



Department of Health  
and Human Services

Maine People Living  
Safe, Healthy and Productive Lives

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

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October 13, 2010

Paul D. Gray, Vice President for System Planning  
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Roy Hitchings, Jr., President/CEO  
Pen Bay Healthcare  
6 Glen Cove Drive  
Rockport, ME 04856

**RE: Certificate of Public Advantage**

Dear Gentlemen:

On this date, I have decided to **grant with conditions** this Certificate of Public Advantage (COPA) that authorizes Pen Bay Healthcare to become a subsidiary of MaineHealth.

This COPA is conditioned on the following:

A. Administrative Savings

1. Commitment: During the initial 36 months following the date upon which Pen Bay Healthcare becomes a member of MaineHealth, MaineHealth and Pen Bay Healthcare will achieve administrative expense savings for Pen Bay Healthcare of at least \$1 million. The failure to have achieved savings in administrative expenses for Pen Bay Healthcare of at least \$1 million for the initial 36 months following the date upon which PBMC 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).
2. Target: MaineHealth and Pen Bay Healthcare have established a target of \$3 million savings in administrative expenses for Pen Bay Healthcare in the 6 years following the date upon which Pen Bay becomes a member of MaineHealth.
3. Report: At 48 months 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 expenses then 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 should also quantify any increase in aggregate administrative expenses greater than the rate of inflation as measured by the CMS Market Basket Index, and identify the reasons for such increase.

## B. Clinical Efficiencies/Savings

1. 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.
2. 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).

## C. Ambulatory Electronic Medical Record System Deployment

1. 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.
2. 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.
3. 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.

D. Access to 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.

E. Quality Improvements

1. 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.
2. 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.

F. Limitations on Operating Margin and Commercial Reimbursement

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.
  - a) 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).
- G. 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.
- H. 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.
- I. Term: The certificate will expire in 6 years.
- J. Reporting of free care: MaineHealth and Pen Bay Healthcare will report free care as required by 22 M.S.R.A. §1716.
- K. Submitting all tax returns for all entities under the control of MaineHealth for the term of the Certificate of Public Advantage.
- L. Upon each submission of 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 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.

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 May 11, 2010. This application included a Definitive Agreement.

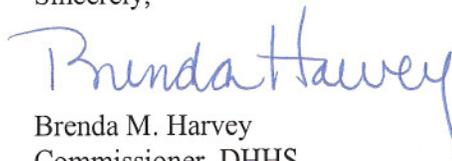
This COPA is based on the record compiled on this matter as described in the Hospital and Health Care Provider Cooperation Act. The proposal must be implemented consistent with the approval and conditions stated in the COPA, as informed and clarified by the analysis and findings summarized in the following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

- 1) PRELIMINARY ANALYSIS: Report from Phyllis Powell, Assistant Director, and Larry Carbonneau, HCFA, CONU, dated September 16, 2010; and
- 2) FINAL REPORT: to Brenda M. Harvey, Commissioner, DHHS, dated October 13, 2010.

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

cc: Bill Caron  
Frank McGinty  
Robert Frank, Esq.  
Richard Linehan  
Janet Mills, Office of the Attorney General  
Trish Riley, Governor's Office of Health Policy and Finance  
Catherine Cobb, Director  
Phyllis Powell, Assistant Director  
Anne Flanagan, Assistant Director  
Herb Downs, Audit  
Janine Raquet, AAG  
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