

# MAINE STATE LEGISLATURE

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# 2008 Report Certificate of Need Act



*John E. Baldacci, Governor*

*Brenda M. Harvey, Commissioner*

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

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## Introduction

The department is responsible to report annually on activities conducted pursuant to Maine's Certificate of Need Act (hereinafter CON Act). The requirements for this report may be found in 22 M.R.S.A. Sec. 343. The report must include information on any Certificate of Need (hereinafter 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 2008.

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 (hereinafter DLRS). Personnel in the Certificate of Need Unit (hereinafter CONU) consist of a Manager, three Health Care Financial Analysts, and administrative support staff.

The CON process is integrated with the priorities established in the State Health Plan and operates within constraints established by the Capital Investment Fund (hereinafter the CIF). The CIF acts as a limit on annual investment subject to review under the CON statute. For purposes of the CIF, investment is measured based on the third year incremental costs associated with an approved project. Both the State Health Plan priorities and the CIF are determined independently by the Governor's Office of Health Policy and Finance.

Several process improvements were instituted in 2008. These include standardized financial templates and joint technical assistance meetings. These changes were designed to eliminate the back and forth between an applicant and the department that was often necessary to obtain all relevant financial information regarding the impact of a project. Combined technical assistance meetings resulted in increased transparencies between the CONU and applicants.

## I. Thresholds for Reviewability

The CON Act establishes a number of thresholds that trigger review. The thresholds applicable in 2008 were:

Table 1

<b>Category</b>	<b>Amount</b>
Major Medical Equipment	\$1,460,936
Capital Expenditures	\$2,921,872
New Technology	\$1,460,936
Nursing Facility Capital Expenditures	\$684,070
New Health Service	
Capital Expenditure	\$133,300
3rd Year Incremental Operating Costs	\$484,728

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 2008, CONU issued fourteen (14) "not subject to review" determinations.

## II. Limits on Investment

The CIF, created by the Dirigo Health Act, created several categories of projects to enable hospital and non-hospital projects, small and large, to be competitive in their own categories. The Dirigo Health Act did not establish a CIF for nursing facility projects. Instead, the CON Act of 2002 established a nursing home funding pool.

After considering comments from the Advisory Council on Health Systems Development, the CIF for 2008 provided the following limits on third year incremental operating costs were established:

Table 2

	Small	Large	Total
<b>Non-Hospital</b>	<b>\$138,560</b>	<b>\$1,247,043</b>	<b>\$1,385,603</b>
<b>Hospital</b>	<b>\$969,922</b>	<b>\$9,633,797</b>	<b>\$10,603,719</b>
			<b>\$11,989,322</b>

To account for extraordinary projects, the CON rules permit the third year operating costs to be spread between CIF periods with no one allocation exceeding \$2,000,000. In prior years, CON projects that received approval were “debited” against the 2008 CIF, thereby reducing the amount of CIF available for projects approved in 2008. Thus, the actual CIF available for 2008 projects (except those involving nursing facilities) was:

Table 3

	Small	Large	Total
<b>Non-Hospital</b>	<b>\$138,560</b>	<b>\$1,247,043</b>	<b>\$1,385,603</b>
<b>Hospital</b>	<b>\$969,922</b>	<b>\$3,399,458</b>	<b>\$4,369,380</b>
			<b>\$5,754,983</b>

Nursing facility projects are handled separately from the CIF. In general, 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 maintains budget neutrality while allowing some projects above the nursing facility thresholds to proceed.

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.

The 2007 amendments creating the funding pool required that it 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 Elder Services engaged The Lewin Group to develop a model to predict needs throughout the state, as required by 22 M.R.S.A. Sec. 333-A. The Lewin methodology for estimating need for nursing home beds was completed in 2008. No Requests for proposals were issued by the Office of Elder Services in 2008. The identification of need by the Office of Elder Services will serve as the proxy for the identification of need that the CONU must determine when making a recommendation to the Commissioner.

### III. Review Process

The CONU reviews projects throughout the year on various timelines. To distribute the work throughout the year, cycles are established. Only applications for large projects and small projects are on a cycle. Nursing facility projects and projects that will not debit against the CIF can be accepted off cycle.

CON applications are also reviewed by the Maine Quality Forum and the MaineCDC. This input provides a perspective on how effectively each application addresses the priorities in the State Health Plan and will contribute to improved health status of the population. The Bureau of Insurance calculates the impact of each project on statewide and regional health insurance premiums in order to advise the Commissioner on the impact to payers.

Except for emergency CON applications, there are regulatory and statutory timelines that govern this process:

Table 4

	<b>Large Project</b>	<b>Small Project</b>	<b>Off Cycle Projects</b>
Letter of Intent	October 1st	January 1 <sup>st</sup>	Any time
Technical Assistance Meeting	Prior to Application	Prior to Application	Prior to Application
Application Due	December 15th	March 15 <sup>th</sup>	After TA Meeting
Public Notice - Beginning of Review	Receipt of Application	Receipt of Application	Receipt of Application
Record Opens	Publication of Notice	Publication of Notice	Publication of Notice
Beginning of Review	January 1st	April 1 <sup>st</sup>	Receipt of Application
Public Notice - Informational Meeting	5 Days After Application Received	5 Days After Application Received	5 Days After Application Received
Public Hearing	Within 30 days of Informational Meeting	Within 30 days of Informational Meeting	Within 30 days of Informational Meeting
Record Closes	30 Days after Informational or Public Hearing	30 Days after Informational or Public Hearing	30 Days after Informational or Public Hearing
Public Notice - Preliminary Analysis	Completion of Review	Completion of Review	Completion of Review
Record Reopens	Public Notice - Preliminary Analysis	Public Notice - Preliminary Analysis	Public Notice - Preliminary Analysis
Record Closes	10 Days from Public Notice - Preliminary Analysis	10 Days from Public Notice - Preliminary Analysis	10 Days from Public Notice - Preliminary Analysis
Final Decision	Made by Commissioner	Made by Commissioner	Made by Commissioner

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.

Applicants for CON are required to a pay a nonrefundable fee for the review of each project. In 2008, revenue from CON fees totaled \$82,600. CON revenue is used to offset DLRS expenses.



#### IV. 2008 Project Review Record

Table 5 is a brief description of the projects from 2008 and the decision status. A summary of any conditions applied to those approvals is provided. Table 6 reflects the status of all projects approved through CON since the inception of the CIF.

Table 5

Applicant	Project Description	Status	Conditions
Eastern Maine Medical Center	Construct New Inpatient Tower	Approved	Decrease shell space by 86,740 sf, decrease financing from 100% to 80% of total capital costs, report prevention outcomes, specify LEED commitment, Value Engineer the project
St. Mary's Regional Medical Center	Renovate/Expand Operating Room, Central Sterile, Lab and Pharmacy	Approved	Phase construction after ER project previously approved exceeds \$4 million, address findings of the CAP, report on employee satisfaction and retention rates, lab error rates, lab turnaround time, pharmacy medication error rates, patient satisfaction with safety, infection rates from surgical cases. and results of the surgical pre-admission testing program
Central Maine Medical Center	Renovate/Expand Emergency Department	Approved	Report on ambulance diversions, patient boarding, length of stay in ED, left without being seen, medical error rates, employee and patient satisfaction
Houlton Regional Hospital	Renovate Emergency Department and Nuclear Medicine	Approved	Submit plan to become a Tier 1 hospital, report infection rates, slip and fall rates, ED departures AMA, commitment to green technologies, include adequate negative pressure rooms
Maine Health and Southern Maine Medical Center	Merger	In Review	

Maine Health and Waldo County, Inc.	Merger	Approved	Provide a letter from the Maine Attorney General's Office that it has no present intention to file an enforcement action relative to the proposed restructuring on antitrust grounds; Report cost savings as attributable to this merger for a period of three years from the merger date; Report improvements in quality outcomes as outlined in its application and as a result of this merger for a period of three years from merger date; and submit an implementation plan within 90 days to meet the requirements for a Tier 1 hospital.
Central Maine Healthcare	Parkview Adventist Medical Center to Become Subsidiary of CMHF	Letter of Intent	
Mid Coast Health Services	Consolidate Health Services in Mid Coast Region	Application Received	
Maine Medical Center	Additional Linear Accelerator	09 Large Review Cycle Application received	
MaineHealth	Property Acquisition and Use	Not Subject to Review	
York Hospital	Subsequent Review of Surgery Project	Approved	Report outcomes for high-risk low volume procedures and develop evidence-based referral policies, notify CONU prior to any build-out of shell space approved in 2006
St. Joseph's Hospital	Transfer of Ownership	Application Received	
Genesis Healthcare of Maine, Inc.	Subsequent Review of Corporate Ownership	Approved	
John C. Orestis, et al	Purchase Stock of Gardiner Health Care	Pending	

Continuum	Subsequent Review of Capital Costs for Durgin Pines Nursing Facility	Pending	
First Atlantic Corporation	Purchase Katahdin Health Care	Application Received	
Genesis Healthcare of Maine, Inc.	Add Nursing Facility Beds at Marshwood Nursing Care Center	Letter of Intent	
York Hospital	Develop Cancer Care Center	Withdrawn	
Maine Coast Memorial Hospital	Subsequent Review - ED expansion	Approved	
Insight Premier Health	Purchase 16 slide CT Scanner	Withdrawn	
The Cedars	Expansion and Renovation	Not Subject to Review	
InterMed	Relocate ambulatory surgical facility	Not Subject to Review	
Penobscot Bay Medical Center	Boiler Equipment / Maintenance Building	Not Subject to Review	
Sebasticook Valley Hospital	MRI service reconfiguration	Not Subject to Review	
Penobscot Valley Hospital	MRI service reconfiguration	Not Subject to Review	
St. Mary's Regional Medical Center	Develop parking lot for ER	Not Subject to Review	
St. Mary's Regional Medical Center	Auburn Medical Office Building	Not Subject to Review	
Waldo County General Hospital	MRI service reconfiguration	Not Subject to Review	
Southern Maine Medical Center	Purchase imaging equipment from PrimeCare Physician Assoc.	Not Subject to Review	

Goodall Hospital	Lease building space to offer outpatient services	Not Subject to Review	
Davis Long Term Care Group	Stock purchase of St. Joseph	Approved	
St. Joseph's Nursing Home			
Millinocket Regional Hospital	MRI service reconfiguration	Not Subject to Review	
Maine Medical Center	P6 Renovations	Letter of Intent	
Eastern Maine Medical Center	Dover-Foxcroft Dialysis Center	Not Subject to Review	
New England Rehabilitation Hospital of Portland	Minor Renovations	Letter of Intent	
Central Maine Orthopedics, PA	Offer Pain Management Services	Not Subject to Review	

Conditions may be attached to a project at the discretion of the Commissioner. Generally, CONU makes recommendations to the Commissioner if it concludes that conditions would further the purpose of the CON Act. The Commissioner may create conditions. Quite often, conditions require ongoing reporting of the CON holder to determine whether the goals of the project are met once it is implemented. Applicants are already required to submit implementation reports and this adds qualitative measures specific to each project.

#### V. Debits against CIF

The Governor's Office of Health Policy and Finance establishes the amount of the CIF through rulemaking. The CONU tracks the cumulative status of the debits against the CIF for all years through calendar year end 2008. The history of the CIF and the debits is found in Appendix A.

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Capital Investment Fund Analysis

2005 CIF \$ 6,582,172.00

YEAR OF CIF	Date	APPROVED PROJECTS CREDITS	LARGE PROJECT HOSPITAL	SMALL PROJECT HOSPITAL	Running Balance Hospitals	LARGE PROJECT NON-HOSPITAL	SMALL PROJECT NON-HOSPITAL	Running Balance Non-Hospital
2005		<b>FINAL CIF AMOUNTS</b>	\$ 5,183,461 00	\$ 575,940.00	\$ 5,759,401.00	\$ 740,494.00	\$ 82,277.00	\$ 822,771 00
		EMMC (2005)	\$ (790,002 00)		\$ 4,969,399.00			\$ 822,771.00
		MGMC (2005)	\$ (1,439,116 00)		\$ 3,530,283.00			\$ 822,771.00
		SMMC (2005)	\$ (1,310,000 00)		\$ 2,220,283.00			\$ 822,771.00
		MMC (2005)	\$ (1,048,500 00)		\$ 1,171,783.00			\$ 822,771.00
		MGMC (Subsequent Review) (2005)	\$ (146,826 00)		\$ 1,024,957.00			\$ 822,771.00
		MMC (Subsequent Review) (2005)	\$ (78,334 00)		\$ 946,623.00			\$ 822,771.00
		SMMC(Subsequent Review) (2005)	\$ (43,000 00)		\$ 903,623.00			\$ 822,771.00
Balance		Balances	\$ 327,683 00	\$ 575,940.00	\$ 903,623.00	\$ 740,494.00	\$ 82,277.00	\$ 822,771 00

2006 CIF \$ 9,237,929.00

YEAR OF CIF	Date	APPROVED PROJECTS CREDITS	LARGE PROJECT HOSPITAL	SMALL PROJECT HOSPITAL	Running Balance Hospitals	LARGE PROJECT NON-HOSPITAL	SMALL PROJECT NON-HOSPITAL	Running Balance Non-Hospital
2006	12/09/2005	<b>FINAL CIF AMOUNTS</b>	\$ 7,274,869 00	\$ 808,319.00	\$ 8,083,188.00	\$ 1,039,267.00	\$ 115,474.00	\$ 1,154,741 00
		MGMC (2005)	(1,439,115 00)		6,644,073.00			\$ 1,154,741.00
		SMMC (2005)	(1,310,000 00)		5,334,073.00			\$ 1,154,741.00
		MMC (2005)	(1,048,500 00)		4,285,573.00			\$ 1,154,741.00
		MGMC (Subsequent Review)(2005)	(146,826 00)		4,138,747.00			\$ 1,154,741.00
		MMC (Subsequent Review) (2005)	(78,333 00)		4,060,414.00			\$ 1,154,741.00
		SMMC(Subsequent Review) (2005)	(43,000 00)		4,017,414.00			\$ 1,154,741.00
		CMMC (2006)	(658,533 00)		3,358,881.00			\$ 1,154,741.00
		EMMC (2006) Y1 of 3	(1,527,391 00)		1,831,490.00			\$ 1,154,741.00
	10/31/2006	York Hospital (2006)	(997,171 00)		834,319.00			\$ 1,154,741.00
		Coastal Eye Care (2006)			834,319.00		(474,676.00)	\$ 680,065 00
		Maine Coast (2006)		(455,128.00)	379,191.00			\$ 680,065.00
		MGMC (2006)		(200,641.00)	178,550.00			\$ 680,065.00
		Rumford Hospital		(176,752.00)	1,798.00			\$ 680,065.00
					1,798.00			\$ 680,065.00
		<b>Balance Transfers</b>	<b>(24,202.00)</b>	<b>24,202.00</b>		<b>(359,202.00)</b>	<b>359,202.00</b>	
					1,798.00			680,065.00
					1,798.00			680,065.00
Balance		\$ -	\$ 1 798 00	\$ -	\$ 1,798.00	\$ 680 065.00	\$ -	\$ 680 065 00

2007 CIF \$ 9,983,624.00

YEAR OF CIF	Date	APPROVED PROJECTS CREDITS	LARGE PROJECT HOSPITAL	SMALL PROJECT HOSPITAL	Running Balance Hospitals	LARGE PROJECT NON-HOSPITAL	SMALL PROJECT NON-HOSPITAL	Running Balance Non-Hospital
2007		<b>FINAL CIF AMOUNTS</b>	\$ 7,862,104 00	\$ 873,567.00	\$ 8,735,671.00	\$ 1,123,158.00	\$ 124,795.00	\$ 1,247,953 00
		EMMC (2006) Y2 of 3	(1,527,391 00)		7,208,280.00			\$ 1,247,953.00
	08/02/2007	Eastern Maine Medical Y1 of 2	(1,727,276 00)		5,481,004.00			\$ 1,247,953.00
	08/02/2007	Maine Medical Y1 of 3	(1,419,266 00)		4,061,738.00			\$ 1,247,953.00
	08/02/2007	Mid Coast Hospital Y1 of 2	(1,560,406 00)		2,501,332.00			\$ 1,247,953.00
	08/02/2007	St. Mary's	(1,608,996 00)		892,336.00			\$ 1,247,953.00
					892,336.00			\$ 1,247,953.00
		NYSIGNED EMMC SURGICAL ROBOT		(319,544.00)	572,792.00			\$ 1,247,953.00
					572,792.00			\$ 1,247,953.00
					572,792.00			\$ 1,247,953.00
					572,792.00			\$ 1,247,953.00
Balance		\$ -	\$ 18,769 00	\$ 554,023.00	\$ 572,792.00	\$ 1,123,158.00	\$ 124,795.00	\$ 1,247,953 00

1,820,745.00

Capital Investment Fund Analysis

YEAR OF CIF	APPROVED PROJECTS CREDITS	LARGE PROJECT HOSPITAL	SMALL PROJECT HOSPITAL	Running Balance Hospitals	LARGE PROJECT NON-HOSPITAL	SMALL PROJECT NON-HOSPITAL	
2008	<b>FINAL CIF AMOUNTS</b>	\$ 9,633,797	\$ 969,922	\$ 10,603,719	1,247,043	138,560	1,385,603
	EMMC (2006) Y3 of 3	\$ (1,527,391)		\$ 9,076,328			1,385,603
	Eastern Maine Medical (2007) Y2 of 2	\$ (1,727,275)		\$ 7,349,053			1,385,603
	Maine Medical (2007) Y2 of 3	\$ (1,419,266)		\$ 5,929,787			1,385,603
	Mid Coast Hospital (2007) Y2 of 2	\$ (1,560,406)		\$ 4,369,381			1,385,603
	EMMC (2008) Y1 of 9	\$ (1,811,237)		\$ 2,558,144			1,385,603
	CMMC (2008) Y1 of 2	\$ (1,402,481)		\$ 1,155,663			1,385,603
	St. Mary's (2008) Y1 of 2	\$ (1,057,517)		\$ 98,146			1,385,603
	Houlton (2008)		\$ (392,569)	\$ (294,423)			1,385,603
				\$ (294,423)			1,385,603
				\$ (294,423)			1,385,603
				\$ (294,423)			1,385,603
				\$ (294,423)			1,385,603
	<b>Balance Transfers</b>	\$ 577,353	\$ (577,353)				1,385,603
				\$ (294,423)			1,385,603
				\$ (294,423)			1,385,603
<b>Balance</b>	\$ -	\$ (294,423)	\$ -	\$ (294,423)	1,247,043	138,560	2,771,206
							2,476,783

YEAR OF CIF	APPROVED PROJECTS CREDITS	LARGE PROJECT HOSPITAL	SMALL PROJECT HOSPITAL	Running Balance Hospitals	LARGE PROJECT NON-HOSPITAL	SMALL PROJECT NON-HOSPITAL	
2009	<b>FINAL CIF AMOUNTS</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Maine Medical Y3 of 3	(1,419,266.00)		(1,419,266.00)			\$ -
	Central Maine Medical Center Y2 of 2	(1,402,481.00)		(2,821,747.00)			\$ -
	St. Mary's Y2 of 2	(1,057,517.00)		(3,879,264.00)			\$ -
	Eastern Maine Med Y2 of 9	(1,811,237.00)		(5,690,501.00)			\$ -
				(5,690,501.00)			\$ -
				(5,690,501.00)			\$ -
				(5,690,501.00)			\$ -
				(5,690,501.00)			\$ -
	<b>Balance Transfers</b>	-	-				\$ -
				(5,690,501.00)			\$ -
				(5,690,501.00)			\$ -
<b>Balance</b>	\$ -	\$ (5,690,501.00)	\$ -	\$ (5,690,501.00)	\$ -	\$ -	\$ -
							(5,690,501.00)