maine 04333-0011

Larry Carbonneau  
Senior Healthcare Financial Analyst  
Division of Licensing and Regulatory  
Services  
Department of Health and Human Services  
State House Station # 11  
Augusta, Maine 04333-0011

Jane Gregory  
Assistant Attorney General  
6 State House Station  
Augusta, Maine 04333-0006