Department of Health and Human Services
Maine People Living
Safe, Healthy and Productive Lives

Paul R. LePage, Governor Mary C. Mayhew, Commissioner

Department of Health and Human Services
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May 12, 2015

Senator Eric L. Brakey, Chair
Representative Drew Gattine, Chair
Members of the Joint Standing Committee on
Health and Human Services
#100 State House Station
Augusta, ME 04333-0100

Re: 2014 Certificate of Need Annual Report

Dear Senator Brakey, Representative Gattine and Members of the Joint Standing Committee on Health and Human Services:

As required in 22 M.R.S.A. §343, we are submitting to you the 2014 Annual Report on Certificate of Need activities during calendar year 2014. The purpose of the report is to provide information on all Certificates of Need that were granted and/or denied and information on proposals granted on a conditional basis.

Should you have any questions regarding the 2014 Annual Report, please feel free to contact Phyllis Powell, Interium Director of the Division of Licensing and Regulatory Services, at 287-6664.

Sincerely,

Mary C. Mayhew
Commissioner

MCM/klv

Enclosure

Department of Health and Human Services

Maine People Living Safe, Healthy and Productive Lives

2014 Report
Certificate of Need Act

Maine Department of Health and Human Services
Division of Licensing and Regulatory Services

January 2015

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Introduction

The Department of Health and Human Services is responsible to report annually on activities conducted pursuant to Maine's Certificate of Need Act (CON Act). The requirements for this report may be found in 22 M.R.S.A. §343. The report must include information on any Certificate of Need (CON) granted or denied, with additional information on any conditions attached, and any subsequent reviews conducted and/or approved. This report contains the required information for calendar year 2014.

The CON Act provides the framework for review of proposals by or on behalf of certain health care facilities and nursing homes involving expansion of plant and equipment, the provision of new services, transfers of ownership and control and other initiatives requiring a CON. Responsibility for activities under the CON Act rests within the Division of Licensing and Regulatory Services (DLRS). Personnel responsible for the operations of the Certificate of Need Unit (CONU) are part of the Division's Health Care Oversight Program which consist of a Manager, and one other Senior Health Care Financial Analyst, and one administrative support staff.

The Health Care Oversight program performs 10 different functions within the Division of Licensing and Regulatory Services. Our latest time estimates indicate that approximately 1.25 FTE's were expended in completing CON functions in 2014

I. Thresholds for Reviewability

The CON Act establishes a number of thresholds that trigger review. The thresholds in effect during 2014:

Table 1

Category	Amount
Major Medical Equipment	$3,379,550
Replacement of Major Medical Equipment	Not Reviewable
Capital Expenditures	$10,561,095
New Technology	$3,379,550
Nursing Facility Capital Expenditures – New or Existing	$5,280,547
New Health Facility	$3,000,000
New Health Services:	
Capital Expenditure	$3,168,328
3rd Year Incremental Operating Cost	$1,056,109

To ensure that providers bring forth applicable projects for review, they may request a determination from the CONU whether a project requires a CON. A "not subject to review" determination is issued if the total projected costs fall below the applicable thresholds or does not otherwise require review. A "not subject to review" determination is only made once CONU is satisfied that it has determined all applicable terms and costs of the project. This requires that the provider submit a Letter of Intent with all the applicable information.

Another reason that CONU may issue a "not subject to review" determination is if the nature of the project itself does not require a CON. As in the case of the thresholds, the provider may obtain such a determination by filing a Letter of Intent, completely describing the nature of the project.

In 2014, CONU issued twelve not subject to review (NSTR) determinations.

II. Limits on Investment

MaineCare Funding Pool

By statute, Maine law has required nursing facility projects to be approved only within available funds. In other words, a project increasing MaineCare costs must have an equal decrease in MaineCare costs elsewhere. This process maintains MaineCare budget neutrality.

The 2007 amendments to the CON Act created a MaineCare funding pool for nursing facility projects. The pool consists of credits representing savings produced by de-licensing nursing facility beds on or after July 1, 2005. The CONU calculated the value of de-licensing transactions in this timeframe, and identified $1,019,569 as available to the pool. This funding pool represents the MaineCare share of third year incremental operating costs for approved projects. In addition to pool funds, the same 2007 amendments established reserved beds whose assets are in the hands of the facility owners. As of December 2013, the owners' value equaled $1.115 million.

As part of the budget process, the legislature enacted deappropriations of $300,000 in each of the fiscal years 2009-2011, inclusive. At the end of SY 2013, the MaineCare funding pool for nursing facilities had a funded balance of $194,715.

The funds are to be utilized for development of additional nursing facility beds in areas of the state where additional beds are necessary to meet community need. The Office of Aging and Disability Services engaged The Lewin Group to develop a model to predict needs throughout the state, as required by 22 M.R.S.A. §333-A. The Lewin methodology for estimating need for Nursing Home beds was completed in 2008. This model serves as the proxy for determining need when CONU makes a recommendation to the Commissioner. Further refinement led to an updated report in 2014. No Requests for Proposals were issued by the Office of Aging and Disability Services in 2014.

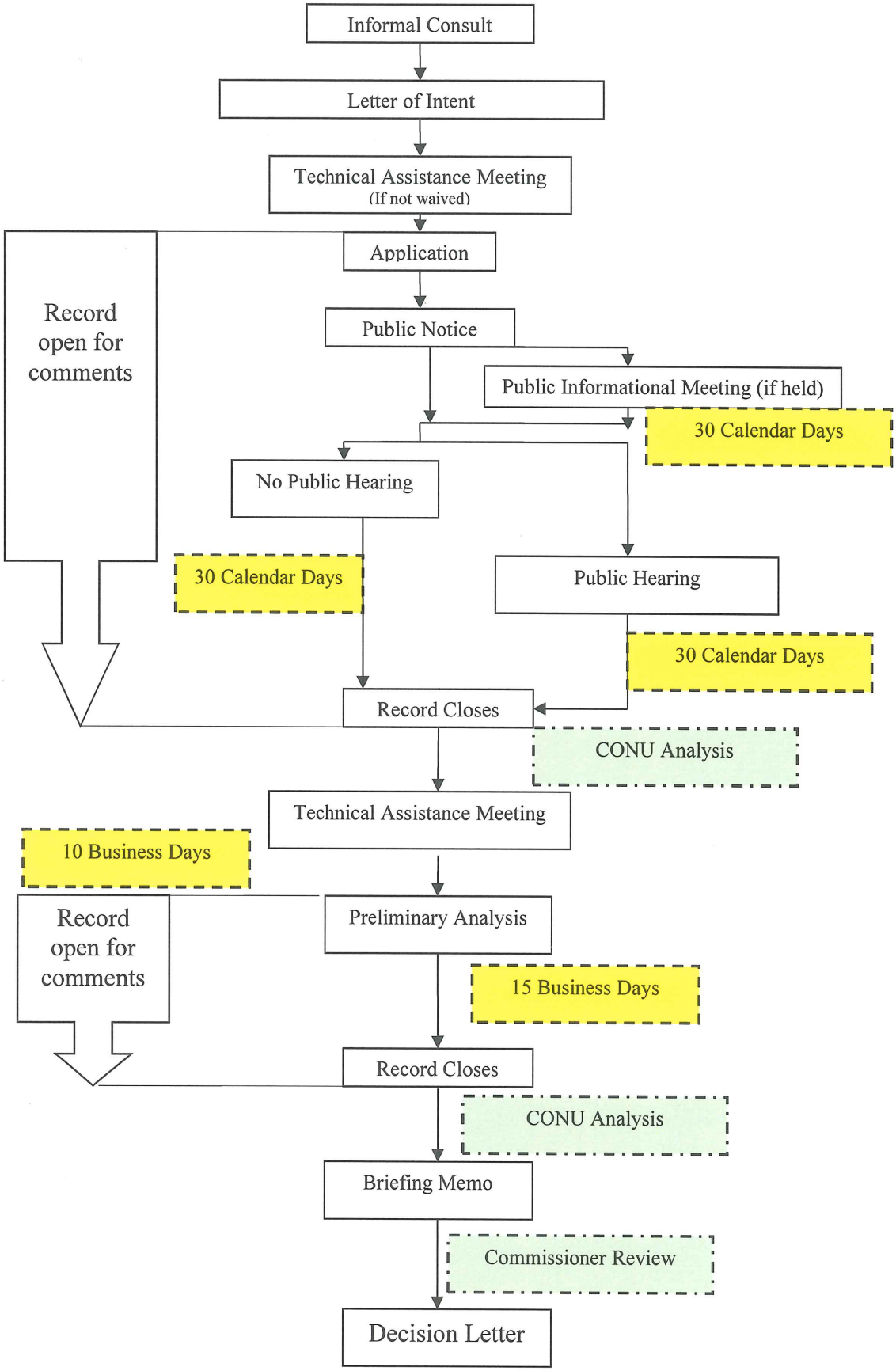
III. Review Process

CON applications are also reviewed by other agencies. Input from Maine Quality Forum provides a perspective on how effectively each application will contribute to the improved health status of the population for projects that the Maine Quality Forum has developed a methodology. The Bureau of Insurance calculates the impact of some large projects on statewide and regional health insurance premiums in order to advise the Commissioner on the impact to payers. Once a CON is approved, a subsequent review of the decision may be necessary if there is a significant change in financing for the project, the approved bed capacity, the approved services, the site or location or the design or type of construction.

During the review process, in addition to considering information submitted from the applicant(s), CONU considers information and comments from the public. In order to provide adequate time for public comments and additional information to be included as part of the official record, the record is considered "Open" during specific times. The flow chart below illustrates when the record is "Open".

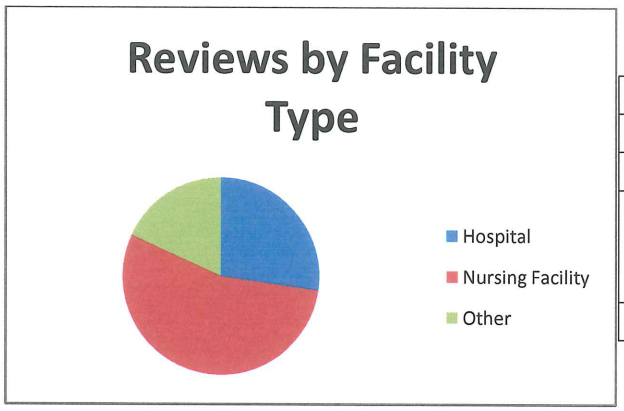
Applicants for a CON are required to pay a nonrefundable fee for the review of each project. CONU also collects fees for copies of documents requested under the Freedom of Information Act (FOIA). In 2014, revenue from CON Review fees totaled $80,000.00 and revenue from FOIA requests totaled $1,028.85. CON revenue is used to offset CONU expenditures.

Certificate of Need Process



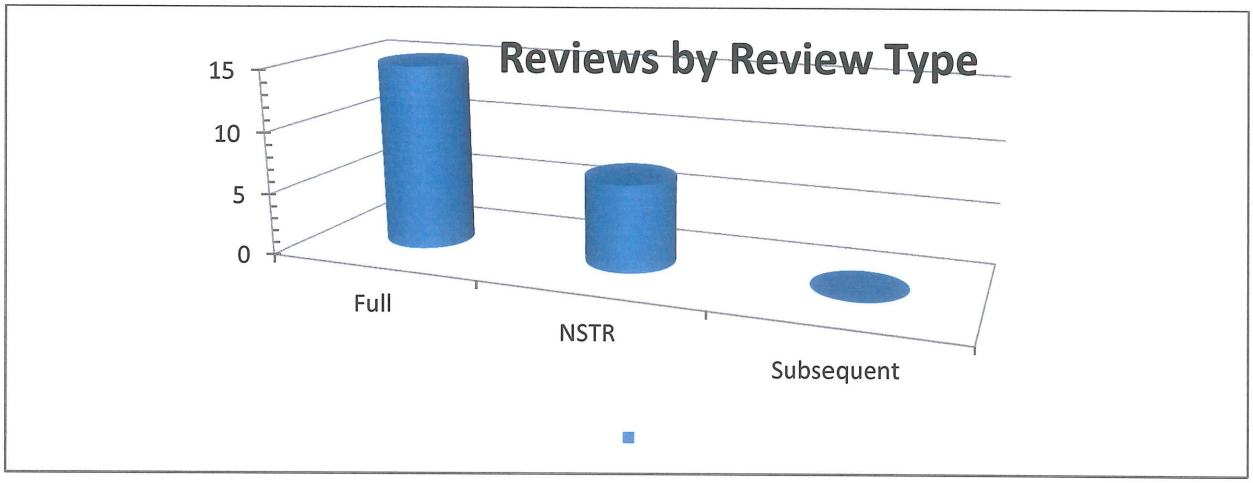
IV. 2014 Project Review Record

CONU is responsible for reviewing hospitals, nursing facilities and other health care facilities. The following chart and table illustrates the reviews by facility type that were active in 2014:



Facility Type	Number	Capital Cost
Hospital	6	$ 42,689,390.00
Nursing Facility	12	$ 14,412,873.00
Other	4	$ 5,000,000.00
		$ 62,102,263.00

The CON process includes several types of reviews. The following chart and table illustrates the number of reviews by review type that were active in 2014:



Historically, "Not Subject to Reviews" have comprised the majority of reviews, followed by proposals subject to a full, or in depth, review. The chart below demonstrates the types of reviews conducted for the past nine full calendar years. Note: Projects that are in active status over multiple calendar years will be accounted for in multiple years.

Historical Review Types

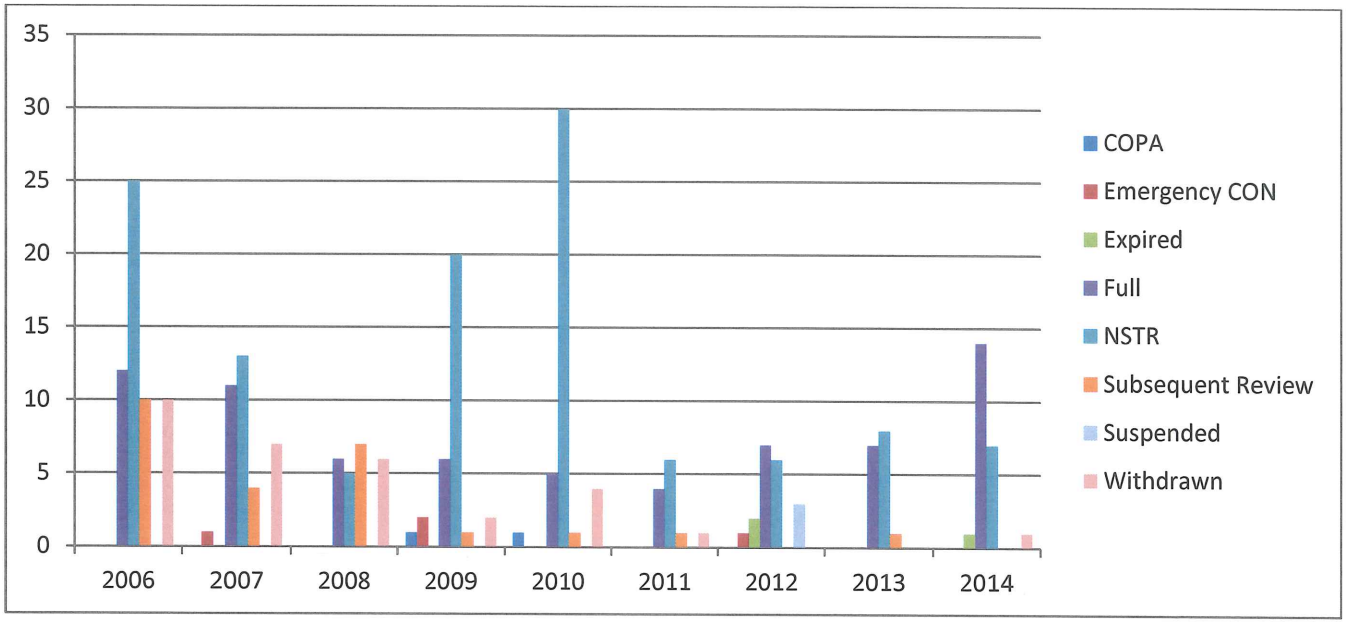


Table 4 is a brief description of the projects that were active during 2014, including the decision status and a summary of any conditions applied to any approved projects.

Table 4

Applicant (s)	Project	Project Type	Review Type	Withdrawn/ Completed
Bucksport	Construction of a New Facility	Nursing Facility	Full	07/31/2014 Withdrawn
Continuum	Gorham House Bed Increase	Nursing Facility	Full	07/01/2014 Withdrawn
Freeport Nursing Home	Transfer of Operations	Nursing Facility	Full	05/14/2014 Completed
Kennebunk (Genesis) – RiverRidge Center	Change Mix of NF/SNF & RC Beds	Nursing Facility	Full	06/26/2014 Completed
Kindred Nursing Homes	Westgate Bed Conversion	Nursing Facility	Full	05/14/2014 Completed
Lincoln County HealthCare	Merger of Miles Memorial Hospital & St. Andrews Hospital	Hospital	Full	05/28/2014 Completed
Madigan Estates	Madigan Estates Bed Increase	Nursing Facility	Full	06/26/2014 Completed
Maine Medical Center	Capital Expenditure to Expand and Renovate OR Capacity	Hospital	Full	02/07/2014 Completed

Applicant(s)	Project	Project Type	Review Type	Withdrawn/ Completed
MaineHealth/Franklin	Acquisition of Control	Hospital	Full	08/27/2014 Completed
Market Square Health Care Center	Purchase of Assets	Nursing Facility	Full	03/11/2014 Completed
Seaside Healthcare, LLC	Purchase of Assets	Nursing Facility	Full	06/26/2014 Completed
Seaside Healthcare, LLC	Capital Improvement	Nursing Facility	Full	03/19/2014 Completed
Treats Falls House	Remodel & Expansion of current facility	Other	Full	07/29/2014 Completed
Eyecare Medical Group P.A.	Expansion of ASU	Other	NSTR	05/13/2014
Casco Bay Dialysis Center	Relocate Facility	Other	NSTR	01/09/2014
ClearChoicesMD	Non-Applicability – Urgent Care	Other	NSTR	04/25/2014
Maine Medical Center	Operation of a Retail Pharmacy within Hospital	Other	NSTR	01/09/2014
Seaside Healthcare, LLC	Renovations to Nursing Facility Wing	Other	NSTR	03/19/2014
Waldo County General Hospital	Retail Pharmacy Service	Hospital	NSTR	01/07/2014
Bangor Nursing and Rehab Center	Convert 13 SNF/NF beds to Specialty Dementia Unit	Other	NSTR	07/18/2014
Central Maine Medical Center	Critical Care Bed Proposal	Other	NSTR	07/18/2014
FirstMRI	New Equipment	Other	NSTR	08/06/2014
Mercy Hospital	Mercy Fore River Express Care Project	Hospital	NSTR	06/16/2014
Mercy Hospital	Employee Health Project	Hospital	NSTR	06/16/2014
St. Joseph Rehabilitation & Residence	Close RCF Wing	Nursing Facility	NSTR	08/05/2014

*NSTR = not subject to review

V. Implementation Reports

Holders of a CON are required to submit written reports to the department according to 22 M.R.S.A. §350-C. These reports summarize the progress on projects and the applicant's compliance with any conditions related to the granted CON. Conditions may be attached to a project at the discretion of the Commissioner. CONU makes recommendations to the Commissioner if it concludes that conditions would further the purpose of the CON Act. Quite often these conditions require ongoing reporting by the CON holder to determine whether the goals of the project are met once it is implemented.

Table 5 lists all of the conditions issued to a CON that the department was reviewing for compliance during 2014. Certain conditions are considered ongoing conditions, where the applicant is required to report on compliance over a period of up to three years after the implementation of the project, these conditions are not reportable until after the project is completed or implemented. Other conditions require certain action(s) from the applicant(s) and are generally considered met in compliance once documentation is provided as described in the condition. Ongoing Conditions are summarized in the project description.

Table 5

Hospitals:

Applicant	Project Description	Number of Conditions	Conditions Ongoing	Conditions Met
Eastern Maine Medical Center	Construct 8 story inpatient tower at campus on State Street in Bangor, ME Conditions: Report on Hospital Safety	5	1	4
Maine Health	Acquisition of Goodall Hospital Report on: Annual Savings, Hospital Improvements and Service Changes	8	3	5
MaineGeneral Medical Center	New Regional Hospital Reports on: Occupancy, ED Use, CT Scanners, Physician Recruitment, Free Care, OR utilization, public health, health improvement indicators.	13	8	5
Rumford Hospital	Consolidated Inpatient Wing – Report on Delivery Services.	3	1	2

Nursing Homes:

Applicant	Project Description	Number of Conditions	Conditions Ongoing	Conditions Met
VK Health	Acquisition of 7 Nursing Home Operations	1	0	1
Westgate Center for Health and Rehabilitation	Acquisition of Nursing Home Reports on Continuing Quality Improvement and financial results.	2	2	0

VI. Legislative Changes

There were no legislative changes in 2014.

The Department of Health and Human Services (DHHS) does not discriminate on the basis of disability, race, color, creed, gender, age, sexual orientation, or national origin, in admission to, access to or operation of its programs, services, activities or its hiring or employment practices. This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and in accordance with the Civil Rights Acts of 1964 as amended, Section 504 of the Rehabilitation Act of 1973 as amended, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 and the Maine Human Rights Act. Questions, concerns, complaints, or requests for additional information regarding civil rights may be forwarded to the DHHS' ADA Compliance/EEO Coordinator, State House Station #11, Augusta, Maine 04333, 207-287-4289 (V) or 207-287 3488 (V), TTY: Maine Relay 711. Individuals who need auxiliary aids for effective communication in programs and services of DHHS are invited to make their needs and preferences known to the ADA Compliance/EEO Coordinator.

This notice is available in alternate formats, upon request.