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2009 Report Certificate of Need Act



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Division of Licensing and Regulatory Services

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Table of Contents

Introduction	3
I. Thresholds for Reviewability	4
II. Limits on Investments	5
III. Review Process	6
IV. 2009 Project Review Record	9
V. Implementation Reports	15
VI. Debits against CIF	18

[Appendix A](#)

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. §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 2009.

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.

Legislation Changes: The 124th legislative session enacted several changes to the CON Act, 22 M.R.S.A. Chapter 103-A. PL 2009 Ch 383/Emergency (LD 1395) was effective as of 6/12/2009. PL 2009 Ch 429 (LD 1260) and Ch 430 (LD 1164) were both effective as of 9/12/2009. These documents may be viewed at <http://www.maine.gov/legis/>.

I. Thresholds for Reviewability

The CON Act establishes a number of thresholds that trigger review. The thresholds in effect as of 9/12/2009 were:

Table 1

Category	Amount
Major Medical Equipment	\$1,600,000
Capital Expenditures	\$3,100,000
New Technology	\$1,600,000
Nursing Facility Capital Expenditures	\$718,958
New Health Service	
Capital Expenditure	\$140,098
3rd Year Incremental Operating Costs	\$509,449

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 2009, CONU issued Nineteen (19) "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, both small and large, to be competitive in their own categories. Nursing facility projects are excluded from the CIF.

After considering comments from the Advisory Council on Health Systems Development, the CIF for 2009 provided the following limits on third year incremental operating costs:

Table 2

	Small	Large	Total
Non-Hospital	\$263,213	\$1,491,540	\$1,754,753
Hospital	\$1,842,491	\$10,440,780	\$12,283,271
			\$14,038,024

Nursing facility projects are handled separately. 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 MaineCare 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. 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 FY 2009, the MaineCare funding pool for nursing facilities had a funded balance of \$719,569.

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. §333-A. The Lewin methodology for estimating need for nursing home beds was completed in 2008. This model will serve as the proxy for determining need when CONU makes a recommendation to the Commissioner. No Requests for proposals were issued by the Office of Elder Services in 2009.

III. Review Process

To distribute the work throughout the year, CONU reviews projects throughout the year on various timelines based on established cycles. 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 other agencies. Input from the Maine Quality Forum and the Maine Center for Disease Control (MaineCDC) provides a perspective on how effectively each application addresses the priorities in the State Health Plan and will contribute to the 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. 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.

Except for emergency CON applications, there are regulatory and statutory timelines that govern this process as outlined in Table 3:

Table 3

	Large Project Cycle	Small Project Cycle	Off-Cycle Projects
Letter of Intent	October 1 st	January 1 st	Any time
Technical Assistance Meeting	Prior to Application	Prior to Application	Prior to Application
Application Due	December 21 st	March 21 st	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 1 st	April 1 st	Receipt of Application
Public Notice - Informational Meeting	5 Days After Application Received	5 Days After Application Received	5 Days After Application Received
Public Hearing	Must be requested within 30 days of Informational Meeting	Must be requested within 30 days of Informational Meeting	Must be requested 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 Business Days from Public Notice - Preliminary Analysis	10 Business Days from Public Notice - Preliminary Analysis	10 Business Days from Public Notice - Preliminary Analysis
Final Decision	Made by Commissioner	Made by Commissioner	Made by Commissioner

Applicants for 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. In 2009, revenue from CON fees totaled **\$347,823**. CON revenue is used to offset CON Unit expenditures.

The legislative changes affecting the CON Act, 22 M.R.S.A. Chapter 103-A are summarized as follows:

PL 2009 Ch 383/Emergency (LD 1395) – effective as of 6/12/2009 –

- Major medical equipment – The review threshold was changed from \$1,200,000 to \$1,600,000. Previously the threshold amount for review was linked to the Consumer Price Index medical index. This has been removed.
- New Technology – The review threshold was changed from \$1,200,000 to \$1,600,000. Previously the threshold amount for review was linked to the Consumer Price Index medical index. This has been removed.
- Capital Expenditures – The review threshold was changed from \$1,200,000 to \$1,600,000. Previously the threshold amount for review was linked to the Consumer Price Index medical index. This has been removed.
- Maintenance of the record – The date the record opens changed from the date the letter of intent is received to the date when the application is received. The letter of intent still remains a public record.
- Replacement of major medical equipment – Major medical equipment does not require a review as long as the replacement cost is less than \$2,000,000. The commissioner shall issue a certificate of need for replacement of major medical equipment that is not otherwise exempt from review.
- Instead of the applicant being required to meet with the department within 30 days of filing a letter of intent, the applicants are now required to schedule a meeting within the 30 days.
- A public informational meeting is not required for the simplified review and approval process in section 336. A public hearing is also not required.
- The CON annual report must include assessment of penalties.
- Repealed and replaced §350 Penalty to read:
 1. Violation. An individual, partnership, association, organization, corporation or trust that violates any provisions of this chapter or any rate, rule or regulation pursuant to this chapter is subject to a fine imposed in conformance with the Maine Administrative Procedure Act and payable to the State of not more than \$10,000. The department may hold these funds in a special revenue account that may be used only to support certificate of need reviews, such as for hiring expert analysts on a short-term consulting basis.
 2. Administrative hearing and appeal. To contest the imposition of a fine under this section, the individual, partnership, association, organization, corporation or trust shall submit to the department a

written request for an administrative hearing within 10 days of notice of imposition of a fine pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

PL 2009 Ch 429 (LD 1260) – effective as of 9/12/2009 –

- Amends the language related to nursing facilities and the MaineCare funding pool.
- Review of flexibility in MaineCare budget neutrality requirements. The Department of Health and Human Services shall work with stakeholders to identify possible methods for creating more flexibility in the laws governing nursing facility projects that are subject to MaineCare budget neutrality requirements, including, but not limited to, the conversion of nursing facility beds to residential care facility beds, transfers between nursing facilities and residential care facilities and transfers of ownership. In conducting this review the department shall consider the available data and information on the adequacy of existing nursing facilities, residential care facilities and long-term care facilities. The department shall report recommendations, including any necessary legislation, to the Joint Standing Committee on Health and Human Services no later than February 15, 2010. The Joint Standing Committee on Health and Human Services is authorized to submit legislation related to the recommendations to the Second Regular Session of the 124th legislature.

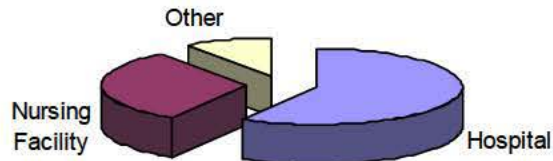
PL 2009 Ch 430 (LD 1164) – effective as of 9/12/2009 –

- The incremental cost of energy-efficient improvements as defined in the rules governing MaineCare reimbursement for nursing facilities will be excluded from the project.
- The cost associated with energy-efficient improvements in nursing facilities, as set forth in rules governing special reimbursement provisions for energy-efficient improvements adopted by the department, must be excluded from the cost of a project in determining whether the project is subject to review.

IV. 2009 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 2009:

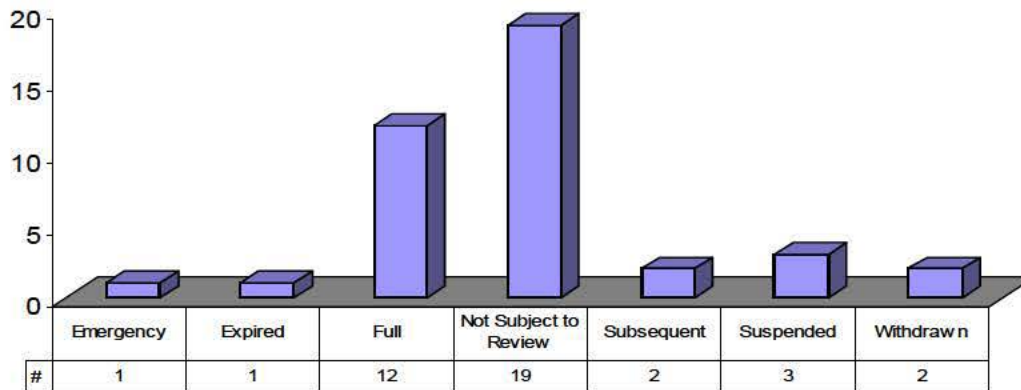
Reviews by Facility Type



Facility	#	Amount
Hospital	24	\$480,476,733
Nursing Facility	13	\$88,429,097
Other	4	\$3,020,000
		\$571,925,830

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 2009:

Reviews by Review Type



Review Type	#	Amount
Emergency	1	\$0
Expired	1	\$0
Full	12	\$512,961,555
Not Subject to Review	19	\$31,102,539
Subsequent	2	\$13,666,316
Suspended	3	\$6,195,420
Withdrawn	2	\$8,000,000
		\$571,925,830

Table 4 is a brief description of the projects from 2009 and the decision status. A summary of any conditions applied to those approvals is provided. [Appendix A](#) reflects the status of all projects approved through CON since the inception of the CIF.

Table 4

Applicant(s) - Project	Status	Capital Costs	Conditions for Approval
Blue Hill Memorial Hospital - MRI Reconfiguration	Not Subject to Review	<1,535,444	
Central Maine Healthcare – Parkview Adventist Medical Center become a subsidiary of CMHC	Expired	Not Provided by the Applicant	
Central Maine Medical Center – Plant and Equipment Projects	Not Subject to Review	\$4,159,714	
Central Maine Medical Center – Replacement Equipment Projects	Not Subject to Review	\$1,011,896	
Central Maine Medical Center – Physician Office Building Projects	Not Subject to Review	\$7,326,120	
Central Maine Medical Center – Information and Communication System Projects	Not Subject to Review	\$4,362,726	
Central Maine Orthopaedics, PA – Offer pain management services	Not Subject to Review	<1,535,444	
Clover Manor – Renovate Facility	Letter of Intent	\$891,000	
Continuum / Kittery Commons – Subsequent Review	Approved	\$8,166,316	
Covenant Healthcare – Change sponsorship of St. Joseph's Hospital	Approved	\$59,481,656	<ol style="list-style-type: none"> 1. Modify the terms of the agreement so that, for the three year period following implementation, that portion of the management fee owed by St. Joseph Healthcare to Covenant shall be deferred to the extent that the excess of revenues over expenditures for the last year on which audited financial statements are available is less than the management fee designated for that year in which the fee is owed. The deferred fee will be owed in the following year in an amount equal to the lesser of the excess of revenues over expenditures for such year or the amount deferred, and if any deferred fee balance remains unpaid, such deferred fee will continue to be deferred in the same manner until paid in full. 2. Report improvements in quality outcomes as a result of this merger annually for a period of three years from transfer date. 3. Identify and report savings that result from this project annually for the first three years from transfer date.

Applicant(s) - Project	Status	Capital Costs	Conditions for Approval
Dialysis Clinic, Inc. – Relocate and expand services in Waldo	Not Subject to Review	\$200,000	
Eastern Maine Healthcare Systems – Allow EMHS to acquire control of DECH as Emergency Receiver	Approved	n/a	<ol style="list-style-type: none"> 1. This acquisition of control is limited to the scope of activities as specified in the Court Order dated July 1, 2009. 2. This Certificate of Need shall expire when the court-ordered Receivership expires. If EMHS were to move to form an alliance with DECH, a complete certificate of need would need to be filed and approved.
First Atlantic Healthcare – Change ownership of Katahdin Nursing Home, Inc.	Approved	\$600,000	<ol style="list-style-type: none"> 1. That the applicant will present a plan that addresses quality metrics as presented in the STAR program, including current metrics at their facilities and their goals for all their facilities, as well as, annual progress reports for two years in accomplishing these goals.
First Atlantic Healthcare – Purchase Marshall's Nursing Services	Not Subject to Subsequent Review	n/a	
Genesis HealthCare – Springbrook	Letter of Intent	\$0	
Genesis Healthcare of Maine – Marshwood Center	Suspended	\$426,420	
Inland Hospital – MRI Reconfiguration	Not Subject to Review	<1,535,444	
InSight-Premier Health, LLC – 16-Slice CT Scanner	Suspended	\$500,000	
John C. Orestis – To purchase Gardiner Health Care Facility	Approved	\$950,000	
Magnetic Resonance Technologies of Maine, LP – Replace 1.5T MRI with a 3.0T System	Not Subject to Review	\$2,000,000	
Maine Medical Center – P6 Renovations	Approved	\$5,136,500	<ol style="list-style-type: none"> 1. Report on quality outcomes relative to the P6 unit for a 3-year period following the implementation of this project. 2. Report annually for a 3-year period following the implementation of this P6 unit project the following: the average length of stay of patients, average number of days a patient awaits placement outside the P6 unit and the average days a patient waits to be admitted. 3. Report any cost savings associated with the collaboration with Maine Mental Health Partners for a period of three years.

Applicant(s) - Project	Status	Capital Costs	Conditions for Approval
Maine Medical Center – Simulation Center for Medical Educational Purposes – Brighton Ave; Portland, ME	Approved	\$5,542,458	1. Report to CONU any federal laws enacted that will increase the number of slots funded under Medicare and MaineCare that Maine Medical Center is allowed to charge for educational reimbursement. 2. Report to CONU any federal laws enacted that will fund any capital expenditures for this Simulation Center.
Maine Medical Center – Bi-Plane Equipment Replacement	Not Subject to Review	\$2,600,000	
Maine Medical Center – Additional Linear Accelerator	Suspended	\$5,269,000	
Maine Medical Partners – Acquisition of Maine Neurology, P.A.	Not Subject to Review	<1,535,444	
Maine Veterans' Homes – Construct a Physical & Occupational Therapy addition to the existing MVH NF at Bangor, ME	Letter of Intent	\$1,600,000	
MaineGeneral Medical Center – Purchase a da Vinci robot	Not Subject to Review	\$1,435,940	
MaineGeneral Medical Center – New Regional Hospital	Letter of Intent	\$322,000,000	
MaineHealth – Ownership change of HD Goodall Hospital in Sanford, ME	Letter of Intent	\$0	
MaineHealth / SMMC – Southern Maine Medical Center membership in MaineHealth	Approved	\$101,837,236	1. The Applicants shall provide to the Department any letter from the Department of Justice/Federal Trade Commission acknowledging the filing of the Notice and Report under the Hart-Scott-Rodino Antitrust Improvement Act for the MaineHealth/SMMC transaction, and also provide subsequent correspondence, if any, indicating that the Department of Justice/Federal Trade Commission have granted a request for early termination of 30-day waiting period requirement of the Hart-Scott-Rodino Antitrust Improvement Act. 2. Carry out the conditions set forth in the Certificate of Public Advantage (COPA). 3. Report improvements in quality outcomes as outlined in its application and as a result of this merger for a period of three years from the merger date.
Mayo Regional Hospital – Reconfiguration of MRI Services	Not Subject to Review	<1,535,444	

Applicant(s) - Project	Status	Capital Costs	Conditions for Approval
Mid Coast Health Services – Consolidate Health Services in Mid Coast Region	Withdrawn	\$3,500,000	
Millinocket Regional Hospital – Infrastructure upgrade project	Not Subject to Review	\$3,100,000	
Mount Desert Island Hospital – MRI Service Reconfiguration	Not Subject to Review	<1,535,444	
New England Rehabilitation Hospital of Portland – Minor renovations	Withdrawn	\$4,500,000	
New Hope Healthcare Systems, LLC – Acquire Caribou & Presque Isle Rehab & Nursing Centers	Letter of Intent	\$8,000,000	
Rousseau Management, Inc. – Replacement Facility	In Review	\$7,813,705	
SMMC / MMC / Goodall – Cancer Care Center of York County (CCCYC) Subsequent Review	Approved	\$5,500,000	<ol style="list-style-type: none"> 1. That the York County Cancer Care Center (SMMC/MMC) must allow all licensed physicians to refer patients to the program, regardless of the hospital or system affiliation of that physician. 2. That the York County Cancer Care Center (SMMC/MMC) must allow all qualified medical oncologists, regardless of current hospital affiliation, to lease space and practice at the Cancer Care Center. 3. That the York County Cancer Care Center (SMMC/MMC) must allow all qualified radiation oncologists choosing to practice at the Center to seek credentialing criteria regardless of their affiliation with other hospitals and facilities. 4. That the York County Cancer Care Center (SMMC/MMC) must secure the services of independent, outside evaluators, approved by the Maine Department of Human Services and fully knowledgeable regarding the best practices in modern cancer care, who shall evaluate the York County Center semi-annually, with particular focus on fullest access for York County residents and adherence to quality cancer care for residents of the area. 5. That the York County Cancer Care Center (SMMC/MMC) demonstrate ongoing promotion and public communication to residents of York County, assuring residents and patients welcome access to the Center, regardless of which physician or hospital they rely upon for medical services.

Applicant(s) - Project	Status	Capital Costs	Conditions for Approval
St. Andre Health Care Facility – Renovations of Long Term Care Unit	Not Subject to Review	\$500,000	
St. Mary's Regional Medical Center – 08' Lab, Pharmacy and Central Sterile Revised Floor Plan	Not Subject to Subsequent Review	n/a	
Sun Healthcare Group, Inc. – Approval for Maine Medicaid provider numbers for four New Hampshire Long Term Care Facilities	Not Subject to Review	n/a	
Sunbury Medical Associates – MRI Services	Not Subject to Review	\$520,000	
The Acadia Hospital – Psych Observation Unit and Electric Convulsive Therapy Renovations	Not Subject to Review	\$1,395,143	
York Hospital – Acquisition of CT Scanner & Other Misc. Equipment	Not Subject to Review	\$1,600,000	

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. Applicants are required to submit implementation reports and this adds qualitative measures specific to each project.

V. Implementation Reports

Holders of a Certificate of Need 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. Table 5 lists all of the conditions issued to a CON that the department was reviewing for compliance during 2009. Certain conditions are considered on-going 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.

Table 5

Applicant	Project Description	Number of Conditions Issued	Number of On-going Conditions	Conditions Met
Hospitals:				
Calais Regional Hospital	Build replacement hospital facility	1	1	
Central Maine Medical Center	Relocate critical care unit	2		2
Central Maine Medical Center	Expand Emergency Department and Laboratory at campus in Lewiston, ME	3	3	
Covenant Health Systems	Transfer of sponsorship of St. Joseph Healthcare Foundation and St. Joseph Hospital in Bangor, ME	3	3	
Eastern Maine Healthcare Systems	Emergency CON to allow Eastern Maine Healthcare Systems to acquire control of Down East Community Hospital	2	2	
Eastern Maine Medical Center	Relocate and expand CancerCare of Maine to Brewer	5	3	2
Eastern Maine Medical Center	Build a co-generation power plant in Bangor	1	1	
Eastern Maine Medical Center	Develop comprehensive outpatient Imaging Center	2	2	
Eastern Maine Medical Center	Purchase a surgical robot	2	2	

Applicant	Project Description	Number of Conditions Issued	Number of On-going Conditions	Conditions Met
Eastern Maine Medical Center	Construct 8 story inpatient tower at campus on State Street in Bangor, ME	5	5	
Houlton Regional Hospital	Renovate existing Emergency Department, Nuclear Medicine, Radiology, and Cardio/Pulmonary rehabilitation space	4	2	2
Maine Medical Center	Obstetrical/Newborn/Neonatal facility	1	1	
Maine Medical Center	Expansion/renovation of Emergency Department and CT Imaging Suite at Bramhall campus in Portland, ME	2	2	
Maine Medical Center	Renovations to P6 Geriatric Psychiatry Inpatient Unit	3	3	
Maine Medical Center	Develop a Simulation Center	2	2	
MaineGeneral Medical Center	Expansion/renovation of Emergency Departments in Augusta, ME and Waterville, ME	4	4	
MaineGeneral Medical Center	Renovate the OB/GYN Department at the Augusta, ME campus	1	1	
Mid Coast Hospital	Expansion/renovation of Emergency Department and Medical Surgical Beds	4	4	
Southern Maine Medical Center	Southern Maine Medical Center becoming a subsidiary of MaineHealth	3	3	
St. Mary's Regional Medical Center	Expansion/renovation of Emergency Department	2		2
St. Mary's Regional Medical Center	Expansion/renovation of Operating Rooms, Central Sterile, Lab, and Pharmacy departments	3	3	
Waldo County Healthcare	Waldo County Healthcare becoming a subsidiary of MaineHealth	4	3	1
York Hospital	Expand Surgical Services Department	2	2	

Nursing Facilities:

First Atlantic Healthcare	Purchase of Russell Park	2		2
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Applicant	Project Description	Number of Conditions Issued	Number of On-going Conditions	Conditions Met
First Atlantic Healthcare	Add seven nursing facility beds to Seaside Nursing and Rehabilitation Facility	1	1	
First Atlantic Healthcare	Purchase nursing facility assets of Marshall's Nursing Services and United Limited Partnership	3	3	
First Atlantic Healthcare	Purchase assets of Katahdin Nursing Home in Millinocket, ME	1	1	
Kittery Commons	Moderate structure and ownership interests and construct a new nursing facility named Durgin Pines in Kittery	2	2	

Other:

Coastal Eye Care, PA	Build Ophthalmologic Ambulatory Surgery Center	2	2	
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VI. 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 2009. The history of the CIF and the debits is found in [Appendix A](#).

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