

MAINE STATE LEGISLATURE

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**Certificate of Need
Work Group Report
Response to L.D. 1535 Resolve Chapter 110
Recommendations to the Joint Standing Committee on
Health and Human Services
March 14, 2008**

I. Introduction

RESOLVE Chapter 110, 123rd Maine State Legislature created a work group to study the Certificate of Need Program administered under the Maine Revised Statutes, Title 22, Chapter 103-A. The charge to the work group was to review and make recommendations on twelve (12) issues specific to the CON Program. A copy of the RESOLVE is included.

This RESOLVE identified the membership composition for this work group. A list of members and the dates of work group meetings and minutes for those meetings are included.

This RESOLVE also required that a report be developed on the results of the review of the Certificate of Need Program. This report shall contain the results of the review and recommendations to the Joint Standing Committee on Health and Human Services by January 15, 2008. The committee is authorized to submit legislation regarding the Certificate of Need Program to the Second Regular Session of the 123rd Legislature.

II. Structure

The work group conducted their review of the Certificate of Need Program using the twelve item structure of the RESOLVE as a guide. For the purpose of consistency, this report is structured according to each item.

III. Findings

- 1. Recent changes to CON** - The Certificate of Need Unit is in the process of revising rules based upon changes enacted according to PUBLIC Law, Chapter 440, First Regular Session – 123rd Legislature. This activity is following established procedures for rulemaking within State government. Stakeholder comments will be solicited and a public hearing will be held. A copy of this law was provided to work group members for review. The Maine HealthCare Association developed a statement specific to changes in the law that impact nursing facility reserved beds. These comments will be considered during the public comment period that is forthcoming;

2. **Current threshold** - A review of the current dollar threshold was conducted. Some members suggested that the threshold should be lowered and others felt certain thresholds should be increased. The consensus of the work group was that consensus on this topic was not attainable and to table further discussion. As a result the committee makes no recommendation regarding the thresholds however, consensus was reached regarding indexing. It was determined that indexing should be standardized with common indexing dates and review periods.
3. **Reviewable project** - The topic of “reviewable projects” and a clarifying definition for “new service” were not able to be fully developed. The work group also reviewed circumstances where health care facilities seek financing from MHHEFA and other sources, where such sources require timely confirmation that needed CON approvals have been received, or that the financing is not subject to review (NSR). The consensus of the work group is that projects seeking confirmation that they are NSR or that needed approvals have been obtained will send a NSR request letter to the Certificate of Need Unit (CONU) when financing is being requested. This will provide the CONU sufficient lead time to develop a letter confirming the NSR status of the project. This action will help expedite project financing. A sample request letter was developed for applicant use;
4. **Community need** - The topic of defining “community need for new services of facilities” was determined to be adequate and not requiring action at this time;
5. **SHP, CON, CIF** - The relationship between the State Health Plan (SHP), the CON process and the Capital Investment Fund (CIF) was discussed. No modifications to the relationship were proposed. It was commented that CON rules should more clearly indicate the most current version of the SHP that is being referred to.
6. **MQF, MeCDC, BOI** - The role of the Maine Quality Forum (MQF); the Department of Health and Human Services (DHHS), the Maine Center for Disease Control and Prevention (MeCDC); and the Department of Professional and Financial Regulation, Bureau of Insurance (BOI) in the CON process was discussed. The consensus of the work group is that the interface between BOI and CON should be streamlined. CON and BOI are in the process of finalizing a Memorandum of Understanding (MOU). Additionally, the two entities are working to develop a single financial document to facilitate review and streamline the application process;
7. **Criteria** - It was determined that no further action was needed at this time relative to the criteria used by DHHS for evaluating a CON application. The use of review panels was mentioned but full consideration of the possible use

of review panels was not a topic that the committee determined warranted full consideration at this time;

- 8. Historical review of revenues & expenditures** - A historical review of revenue and expenditures was presented by a summary. The DHHS has hired a full-time CONU Manager and is providing additional division resources as needed. The functioning of the CONU is improving over time;
- 9. Application process** - A historical summary of CON applications was provided to the group.
- 10. Related project description** - No action was taken with regards to related projects. The work group determined that any movement on this issue was not expected as considerable effort was made to reach a consensus that was incorporated in PUBLIC Law 440.
- 11. Acquisition equipment requirement** – CONU reviewed information contained in the National Directory State CON Programs Health Planning Agencies 2007. This review was limited to high tech equipment inventories and to the New England States. The work group determined that any movement on this issue was not expected as considerable effort was made to reach a consensus that was incorporated in PUBLIC Law 440. No changes were recommended at this time.
- 12. Additional topics** - Additional topics were not a priority unless legislation is actually considered. Regarding PUBLIC Law 440, clarifying language to amend the statute and subsequent discussion with the Department has resulted in an agreement to clarify Section 333-A-3 Emergencies.

Section 333-A-3 Emergencies and Necessary Renovations. In the event of an emergency, the department may allocate savings calculated in accordance with section 2 by the sole source process. The department may also deem as an emergency, and may approve nursing facility certificate of need applications that propose capital expenditures for renovations and improvements that are necessary: (a) to achieve compliance with code and related regulatory requirements, (b) to comply with HIPAA and related patient privacy standards, (c) address other patient safety requirements and standards, consistent with the priorities set forth in the current State Health Plan, or (d) to address other necessary and time-sensitive patient safety or compliance issues.

Certificate of Need projects described in this subsection shall not be subject to or limited by the nursing facility MaineCare Funding Pool, and any accompanying increases in MaineCare costs may be approved by the department so long as the project fulfills all other pertinent requirements.

CONU raised the issue of who owns the CON, specifically MRIs with multiple interests, providers and hospitals. CONU staff noted that transfer of ownership of Magnetic Resonance Imaging (MRI) entities are not a covered activity because of the definition of health care facilities. If future legislation is considered, inclusion of MRI providers in the definition of the health care facilities is to be considered. No determination was made.

IV. Members

Four medical representatives:

Andrew B. MacLean, JD, Deputy Ex. VP
Maine Medical Association

Jean Mellett, FHFMA, CPA, Director of Planning
EMMC Hospital

David S. Winslow, VP of Financial Policy
Maine Hospital Association

John Wipfler, CEO
Maine Ambulatory Surgery Center/Orthopedic Associates of Portland

Seven other representatives:

Brent D. Churchill, CHC
Employee Benefits Design, Inc.

Glenn Cyr/Richard Erb, President CEO
Maine Health Care Association

Representative Elizabeth Miller
Public Health

Dora Mills, MD
Maine Center for Disease Control and Prevention

Brian Rines/Lani Graham, MD
Advisory Council on Health System Development

Hilary Schneider, Director of Programs and Policy
Consumers for Affordable Health Care

Dennise Whitley, Health Representative
American Health Association

One designee from the Governor's Office of Health Policy and Finance

Peter Kraut, Ex-officio
Governor's Office of Health Policy and Finance

One designee from the DLRS

Phyllis Powell, CONU Manager
DHHS, Division of Licensing and Regulatory Services

V. Meeting Dates

October 11, 2007
October 16, 2007
October 30, 2007
November 13, 2007