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2018 Annual Report Certificate of Need Act



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

January 2019

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Introduction

The Department of Health and Human Services (hereinafter 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 are included in law at 22 M.R.S.A. §343. This report contains the required information for calendar year 2018. The Department annually prepares and publishes a report on its activities conducted pursuant to the CON Act. The annual report must include information for any certificate of need (hereinafter CON) granted or denied and the assessment of penalties. With regard to all CONs granted on a conditional basis, the report must include a summary of information reported pursuant to subsequent reviews (22 M.R.S.A. §332) and any accompanying statements by the Commissioner or Department staff submitted regarding the reports.

The CON Act provides the framework for review of proposals by or on behalf of certain health care facilities (hospitals; psychiatric hospitals; nursing facilities; kidney disease treatment centers, including a freestanding hemodialysis facilities; rehabilitation facilities; ambulatory surgical facilities; independent radiological service centers; independent cardiac catheterization centers or cancer treatment centers) 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 Certification (hereinafter DLC).

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I. Thresholds for Reviewability

The CON Act establishes a number of thresholds that trigger review. The thresholds in effect during 2018 are listed in Table 1.

Table 1 Thresholds in Effect for 2018

Category	Amount
New Major Medical Equipment	\$3,705,143
Capital Expenditures	\$11,578,572
New Technology	\$3,620,916
Nursing Facility Capital Expenditures	\$5,789,286
New Health Facility	\$3,000,000
Nursing Facility	\$5,000,000
New Health Services:	
Capital Expenditure	\$3,473,571
3 rd Year Incremental Operating Cost	\$1,157,857

Providers may request a determination from the CON Unit (hereinafter CONU) that a project does not require a CON. A “not subject to review” determination is issued if the total projected costs fall below the applicable thresholds. A “not subject to review” determination is only made once the CONU is satisfied that all applicable terms and costs of the project have been considered. A provider requesting a ‘not subject to review’ determination must submit a letter of intent with all the applicable information.

CONU may issue a “not subject to review” determination 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 2018, CONU issued eight (8) “not subject to review” determinations.

II. Limits on Investment

MaineCare Funding Pool

By statute, nursing facility projects that add beds to the system may be approved only when MaineCare budget neutrality is maintained. In other words, a project increasing MaineCare costs must have an equal decrease in MaineCare costs elsewhere.

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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 CON projects.

As part of the budget process, the legislature enacted de-appropriations of \$300,000 in each of the fiscal years 2009-2011, inclusive. At the end of SFY 2018, the MaineCare funding pool for nursing facilities had a funded balance of \$147,665.

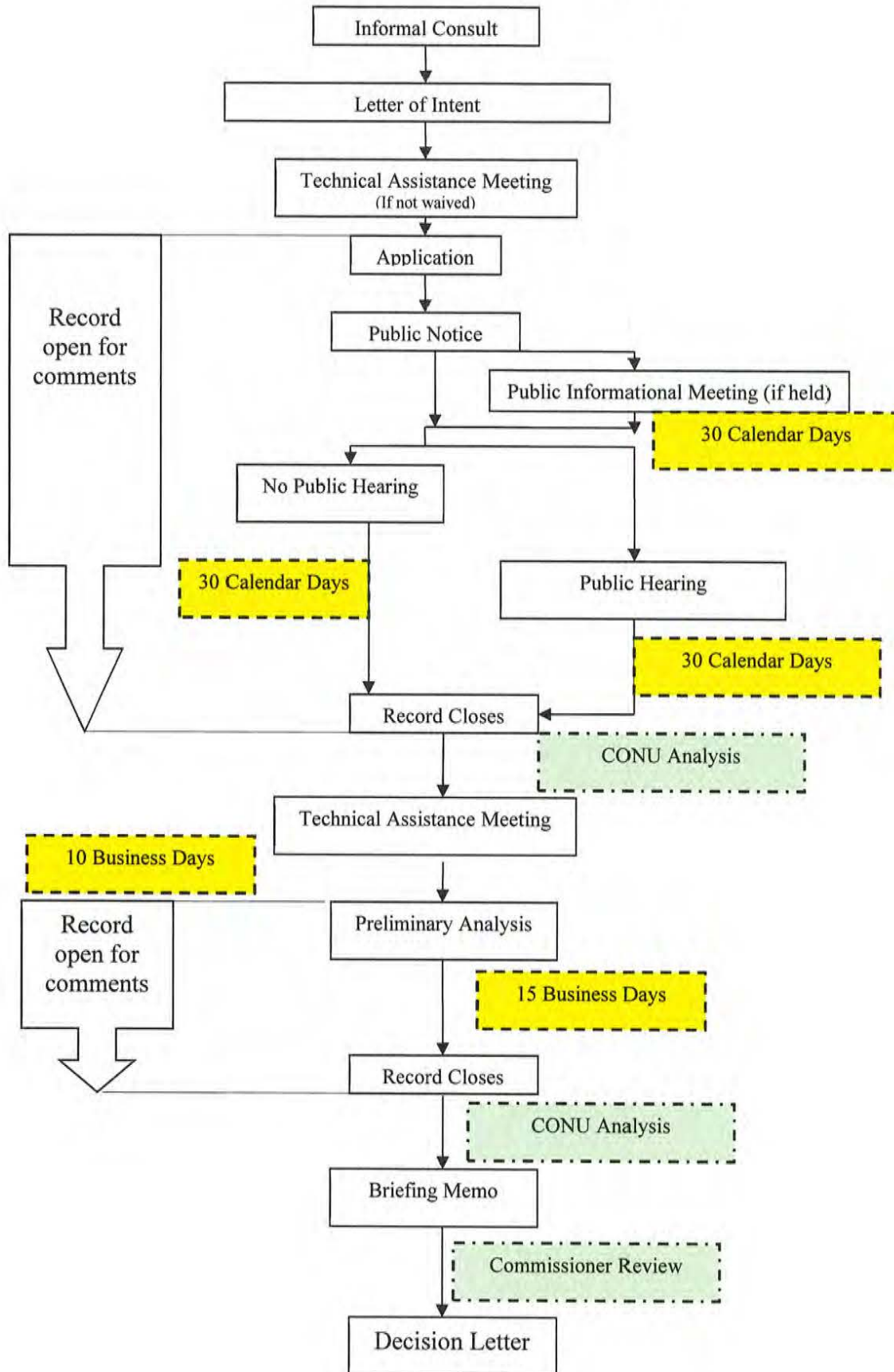
The MaineCare pool funds are to be utilized for development of nursing facility beds in areas of the state where additional beds are necessary to meet community need. The Office of Aging & Disability Services engaged The Lewin Group to develop a model to predict needs throughout the state, as required by 22 M.R.S.A. §333-A. The Lewin methodology for estimating the need for nursing facility beds was completed in 2008. The CONU utilizes this model as a proxy for determining need in making recommendations for additional beds to the Commissioner. The report was last updated in 2014. No requests for proposals for additional nursing home beds were issued by the Office of Aging and Disability Services in 2018.

III. Review Process

During the review process, in addition to considering information submitted from the applicant(s), HCO 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".

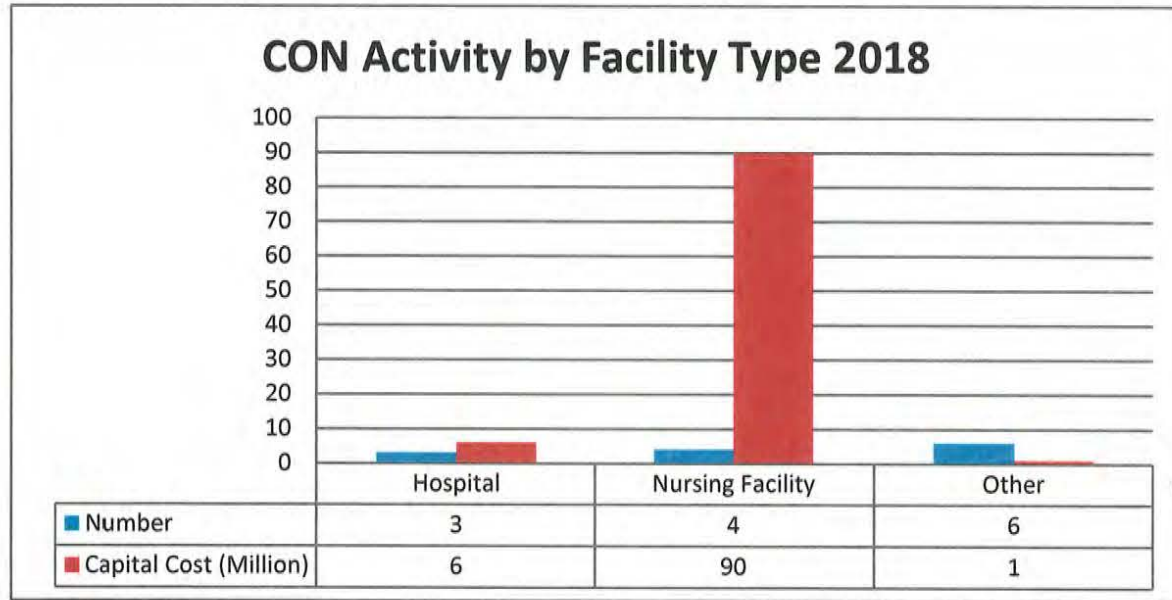
Applicants for a CON are required to pay a nonrefundable fee for the review of each project. CONU also collects fees for copies of documents requested under the Freedom of Information Act (FOIA). In 2018, revenue from CON review fees totaled \$97,000.00 and no revenue was generated from FOIA requests. CON revenue is used to offset expenditures related to completing CON activities.

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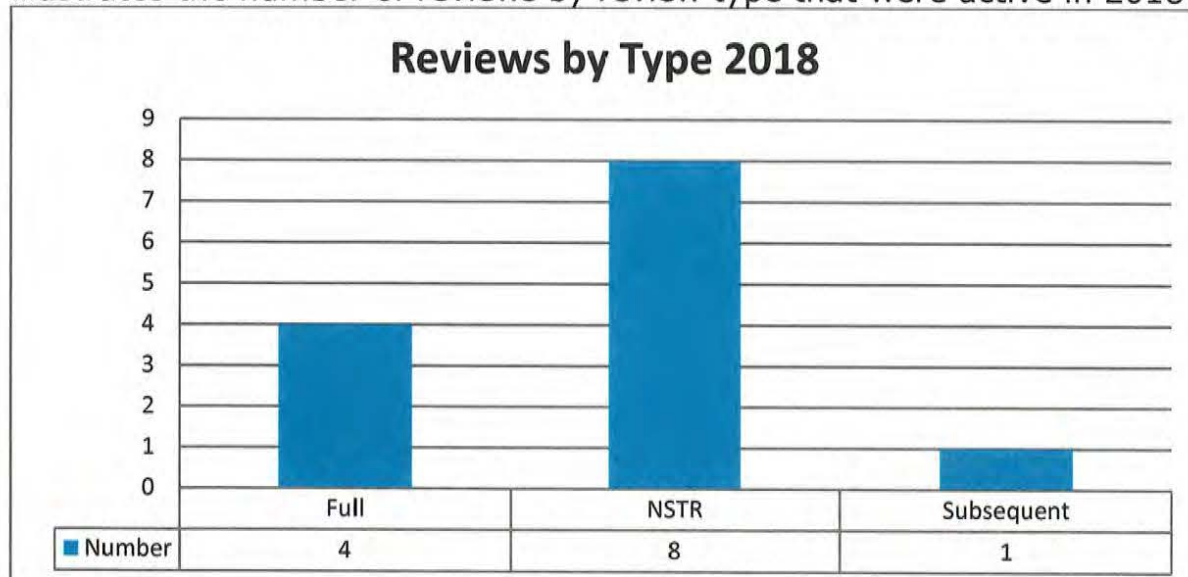


IV. 2018 Project Review Record

CONU is responsible for reviewing hospitals, nursing facilities and other health care facilities. The following chart illustrates the CON reviews by facility type for 2018:



The CON process includes several types of reviews. The following chart illustrates the number of reviews by review type that were active in 2018:



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Historically, “not subject to review” determinations have comprised the majority of reviews, followed by proposals subject to a full, or in depth, review.

Table 2 contains brief descriptions of the projects that were active during 2018:

Table 2 Projects Active During 2018

Applicant (s)	Project	Review Type
Northeast Rehabilitation Hospital Network	New Rehab Hospital	Full
The Cedars	Addition /Remodel	Full
Maine Veterans Home	Replacement Nursing	Full
Wolf Eye Associates	Transfer of Ownership	Full
Maine Veterans Home	Capital Expense	Subsequent
Shield’s Imaging	MRI Center	NSTR
Maine Medical Center	Change in Ownership	NSTR
First Atlantic	Corporate Restructuring	NSTR
Shields Imaging	Mobile MRI	NSTR
ConvenientMD	Urgent Care Center	NSTR
AMH Health	HMO	NSTR
Maine Eye Center	Change in Location	NSTR
South Portland Nursing	Change in Ownership	NSTR
SMHC	Capital Expenditure	NSTR

V. Implementation Reports

Holders of a CON are required to submit written reports to the Department in accordance with 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. Conditions often require ongoing reporting by the CON holder to determine whether the goals of the project are met once it is implemented.

Table 3 lists all the conditions issued regarding CONs during 2018. Certain conditions are considered on-going, 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)

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and are generally considered met in compliance once documentation is provided as described in the condition.

Table 3 Conditions Implemented in 2018

Applicant	Project Description	Number of Conditions	Conditions Ongoing	Conditions Met
Maine Medical Center	Major Renovations	3	3	0

VI. Legislative Changes

There were no legislative changes to the Maine Certificate of Need law in 2018. In 2016, the Maine Certificate of Need law was changed by adding an additional notation for when a Certificate of Need was not required. This change occurred in the language of 22 MRSA §329. The additional language is listed in **bold**.

1. Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control. Any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department **or except if the transfer of ownership or acquisition of control involves only entities or health care facilities that are direct or indirect subsidiaries of the same parent corporation, is between a parent corporation and its direct or indirect subsidiaries or is between entities or health care facilities all under direct or indirect ownership of or ultimate control by the same parent corporation immediately prior to the transfer or acquisition.**

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