

Annual Report on Maine's Certificate of Need Act Calendar Years 2021 and 2022



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

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Introduction

The Maine Department of Health and Human Services (the “Department”) is required to report annually on activities conducted pursuant to Maine’s Certificate of Need Act (hereinafter “CON Act”). The requirements for such a report are included in law at 22 M.R.S. §343.¹ This report contains the required information for calendar year, 2022.

The annual report must include information on any Certificate of Need (hereinafter CON) granted or denied, as well as information concerning any penalties assessed under the CON Act.

The CON Act provides the framework for review of Requests for Proposals by or on behalf of certain health care facilities (hospitals; psychiatric hospitals; nursing facilities; kidney disease treatment centers, including freestanding hemodialysis facilities; rehabilitation facilities; ambulatory surgical facilities; independent radiological service centers; and independent cardiac catheterization centers). These Requests for Proposals ask to expand plant and equipment, provide new services, allow for transfer of ownership and/or control, and other initiatives requiring a CON.

¹ 22 M.R.S. §343: The department shall prepare and publish at least annually a report on its activities conducted pursuant to this Act. The annual report must include information on all certificates of need granted and denied and on the assessment of penalties. With regard to all certificates granted on a conditional basis, the report must include a summary of information reported pursuant to section 332 and any accompanying statements by the commissioner or department staff submitted regarding the reports.

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I. Thresholds for Reviewability

The CON Act establishes several thresholds that trigger review. The thresholds in effect during 2021 are listed in Table 1.

Table 1 Thresholds in Effect for 2021

Category	Amount
New Major Medical Equipment	\$3,858,310
Capital Expenditures	\$13,076,656
New Technology	\$4,184,530
Nursing Facility Capital Expenditures	\$6,538,328
New Health Facility	\$3,000,000
Nursing Facility	\$5,000,000
New Health Services:	
Capital Expenditure	\$3,922,997
3 rd Year Incremental Operating Cost	\$1,397,666

The thresholds in effect during 2022 are listed in Table 2.

Table 2: Thresholds in Effect for 2022

Category	Amount
New Major Medical Equipment	\$4,266,424
Capital Expenditures	\$13,332,576
New Technology	\$4,266,424
Nursing Facility Capital Expenditures	\$6,666,288
New Health Facility	\$3,000,000
Nursing Facility	\$5,000,000
New Health Services:	
Capital Expenditure	\$3,999,773
3 rd Year Incremental Operating Cost	\$1,333,258

Providers may request a determination 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 all applicable terms and costs of the project have been determined. A provider requesting a “not subject to review” determination must submit a Letter of Intent with all the applicable information.

The Certificate of Need Unit (“CONU”) of DHHS’s Division of Licensing and Certification 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.

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In the twelve months ending December 31, 2021, CONU issued twelve (12) “not subject to review” determinations.

In the twelve months ending December 31, 2022, CONU issued six (6) “not subject to review” determinations. (See page 8.)

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.

Amendments in 2007 to the CON Act created a MaineCare funding pool for nursing facility projects. The pool consists of savings obtained by delicensing nursing facility beds on or after July 1, 2005. The 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 CONU identified \$1,019,569 available to the funding pool as a result of delicensing transactions between July 1, 2005 and the 2007 Amendments. This funding pool represents the MaineCare share of third-year incremental operating costs for approved CON projects.

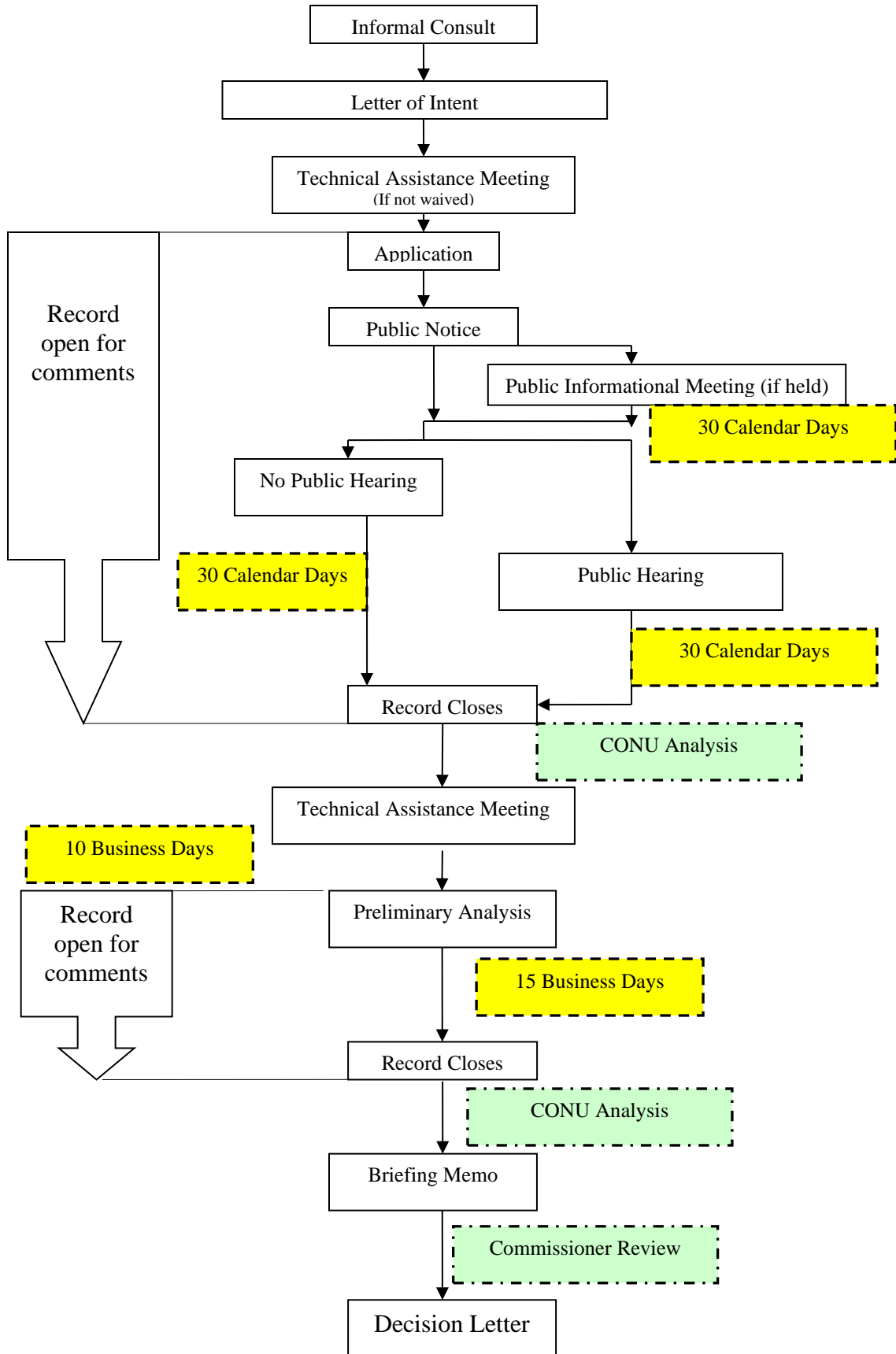
As of December 31, 2022, the MaineCare funding pool for nursing facilities had a balance of \$147,665.

III. Review Process

During the review process, in addition to considering information submitted from the applicant(s), information and comments from the public are included and considered. 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. In 2021, revenue from these fees totaled \$107,500.00. In 2022, revenue from these fees totaled \$49,500.00. This money is used to offset expenditures related to completing CON activities.

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IV. 2021 Project Review Record

CONU is responsible for reviewing hospitals, nursing facilities and other health care facilities. The following chart illustrates the ten (10) completed CON reviews by facility type for 2021.

Review Type	Applicant	Description
Hospital	Northern Light Acadia	Construction to accommodate current license
Hospital	Northern Light C.A. Dean	Extensive Reconstruction of Facility
Hospital	Northern Light Blue Hill	Extensive Reconstruction of Facility
Hospital	Calais Community Hospital	Management Services Agreement
Hospital	Calais Community Hospital	Asset Purchase Agreement
Nursing Home	Breakwater Commons	Construction of New Nursing Home in Rockland
Nursing Home	Covenant Health	Acquisition of Bangor Nursing Home
Nursing Home	Genesis Healthcare of Maine, LLC	Construction of New Nursing Home in Sanford
Nursing Home	Northern Maine Medical Center	Construction of Replacement Nursing Home in Fort Kent
Nursing Home	Waterville Commons	Acquisition of Mount St, Joseph Nursing Home

CONU conducted two (2) Subsequent Reviews during 2021. Subsequent Reviews are conducted when a certificate of need has been issued and changes occur in financing, licensing or bed capacity, the addition or termination of health services, or substantial changes in the design of the health care facility or type of construction.

Review Type	Applicant	Description
Subsequent Review	Maine Medical Center	Change in design and financing
Subsequent Review	Waterville Center for Health & Rehab	Change in financing

CONU conducted one (1) HMO Certification Review. CONU determines if an applicant who wishes to operate a health maintenance organization line of business in the State of Maine meets the requirements of 22 M.R.S.A §4204-2A Parts A and B. The Bureau of Insurance will ultimately determine if the applicant is qualified to receive a Certificate of Authority.

Review Type	Applicant	Description
HMO Certification	United Healthcare	Certification for Bureau of Insurance

CONU conducted twelve (12) “Not Subject to Review” (NSTR) determinations during 2021. These projects do not meet the CON thresholds and/or statutory provisions for requiring a CON review.

Review Type	Applicant	Description
Not Subject to Review	Bio-Medical Applications of Maine	Relocation of Hemodialysis Facility in Lewiston
Not Subject to Review	Bio-Medical Applications of Maine	Construction of New Hemodialysis Facility in Lewiston
Not Subject to Review	Coastal Health Alliance, Inc.	Expansion of Emergency Department
Not Subject to Review	ConvenientMD	Urgent Care Center in Auburn
Not Subject to Review	ConvenientMD	Urgent Care Center in Augusta
Not Subject to Review	ConvenientMD	Urgent Care Center in Sanford
Not Subject to Review	Genesis Healthcare	Changes in Minority Ownership
Not Subject to Review	High View Manor	Indirect Ownership Transfer
Not Subject to Review	Maine Behavioral Healthcare	Physician Office Space
Not Subject to Review	MaineHealth	Retail Pharmacy
Not Subject to Review	Rayus Radiology	Imaging Center in Auburn
Not Subject to Review	Surgical Centers of Maine	Ambulatory Surgical Center Lewiston

In 2021, as part of the response to the COVID-19 pandemic, twelve emergency CONs were requested. Eleven hospitals and one nursing home were granted additional capacity to address potential bed needs, these emergency increases are continuing.

Review Type	Applicant	Description
COVID-Hospital	Mid Coast Hospital	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light CA dean	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Mayo	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Blue Hill	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Eastern Maine Medical	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Maine Coast	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Sebasticook Valley	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Inland	Temporary Licensed Bed Increase
COVID-Hospital	Northern Light Inland	Temporary Licensed Bed Increase
COVID-Hospital	Maine General Medical Center	Temporary Licensed Bed Increase
COVID-Hospital	Mount Desert Island Hospital	Temporary Licensed Bed Increase
COVID-Nursing Home	Mid Coast Senior Health	Temporary Licensed Bed Increase

V. 2022 Project Review Record

CONU is responsible for reviewing hospitals, nursing facilities and other health care facilities. The following chart illustrates the three (3) completed CON reviews by facility type during 2022.

Review Type	Applicant	Description
Hospital	Calais Community Hospital	Transfer of Operations and Assets
Nursing Home	Genesis Healthcare of Maine, LLC	Addition of Nursing Home Beds
Nursing Home	Pinnacle Group of Hudson Valley, LLC	Change of Ownership

CONU has received CON applications for four (4) additional CON reviews which are currently in progress. These reviews are listed below by facility type for 2022.

Review Type	Applicant	Description
Hospital	MaineHealth	Combine Hospital Licenses
Hospital	MaineGeneral	Cancer Center Expansion
Nursing Home	Clippership Landing	Replacement Nursing Home
Nursing Home	Hawthorne House	Addition of Nursing Home Beds

Subsequent Reviews are conducted when a CON has been issued and then changes are necessary in financing, licensing, bed capacity, the addition or termination of health services, or substantial changes in the design of the health care facility or type of construction. CONU conducted seven (7) Subsequent Reviews during 2022.

Review Type	Applicant	Description
Subsequent Review	Northern Light Acadia	Change in Financing
Subsequent Review	Northern Light Acadia	Change in Financing
Subsequent Review	Northern Light Blue Hill	Change in Financing
Subsequent Review	Northern Light Blue Hill	Change in Financing
Subsequent Review	Northern Light CA Dean	Change in Financing
Subsequent Review	Northern Light CA Dean	Change in Financing
Subsequent Review	Fallbrook Care Operations	Change in Financing

CONU conducted one (1) Health Maintenance Organization (HMO) Certification Review. CONU determines if an applicant who wishes to operate a HMO line of business in the State of Maine meets the requirements of 22 M.R.S. §4204-2A Parts A and B. The Bureau of Insurance will ultimately determine if the applicant is qualified to receive a Certificate of Authority.

Review Type	Applicant	Description
HMO Certification	Taro Health Plan of Maine, Inc.	Certification for Bureau of Insurance

CONU conducted six (6) “Not Subject to Review” (NSTR) determinations during 2022. These projects do not meet the CON thresholds and/or statutory provisions for requiring a CON review.

Review Type	Applicant	Description
Not Subject to Review	Riverside iSurgery	Construction of Ambulatory Surgical Center
Not Subject to Review	Covenant Surgical Partners	Ownership Restructuring
Not Subject to Review	Rayus Radiology	Open Outpatient Imaging Center
Not Subject to Review	Eyecare Medical Group, P.A.	Relocation of ASU
Not Subject to Review	Lincoln Home	Renovation Project
Not Subject to Review	JF Murphy Homes	ICF/IID Replacement Facility

VI. Implementation Reports

Holders of a CON are required to submit written reports to the Department in accordance with 22 M.R.S. §350-C. These reports summarize the progress on the CON project and the applicant’s compliance with any conditions required by the 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.

VII. Legislative Changes

There have been no changes to the CON statute since 2016.



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.

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