Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Monday, December 8, 2025
10:00 a.m. – 3:00pm

Note different location: Room 208 (EDU), Cross State Office Building

DRAFT MEETING AGENDA

10:00 am	Welcome *Chairs, Senator Mike Tipping and Representative Michelle Boyer*
10:05 am	Commission Review and Discussion of Recommendations from Nov. 17th Meeting *Chairs and Commission Members* ***Commission will take a break at approx. 12 pm***
1:00 pm	Continued Commission Discussion (if necessary) *Chairs and Commission Members*
2:30 pm	Process for Review of Final Report *Commission Staff*
3:00 pm	Adjourn

Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#208

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

III. Recommendations

At the request of the chairs, individual commission members suggested potential recommendations for consideration by the full commission. The commission discussed each suggested recommendation at the November 5th meeting and took initial straw votes to gauge the commission's interest in continued discussion of each suggestion. During the November 17th meeting, the commission reviewed the results of the straw votes and focused its consideration on those potential recommendations that were of interest to all or a majority of commission members present and voting. (As the designee of the Commissioner of Health and Human Services, Commissioner Montejo abstained and did not participate in the commission's straw votes.) At the December 8th meeting, the commission reviewed the draft recommendations developed over the course of its previous meetings and agreed that this report would include only those recommendations that represented the consensus of all members or were supported by a majority of commission members. Commission members acknowledge that it was not possible to consider and understand all of implications and consequences of these recommendations. The recommendations suggested to the Legislature in this report are based on the information available to members at the time of the meetings and the commission encourages the Legislature to engage commission members and other stakeholders in additional discussion before moving forward. With these considerations in mind, the commission provides the following comments and recommendations. Unless otherwise noted, the recommendations reflect the consensus of all commission members.

Potential Changes Related to the Certificate of Need Program

The commission recommends that the Legislature consider the following changes to the Certificate of Need (CON) program.

- **Increase the monetary threshold in current law that requires CON review and approval to establish a new health care facility based on the estimated cost of the facility from $3 million to the 2025 amount as adjusted to reflect the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index and require that the threshold amount for review be adjusted annually based on the change in that index**

The commission recommends that the CON law be amended to increase the monetary threshold that requires CON review and approval to establish a new health care facility by adjusting the $3 million threshold to the 2025 amount as adjusted by inflation and to require that the threshold amount be adjusted annually based on the change in that index. As required by the Legislature, the commission reviewed the current CON law and noted that the law had not been updated in any significant way for many years. One area the commission focused on during its review was the monetary thresholds in current law that determine whether a particular project affecting Maine's health care delivery system and infrastructure is subject to prior review and approval by

the CON program. Under the CON program, there is only one project — the establishment of a new health care facility — that is not updated to reflect any increase due to inflation or a change in construction costs over time. Commission members believe that the monetary threshold for all types of projects subject to CON review should be updated on an annual basis.

In order to be consistent, the commission recommends that the Legislature amend the CON law so that the monetary threshold that triggers CON review prior to the establishment of a new health care facility is increased from $3 million to the 2025 adjusted amount based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index. The commission also recommends that the law be amended to required that the threshold be adjusted annually based on any changes to that index in the same way other monetary thresholds in the CON law are adjusted.

- **Codify guidance developed by the Department of Health and Human Services, Division of Licensing and Certification to require that hospitals provide at least 120-days' prior notice to the division of a permanent closure of a hospital's labor and delivery unit or of a change in the level of care a hospital provides for maternity and newborn services**

The commission recommends that the Legislature enact legislation to codify guidance developed by the Department of Health and Human Services, Division of Licensing and Certification to require that hospitals provide at least 120 days' prior notice to the department of a hospital's permanent closure of a labor and delivery unit or of a change in the level of care a hospital provides for maternity and newborn services. During its meetings, the commission members discussed recent closures of hospital labor and delivery units in rural areas of the State and noted that prior notice of a closure provided the necessary level of transparency to the affected communities but also provided an opportunity for more careful planning to maintain access to maternity and newborn services. While current law does not require CON review and approval before a hospital terminates health care services, the department has developed guidance asking that hospitals provide at least 120 days' prior notice before closing labor and delivery units. Commissioner Montejo shared that some hospitals were willing to provide notice as provided in the guidance, but that not all hospitals have voluntarily complied. The commission believes it is important for the department and the public to have prior notice of a closure so that the department can engage with the hospital and other health care providers to plan for the loss of these services and take appropriate steps to transition care to other providers.

- **Expand the criteria considered during a CON review to include consideration of a proposal's impact on affordability and accessibility of health care for all Maine consumers and provide any additional resources needed to implement the expanded scope of review**

The commission recommends that the CON law be amended to expand the criteria considered during review of a proposed project to include consideration of a proposal's impact on the affordability and accessibility of health care for all Maine consumers. The commission learned during its meetings that while the CON review criteria does take into account the financial

impact of a proposal on the State's MaineCare program, the review process does not appear to consider and analyze how a proposal may affect health care costs for all Maine consumers, including any impact of those costs on access to services and on health insurance premiums paid by employer and individuals. The commission believes it is important that the CON review process be broadened to include consideration of how a proposal, if approved, may impact the affordability and accessibility of care: How will it affect prices for health care services? How will it increase health insurance premiums? How will it affect access to health care services? Because the purposes of CON laws are focused on controlling health care costs and determining whether new spending on health care services meets the needs of the community, the commission feels that the CON review process must consider the impact of a proposal on all Maine consumers by evaluating how it may affect the affordability and accessibility of health care overall.

The commission also wants to acknowledge that the members had a substantive discussion related to proposed changes to CON review of ambulatory surgical centers. One of the commission members, Rep. Foley, is the sponsor of LD 1890, An Act to Facilitate the Development of Ambulatory Surgical Facilities by Exempting Certain Facilities from the Requirement to Obtain a Certificate of Need, which has been carried over for consideration in the Second Regular Session of the 132nd Legislature. Rep. Foley discussed his intention to propose an amendment to LD 1890 and outlined the potential changes to the original bill that he is considering. It is expected that the Joint Standing Committee on Health Coverage, Insurance and Financial Services will hold a public hearing on LD 1890, as amended by Rep. Foley, in early January. Because final language for Rep. Foley's proposed amendment is still being developed, the commission decided not to put forward a specific recommendation in support of the proposed legislation. However, commission members believe it is appropriate for the Legislature to consider potential changes to the regulation of ambulatory surgical centers under the CON program at the same time as the Legislature considers the recommendations made in this report.

Potential Changes Related to the Regulatory Oversight Over Health Care Transactions

The commission recommends that the Legislature consider the following changes related to the regulatory oversight over health care transactions.

- **Require a health care entity to provide notice to the Attorney General about a pending merger or acquisition at the same time a health care entity is required to notify the Federal Trade Commission in accordance with federal law and regulations**

The commission recommends that the Legislature enact legislation to require that a health care entity provide notice to the Attorney General about a pending merger or acquisition at the same time a health care entity is required to notify the Federal Trade Commission in accordance with

federal law and regulations. During its meetings, the commission learned from the Attorney General's Office that, while the Attorney General has independent authority to enforce antitrust laws if a pending merger or acquisition in any industry may create a monopoly, the Attorney General's Office is not notified prior to a pending merger or acquisition. Under federal law and regulations, entities are required to notify the Federal Trade Commission of pending mergers or acquisitions valued at $50 million or more as adjusted to inflation; the 2025 threshold is approximately $126.4 million. Given the increased concern about consolidation of the State's health care delivery system and the potential negative impact of private equity financing, the commission believes it is appropriate to require health care entities involved in any large mergers and acquisitions in the State to notify the Attorney General at the same time notice is provided to the Federal Trade Commission. To that end, the Uniform Law Commission has developed the Uniform Pre-Merger Notification Act to require such notices to states. The commission recommends that the Legislature enact legislation modeled on the uniform law, but specific to health care entities only, to require prior notice of pending mergers and acquisitions to the Attorney General.

- **Require that a health care entity provide notice of a transaction between a health care entity and a private equity company, hedge fund or management service organization when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or a private equity company, hedge fund or management service organization takes operational control over a health care entity**

The commission recommends that the Legislature enact legislation to require that a health care entity provide notice of a transaction between a health care entity and a private equity company, hedge fund or management service organization when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or a private equity company, hedge fund or management service organization takes operational control over a health care entity. The commission acknowledge that private equity companies have invested in Maine's health care entities but there is no mechanism for the reporting of these transactions or for the collection of data about these transactions. The commission believes that it is important for these transactions to be transparent so that State policymakers, regulators and the public know when these transactions occur and that it is necessary to enact legislation to require notice of any transaction.

- **Develop a regulatory process for review and approval of transactions when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity**

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

A majority[1] of the commission members recommend that the Legislature consider enacting legislation to develop a regulatory process for review and approval of transactions when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity. While all commission members support a statutory requirement to provide notice to the State when these types of transactions occur, the members supporting this recommendation also believe it is important that there be a regulatory process to review and approve these transactions. These members expressed concerns about the consolidation of the State's health care delivery system and the potential negative impact of private equity financing on competition and health care costs. Members also noted that these types of transactions may also negatively impact access to health care services in the State and the quality of health care services delivered to Maine consumers. The members suggested that legislation should be enacted to authorize State regulators to provide a mechanism for the State to approve, modify or deny such transactions to address these concerns and to monitor the impact of private equity interests on Maine's health care delivery system. During the First Regular and First Special Sessions of the 132nd Legislature, the Legislature considered LD 1972, An Act to Enhance Transparency and Value in Substantial Health Care Transactions by Changing the Review and Approval Process for Those Transactions. The proposed legislation would have established a review process over certain health care transactions, such as transfers of ownership or control, among health care entities, including post-transaction oversight. This proposal may provide a starting point to help guide the development of amended legislation that focuses specifically on transactions when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity.

Potential Changes to Address Role of Private Equity Investment in Health Care

The commission recommends that the Legislature consider the following changes to address the role of private equity investment in health care.

- **Expand the scope of CON review when there is a change in ownership of an entity to:**
  - **Review and analyze the extent to which the applicant's ownership structure involves a private equity company or real estate investment trust;**

[1] The vote in favor of this recommendation was 7-6 of the members present and voting. In favor were Sen. Tipping, Reps. Boyer and Foley and Commissioners Cheff, Ende, Garratt-Reed and Putnoky. Opposed were Commissioners Maguire, Ossenfort, Poitras, Prescott, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

- **Require that the department contract with a consultant funded by the applicant to review and investigate the prior activities and conduct of the private equity company or real estate investment trust;**
- **Authorize the department to consult with the Attorney General; and**
- **Authorize the department to impose conditions on an applicant and to conduct subsequent reviews following a conditional approval of an applicant for CON**

The commission recommends that the Legislature enact legislation to amend the scope of CON review when there is a change in ownership of a health care entity. The members recommend that there should be increased scrutiny using the existing CON process when there is a change in ownership of a health care entity to review and analyze the extent to which the applicant's ownership structure involves a private equity company or real estate investment trust. As part of this enhanced CON review, the members recommend that the department be required to contract with a consultant funded by the CON applicant to review and investigate the prior activities and conduct of the private equity company or real estate investment trust and that the department be authorized to consult with the Attorney General and to impose conditions on an applicant, including post-transaction reviews following a conditional approval.

❖ **Prohibit any private equity company or real estate investment trust from entering any arrangement with a health care entity for the sale and leaseback of the health care entity's main campus or primary location to the private equity company or real estate investment trust**

The commission recommends that the Legislature enact legislation to prohibit any private equity company or real estate investment trust from entering any arrangement with a health care entity for the sale and leaseback of the health care entity's main campus or primary location to the private equity company or real estate investment trust. During its meetings, the commission learned that this type of practice by a private equity company or real estate investment trust contributed to the significant financial difficulties and closures of several hospitals in Massachusetts and has also led to problems in other states. The commission members believe that the main campus of a health care entity's main campus or primary location should not be used as part of a sale and leaseback arrangement because of the potential financial risk to a health care entity if it is not able to manage the debt payments required for such a transaction. The commission agrees that it is appropriate to ban this practice to protect health care entities from experiencing the financial problems caused by this practice in other states.

❖ **Prohibit any transaction between a health care entity and a private equity company or real estate investment trust in which the ratio of debt to equity is greater than 50%**

A majority[2] of the commission members recommend that the Legislature enact legislation to prohibit any transaction between a health care entity and a private equity company or real estate investment trust in which the ratio of debt to equity is greater than 50%. During its meetings, the commission noted that transactions engaged in by private equity companies and real estate investment trusts in other states with an unbalanced debt to equity ratio has led to financial failures and closures of health care entities. The commission members believe that a private equity company or real estate investment trust that seeks to invest in health care entities located in Maine should be required to maintain a 50/50 ratio of debt to equity so that these transactions do not transfer significant amounts of debt to Maine health care entities that would endanger them financially and put them at risk of closure. The commission agrees that it is appropriate to prohibit transactions that have a debt-to-equity ratio greater than 50% to minimize the financial risk to Maine's health care entities.

- **Prohibit any person from interfering with the professional judgment or clinical decision of a licensed health care professional with independent practice authority**

A majority[3] of the commission members recommend that the Legislature enact legislation to prohibit any person from interfering with the professional judgment or clinical decision of a licensed health care professional with independent practice authority. The members supporting this recommendation expressed concern about the potential risks to the professional judgment or clinical decision of health care professionals in Maine if private equity companies or management services organizations establish management practices or policies related to staffing, billing and coding or electronic medical records that may have a negative impact on the ability of a licensed health care professional to practice independently and deliver patient care. While this does not appear to be a problem that health care professionals are currently experiencing, the members supporting this recommendation believe it is warranted to prevent a potential problem.

Potential Recommendations with Broader Scope

[2] The vote in favor of this recommendation was 9-4 of the members present and voting. In favor were Sen. Tipping, Rep. Boyer and Commissioners Cheff, Ende, Garratt-Reed, Ossenfort, Poitras, Prescott and Putnoky. Opposed were Rep. Foley and Commissioners Maguire, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

[3] The vote in favor of this recommendation was 7-6 of the members present and voting. In favor were Sen. Tipping and Reps. Boyer and Foley and Commissioners Ende, Garratt-Reed, Ossenfort and Putnoky. Opposed were Commissioners Maguire, Ossenfort, Poitras, Prescott, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

The commission recommends that the Legislature consider the following recommendations with a broader scope.

- **Recommend that the Legislature re-establish statewide health care services planning by increasing coordination and information sharing between state agencies responsible for community health needs assessments, regional public health planning and implementation of the rural health transformation program**

The commission recommends that the Legislature enact legislation to reestablish a statewide planning process for health care services. Until its repeal in 2011, the State required the development of a statewide health plan and the Commissioner of Health and Human Services was required to consider the state health plan when making decisions during the CON review process, such as whether to approve new health care facilities, expand health care services or make capital expenditures and investments in health care facilities or medical equipment. The commission believes such a planning process is needed to improve coordination and communication among the state agencies that make health care-related planning and regulatory decisions to ensure that the State's health care delivery system and infrastructure can meet the needs of all Maine consumers to ensure access to needed health care services. It is important that the criteria for CON review include consideration of the most current information and strategic planning for statewide public health and health needs.

- **To the maximum extent possible, recommend use of federal grant funding through the Rural Health Transformation Program to support the sustainability of rural health care providers**

The commission recommends that the State use any federal grant funding received under the federal Rural Health Transformation Program to support the sustainability of rural health providers to the maximum extent possible. During the commission's work, the Department of Health and Human Services and the Governor's Office of Policy Innovation and the Future were working to develop the State's application for the Rural Health Transformation Program. Rural hospitals in the State face increasing financial pressures to maintain services and commission members are concerned about the potential for hospital closures. The commission believes that the State needs to make every effort to ensure the sustainability of rural health care providers. The commission strongly suggests that financial assistance targeted to support the sustainability of rural health providers must be a high priority for funding disbursed under the federal Rural Health Transportation Program.

- **Prohibit provider non-compete clauses and non-disparagement clauses in contracts with licensed health care professionals**

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

A majority[4] of the commission members recommend that the Legislature enact legislation to prohibit provider non-compete clauses and non-disparagement clauses in contracts with licensed health care professionals. The commission noted that Maine law prohibits non-compete clauses in certain contracts with veterinarians and Sen. Tipping explained that the Legislature acted in that area because concerns were raised about a loss of access to veterinary care. The commission members believe that the ability of licensed health care professionals should not be restricted by non-compete clauses and that providers should not be restricted from speaking about the employment practices of health care providers that may have led to changes in employment, especially if the health and safety of patients may be at risk. Members suggested that physicians and other licensed health care professionals should not be restricted in the areas they practice because it is important to maintain access to care, especially in rural areas. While members recognized that employers of physicians and other health care professionals have invested significant resources in their employees, these financial factors did not persuade a majority of members that employers should be able to use non-compete clauses in their contracts. The members supporting this recommendation also believe that physicians and other licensed health care professionals should be able to raise concerns about any potential negative impacts they have identified when private equity companies or management services organizations participate in the State's health care delivery system.

- **Recommend that the Legislature consider the creation of a task force to study the demand for long-term care to determine the appropriate number of long-term care beds and to increase nursing home bed capacity statewide**

A majority[5] of the commission members recommend that the Legislature consider the creation of a task force to study the demand for long-term care in the State to determine the appropriate number of long-term care beds that are needed and to increase the capacity for long-term care beds statewide to meet those needs. The commission members supporting this recommendation agreed that long-term care is an urgent priority given Maine's demographics. Current federal and State requirements related to long-term care and nursing home bed capacity, to reimbursement rates for care and to staffing ratios limit the ability of long-term care providers to expand or to build new facilities to meet the demand for long-term care services throughout the State. The members believe that planning for long-term care needs is unique and that policymakers should

[4] The vote in favor of this recommendation was 8-4 of the members present and voting. In favor were Sen. Tipping, Rep. Boyer and Commissioners Cheff, Ende, Garratt-Reed, Maguire, Putnoky and Westhoff. Opposed were Rep Foley and Commissioners Ossenfort, Poitras and Prescott. Commissioner Montejo abstained and Sen. Haggan and Commissioner Vienneau were absent.

[5] The vote in favor of this recommendation was 10-1 of the members present and voting. In favor were Sen. Tipping, Rep. Foley and Commissioners Cheff, Ende, Maguire, Ossenfort, Poitras, Prescott, Putnoky and Westhoff. Opposed was Rep. Boyer. Commissioners Garratt-Reed and Montejo abstained, and Sen. Haggan and Commissioner Vienneau were absent.

address policy questions about the sustainability of the State's long-term care infrastructure separately.

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Examples Of Legislation Proposing to Prohibit Interference with Licensed Professionals' Clinical Judgement

State Legislation or Model Legislation	Excerpt of Legislative Language
Oregon SB 951(enacted)	[ ], a management services organization or a shareholder, director, member, manager, officer or employee of a management services organization may not: (H) Exercise de facto control over administrative, business or clinical operations of a professional medical entity in a manner that affects the professional medical entity's clinical decision making or the nature or quality of medical care that the professional medical entity delivers, which de facto control includes, but is not limited to, exercising ultimate decisionmaking authority over: (i) Hiring or terminating, setting work schedules or compensation for, or otherwise specifying terms of employment of medical licensees; (ii) Setting clinical staffing levels, or specifying the period of time a medical licensee may see a patient, for any location that serves patients; (iii) Making diagnostic coding decisions; (iv) Setting clinical standards or policies; (v) Setting policies for patient, client or customer billing and collection; (vi) Advertising a professional medical entity's services under the name of an entity that is not a professional medical entity; (vii) Setting the prices, rates or amounts the professional medical entity charges for a medical licensee's services; or (viii) Negotiating, executing, performing, enforcing or terminating contracts with third party payors or persons that are not employees of the professional medical entity.
CA AB 3129 (vetoed)	A private equity group or hedge fund involved in any manner with a physician, psychiatric, or dental practice doing business in this state, including as an investor in that physician, psychiatric, or dental practice or as an investor or owner of the assets of that practice, shall not do either of the following with respect to that practice: (1) Interfere with the professional judgment of physicians, psychiatrists, or dentists in making health care decisions, including any of the following:

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

State Legislation or Model Legislation	Excerpt of Legislative Language
	(A) Determining what diagnostic tests are appropriate for a particular condition. (B) Determining the need for referrals to, or consultation with, another physician, psychiatrist, dentist, or licensed health professional. (C) Being responsible for the ultimate overall care of the patient, including treatment options available to the patient. (D) Determining how many patients a physician, psychiatrist, or dentist shall see in a given period of time or how many hours a physician, psychiatrist, or dentist shall work. (2) Exercise control over, or be delegated the power to do, any of the following: (A) Owning or otherwise determining the content of patient medical records. (B) Selecting, hiring, or firing physicians, psychiatrists, dentists, allied health staff, and medical assistants based, in whole or in part, on clinical competency or proficiency. (C) Setting the parameters under which a physician, psychiatrist, dentist, or physician, psychiatric, or dental practice shall enter into contractual relationships with third-party payers. (D) Setting the parameters under which a physician, psychiatrist, or dentist shall enter into contractual relationships with other physicians, psychiatrists, or dentists for the delivery of care. (E) Making decisions regarding coding and billing procedures for patient care services. (F) Approving the selection of medical equipment and medical supplies for the physician, psychiatric, or dental practice.
MA S 2871 (proposed)	(2) Health care facilities or entities that hold a license issued by the department of public health pursuant to sections 51, 51M, 51N or 52 of chapter 111, providers and provider organizations shall not, themselves or through a management services organization that the provider organization fully or partially owns or controls, directly or indirectly interfere with, control or otherwise direct the professional judgment or clinical decisions of clinicians with independent practice authority who receive compensation, including, but not limited to, as employees or independent contractors, from the health care facility, provider, provider organization or an entity that the provider

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

State Legislation or Model Legislation	Excerpt of Legislative Language
	organization fully or partially owns or controls. Conduct prohibited under this paragraph shall include, but not be limited to, controlling, either directly or indirectly, through discipline, punishment, threats, adverse employment actions, coercion, retaliation or excessive pressure, regarding: (i) the amount of time spent with patients, including the time permitted to triage patients in the emergency department or evaluate admitted patients; (ii) the time period within which a patient must be discharged; (iii) decisions involving the patient's clinical status, including, but not limited to, whether the patient should be kept in observation status, whether the patient should receive palliative care and where the patient should be placed upon discharge; (iv) the diagnosis, diagnostic terminology or codes that are entered into the medical record; or (v) any other conduct the department of public health determines by regulation would interfere with, control or otherwise direct the professional judgement or clinical decisions of clinicians with independent practice authority.
Connecticut SB 1507 (proposed)	(b) No health care facility or entity that holds a license issued by the Department of Public Health or the Department of Mental Health and Addiction Services and no management services organization shall directly or indirectly interfere with, control or otherwise direct the professional judgment or clinical decisions of a health care practice or a clinician with independent practice authority who provides health care services at or through such facility or entity or at or through a health care practice. (c) Conduct prohibited under subsection (b) of this section shall include, but need not be limited to, controlling, either directly or indirectly, through discipline, punishment, threats, adverse employment actions, coercion, retaliation or excessive pressure any of the following: (1) The amount of time spent with patients or the number of patients seen in a given time period, including, but not limited to, the time permitted to triage patients in the emergency department or evaluate admitted patients; (2) the time period within which a patient must be discharged;

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

State Legislation or Model Legislation	Excerpt of Legislative Language
	(3) decisions involving the patient's clinical status, including, but not limited to, whether the patient should be kept in observation status, whether the patient should receive palliative care and where the patient should be placed upon discharge; (4) the diagnosis, diagnostic terminology or codes that are entered into the medical record; (5) the appropriate diagnostic test for medical conditions; or (6) any other conduct the Department of Public Health determines would interfere with, control or otherwise direct the professional judgment or clinical decision of a clinician with independent practice authority.
NASHP model legislation	(F) Ban on Relinquishing Control of the Medical Practice i. A medical practice may not by means of a contract or other agreement or arrangement, by providing in the medical practice's articles of incorporation or bylaws, by forming a subsidiary or affiliated entity or by other means, relinquish control over or otherwise transfer de facto control over any of the medical practice's administrative, business or clinical operations that may affect clinical decision-making or the nature or quality of medical care that the medical practice delivers. ii. Conduct prohibited under paragraph (i) of this subsection includes, but is not limited to, relinquishing ultimate decision-making authority over: a. Hiring or terminating, setting work schedules and compensation, or otherwise specifying terms of employment of employees who are licensed to practice medicine in this state or who are licensed in this state as physician assistants or nurse practitioners; b. The disbursement of revenue generated from physician fees and other revenue generated by physician services.

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

State Legislation or Model Legislation	Excerpt of Legislative Language
	c. Collaboration and negotiation with hospitals and other institutions in which the licensees of the medical practice may deliver clinical care, particularly with regard to controlling licensee schedules as a means of discipline. d. Setting staffing levels, or specifying the period of time a licensee may see a patient, for any location that serves patients; e. Making diagnostic coding decisions; f. Setting clinical standards or policies; g. Setting policies for patient, client, or customer billing and collection; h. Setting the prices, rates, or amounts the medical practice charges for a licensee's services; or i. Negotiating, executing, performing, enforcing, or terminating contracts with third-party payors or persons that are not employees of the medical practice. iii. The conduct described in paragraph (ii) of this subsection do not prohibit: a. Collection of quality metrics as required by law or in accordance with an agreement to which the medical practice is a party; or b. Setting criteria for reimbursement under a contract between the medical practice and an insurer or payer or entity that otherwise reimburses the medical practice for medical care. Notwithstanding subparagraph (i) of this subsection, a medical practice may delegate administrative, business, or clinical operations described in subparagraph (ii) of this subsection to a managed services organization, provided that (a) the medical practice's shareholder agreement bestows this delegation authority exclusively to the majority of shareholders who are licensee-owners, and (b) such delegation does not relinquish de facto control of the medical practice to non-licensees.

Janet T. Mills
Governor

Sara Gagné-Holmes
Commissioner

Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

November 21, 2025

Mr. Steve Aleman, CFO
Prime Healthcare Foundation, Inc.
3480 E. Guasti Road
Ontario, CA 91761

RE: Certificate of Need approval with conditions: Prime Healthcare Foundation Acquisition of Control of Central Maine Healthcare Corporation

Dear Mr. Aleman:

This letter serves as the Certificate of Need ("CON") approval with conditions for Prime Healthcare Foundation, Inc.'s. acquisition of control of Central Maine Healthcare Corporation.

My approval is conditioned on the following:

Condition: Provide annually, for a period of 3 years following implementation of this project, a copy of CMH's audited financial statements as soon as they become available.

Condition: For a period of at least five (5) years following the implementation of the project, Corporate Parent will (i) continue to operate Rumford Hospital and Bridgton Hospital as either critical access or general acute care hospitals and (ii) continue to operate CMMC as a general acute care hospital (including general surgery, general medicine, emergency department services, maternity services, and family practice residency), in each case subject to adequate patient volumes to support appropriate quality and safety measures. Additionally, for a period of at least five (5) years following the implementation of the project, Corporate Parent (i) shall not make any material reductions to, or material changes in, the mix or level of essential services offered at the CMH as of the effective date of the project except as necessary to meet community needs, and (ii) shall continue to support the Maine College of Health professions and ensure the continued operations of the long-term care facilities, Bolster Heights Residential Care and Rumford Community Home.

Condition: CMMC shall maintain trauma hospital certification/accreditation for at least one year from the date of the CON approval.

In order for this CON to remain valid, the project must commence within two years of the date of this letter. Limited extensions may be available if requested in a timely manner and for good cause. Failure to commence the project within this 24-month period, without having received an extension, will result in the expiration of the CON.

This CON is being issued because the project meets the criteria set forth in 22 M.R.S. §335 (1), and the Department's regulations. The specific details of the project are contained in the record.

Please be aware that in accordance with 22 M.R.S. §346 (1), this CON is valid only for the stated scope, premises, and facility named in the application, and is not transferable or assignable. No significant changes to the project, no variations from the projected operating costs, no modifications of the terms of financing the project, and no increase in the capital expenditures are permitted without the prior written approval of the Department. Any such variances may result in either the disallowance of related expenses, financial penalties, or the immediate revocation of the CON.

It should be clearly understood that our analysis and findings regarding the need for this project, as well as its financial and economic feasibility, are predicated on the application record, as required by 22 M.R.S. §335 (5-A). That record now includes the Department's Briefing Memo dated November 21, 2025.

Finally, the Maine CON statute requires that a holder of a CON make a written report at the end of each six-month period following its issuance. Therefore, Prime Healthcare Foundation Inc.'s first report will be due no later than six months from the date of this letter.

Details regarding this and related requirements will be made the subject of a separate letter to Prime Healthcare Foundation Inc. from the HCO/CONU.

Please work closely with my staff in the HCO/CONU to ensure this project is implemented in accordance with the provisions of this Certificate and applicable rules and regulations.

Sincerely,

Sara Gagné-Holmes
Commissioner, DHHS

cc: William Montejo, Director, DLC
Joseph Zamboni, Chief Operating Officer, DLC
Rich Lawrence, Manager, DLC's Healthcare Oversight Unit/Certificate of Need Unit
Herb Downs, Audit
File

For Review and Consideration at Dec. 8 Meeting
(reflects votes taken on Nov. 17)

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Recommendation Voting Results from Nov. 17

Certificate of Need Process

Recommendation	*Results of vote from Nov. 17*
Increase monetary threshold for establishment of new health care facilities (other than hospitals) by indexing	***Unanimous*** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.
Codify existing guidance related to notice of changes or closures of maternity and newborn care* and consider increasing the prior notice requirement to 180 days prior to effective date for a permanent termination of service	Initially, Commission voted 6-7 to consider a higher threshold of 180 days (In favor were Sen. Tipping, Rep. Boyer, Commissioners Putnoky, Ossenfort, Ende and Garratt-Reed). Vote **fails.** Finally, Commission voted unanimously (absent was Sen. Haggan and abstaining was Commissioner Montejo) to recommend the 120-day notice as recommended in guidance from DHHS. Vote **passes.**
Require CON review to consider impacts on affordability and accessibility of health care for all consumers (not solely the MaineCare program) as part of review and provide any necessary resources to fulfill the expanded scope of responsibility *	Staff confirmed (11:21 a.m.) that this language will stay as is, pending further consideration of the Oregon legislation and fleshing out definitions. There were no objections voiced.

Recommendation	*Results of Straw Vote on Nov. 17*
Changes to Certificate of Need (CON) Requirements for Ambulatory Surgery Centers ("ASC's"): • Exempt ambulatory surgical centers from CON* • Ensure that CON Approval / Denial Process avoids Anti-Competitive and Political Motivations • Increase Capital Thresholds that trigger CON review to Reflect Current Cost of Construction • Increase the capital threshold to $10 million • Define an ambulatory surgical center not subject to review as one with 4 or fewer operating rooms • Require ambulatory surgical centers to accept Medicare and MaineCare at the same rates hospitals receive for similar services as a condition of approval • Require ambulatory surgical centers to provide up to 4% charity care annually as a condition of approval	**NOTE:** Sen. Tipping asked consent of the Commission on including in the report an acknowledgement that this proposed legislation by Rep. Foley is going forward (will have public hearing in January) and including the discussion surrounding this in the report. There was no objection from Commission members.
Establish a formal review process prior to a hospital discontinuing a service, including providing prior notice to the State and an opportunity for staff and public feedback*	N/A
Amend CON review to include specific consideration of private equity ownership in a determination by DHHS that an applicant is "fit, willing and able" to provide proposed services at proper standard of care	N/A
Eliminate Certificate of Need (CON) law	N/A
Exempt entities that accept Medicare/Medicaid from CON	N/A
Amend CON review for medical projects (other than long-term care) to require that all patients be served by the facility regardless of ability to pay as a condition of approval	N/A

Include cybersecurity risks in the CON process. Review of technology systems and vulnerabilities of applicants	N/A

Regulatory Oversight of Health Care Transactions

Recommendation	*Results of vote from Nov. 17*
Require notice to the Attorney General when a health care entity is required to notify the Federal Trade Commission about a pending merger/acquisition	**Unanimous** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.
Adopt the transparency provisions of LD 1972, which would allow the state to better track a wide range of acquisition types and monitor ownership structures of health care entities	Commission voted 6-7. In favor were Sen. Tipping, Rep. Boyer, Commissioners Cheffe, Putnoky, Ende, Garratt-Reed. Opposed were Rep. Foley and Commissioners Westhoff, Maguire, Vienneau, Prescott, Ossenfort and Poitras. Absent was Sen. Haggan and abstaining was Commissioner Montejo. Vote ***fails.***
Require notice of change of control or significant ownership stake (>49%) by PE, hedge fund, or management services organization (MSO) – potentially broader to include all change of control/ownership for transactions exceeding $X: Disclosure of ultimate parent entity and investment fund Disclosure of names of all entities Disclosure of debt to equity ratio	***Unanimous*** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.
Review and possibly revise LD 1972 and ask HCIFS to move forward with this legislation*	Commission voted 5-6 in favor. In favor were Sen. Tipping, Rep. Boyer and Commissioners Putnoky, Ende, Garratt-Reed. Opposed were Rep. Foley and Commissioners Westhoff,

	Maguire, Vienneau, Prescott and Poitras. Absent was Sen. Haggan. Abstaining were Commissioners Montejo, Ossenfort and Cheff. Vote ***fails.***
Consider an expanded review and approval process for health care transactions but with a scope limited to acquisition of control by financial entities that pose especially high risks to the stability of the health care system. This could at minimum include private equity firms but could also include management services organizations and real estate investment trusts.	Commission voted 7-5 in favor. In favor were Sen. Tipping, Reps. Boyer and Foley, Commissioners Cheff, Putnoky, Ende and Garratt-Reed. Opposed were Commissioners Westhoff, Maguire, Vienneau, Prescott and Poitras. Absent was Sen. Haggan. Abstaining was Commissioner Montejo. Vote ***passes.***
Require enhanced review for safety net hospitals and sole providers in a geographic region	
Provide for conditional approval of transactions exceeding $X	

Regulation of Private Equity

Recommendation	***Results of vote from Nov. 17***
Prohibit private equity groups and hedge funds from interfering with the professional judgment of physicians in making healthcare decisions:* • Interfering with licensed professionals' clinical judgement • Controlling staffing levels • Dictating coding in medical records • Obtaining legal custody over EHRs and patient data	Commission requested more information on how other states regulate this issue but took a preliminary vote. Commission voted 7-6 in favor. In favor were Sen. Tipping, Reps. Boyer and Foley, Commissioners Putnoky, Ossenfort, Ende and Garratt-Reed. Opposed were Commissioners Westhoff, Maguire, Vienneau, Cheff, Prescott and Poitras. Absent was Sen. Haggan. Abstaining was Commissioner Montejo. Vote ***passes.***

Restrict MSO-affiliated individuals from serving in the same roles within the acquired entity they manage. (They cannot make personnel, staffing/scheduling, clinical, financial/payor, pricing, or asset/equity decisions but does not prohibit MSOs from providing support, advice, or consultation. It prevents them from holding the ultimate authority to make final, binding decisions.)	Combined straw vote below with above
Prohibit primary operating real estate sale/leaseback arrangements (specifically with private equity)	***Unanimous*** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.
Prohibit majority ownership by PE, hedge funds, and MSOs	N/A
Prohibit debt financing ratios >50% (all transactions)	Commission voted 9- 4 in favor. In favor were Sen. Tipping, Rep. Boyer and Commissioners Cheff, Prescott, Putnoky, Ossenfort, Ende, Garratt-Reed and Poitras. Opposed were Rep. Foley and Commissioners Westhoff, Maguire, Vienneau. Absent was Sen. Haggan. Abstaining was Commissioner Montejo. Vote ***passes***.
Enhanced CON review of applicants involving private equity – new proposal discussed by Commission – (bottom of p. 5 on recommendations sent to Commission)	***Unanimous*** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.
Prohibit resale before X # of years*	N/A
Limit PE Ownership to 20% Equity Interest	N/A
For non-hospital transactions, require that private equity firms invest at least 10% of equity internally	

Prohibit PE ownership of hospitals*	
Make the moratorium on hospital ownership by private equity firms and real estate trusts passed with LD 985 permanent, adding coverage of hospital-affiliated entities (similar to those described in Connecticut SB 1507)	
Ensure PE, hedge fund or MSO are liable for financial damages if an acquired, highly leveraged facility fails or files for bankruptcy within a given time frame (5 years?) due to underfunding or asset stripping (modeled on Federal proposal: Corporate Crimes Against Health Care Act of 2024, which proposed to grant the Department of Justice (DOJ) and State Attorneys General the power to claw back all compensation (including salaries, fees, and dividends) paid to PE executives and portfolio company executives within a 10-year period before or after a facility experiences serious financial difficulties due to "looting.")	
Limit management fees to private equity and address taxation of these entities *(added during discussion)*	
Prohibit certain activities associated with failures of health care entities following private equity acquisition (consider exemption for nursing facilities)	
Require private equity firms to directly contribute to a “Maine health care quality fund" (similar to Oregon model)	

Suggestions with Broader Scope

Recommendation	***Results of vote from Nov. 17***
Reestablish statewide health care services planning	***Unanimous*** of those present (Absent was Sen. Haggan). Abstaining was Commission Montejo.

Provide more time for the Commission to consider these issues	N/A
Enact the Uniform Law Commission's Uniform Antitrust Pre-Merger Notification Act to help strengthen the AG's ability to review Antitrust issues	Committee took a "straw vote" and voted 4-8 in favor. In favor were Sen. Tipping, Rep. Boyer, Commissioners Putnoky and Ende. Opposed were Rep. Foley, Commissioners Westhoff, Maguire, Vienneau, Cheff, Prescott, Ossenfort and Poitras. Absent was Sen. Haggan. Abstaining were Commissioners Montejo and Garratt-Reed. Vote ***fails.***
Recommend use of federal grant funding through Rural Health Transformation Program to provide financial assistance to struggling rural hospitals *(as amended during discussion)*	***Unanimous*** of those present (10 Commissioners). Absent was Sen. Haggan and Commissioner Vienneau. Abstaining was Commissioner Montejo, Ende and Garratt-Reed. Vote ***passes.***
Support cooperation among hospitals to extent possible under federal law and consider re-enacting laws to allow state-issued approval of mergers and joint activities that achieve specific public health benefits determined by the State to outweigh potential harm from reduced competition (revisit repeal of Certificate of Public Accommodation law)	Commission voted 1-11 in favor. In favor was Commissioner Maguire. Opposed were Sen. Tipping, Reps. Boyer and Foley, Commissioners Westhoff, Cheff, Prescott, Putnoky, Ossenfort, Ende, Garratt-Reed and Poitras. Absent was Sen. Haggan. Abstaining was Commissioner Montejo. Vote ***fails.***
Prohibit provider non-compete clauses and non-disparagement limits in contracts	Commission voted 8-4 in favor. In favor was Sen. Tipping, Rep. Boyer, Commissioners Westhoff, Maguire, Cheff, Putnoky, Ende, Garratt-Reed. Opposed were Rep. Foley, Commissioners Prescott, Ossenfort and Poitras. Absent was Sen. Haggan and Commissioner Vienneau. Abstaining was Commissioner Montejo. Vote ***passes.***

Create a task force to study the demand for long-term care to determine the appropriate number of long-term care beds and to increase nursing home bed capacity statewide*. Allocate the necessary funding to address the bed capacity and workforce needs projected by the task force. *(also include discharge planning as amended during discussion)*	Commission voted 10-1 in favor. In favor were Sen. Tipping and Rep. Foley, Commissioners Westhoff, Maguire, Cheff, Prescott, Putnoky, Ossenfort, Ende and Poitras. Opposing was Rep. Boyer. Absent was Sen. Haggan and Commissioner Vienneau. Abstaining were Commissioners Garratt-Reed and Montejo. Vote ***passes.***
Establish a State fund for temporary financial support for long-term care facilities (nursing homes/ residential care facilities) to bridge emergency financial situation and to prevent immediate closures. Explore government backed bond programs (e.g. Maine Health & Higher Educational Facilities Authority (MHHEFA) as a lending resource for long term care like it once was.	N/A
Require MaineCare rate adequacy studies and notable investment by the Legislature	N/A
Enhance monitoring and tracking of maternity/obstetrics services in the State (although work is underway, how are we tracking this as a state? Do we want to make a specific recommendation to HCIFS on this focus area?)	N/A

FOR REVIEW 12/8

McCarthyReid, Colleen

From: McCarthyReid, Colleen
Sent: Thursday, December 4, 2025 10:02 PM
To: Chrissi Maguire
Cc: michelle.boyer@maine.gov; Vienneau, Marie; mike.tipping@maine.gov
Subject: Re: [EXTERNAL]FW: December 8 Meeting of the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Yes, we will do that. Thank you, Colleen

Get Outlook for iOS

From: Chrissi Maguire <Chrissi.maguire@mdihospital.org>
Sent: Thursday, December 4, 2025 4:53:22 PM
To: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Cc: michelle.boyer@maine.gov <michelle.boyer@maine.gov>; Vienneau, Marie <mvienneau@northernlight.org>; mike.tipping@maine.gov <mike.tipping@maine.gov>
Subject: [EXTERNAL]FW: December 8 Meeting of the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Colleen,

I received bounce back messages on my response, could you please make sure the commission member receive our thoughts on reopening closed discussion points?

Thank you,
Chrissi

Christina J. Maguire | President and Chief Executive Officer
Mount Desert Island Hospital & Birch Bay Retirement Village | 10 Wayman Ln, PO Box 8| Bar Harbor, ME 04609
Office: 207.288.5082 | Ext 1330
chrissi.maguire@mdihospital.org | www.mdihospital.org

Mission: To provide compassionate care and strengthen the health of our community by embracing tomorrow's methods and respecting time-honored values.

(1)

From: Chrissi Maguire
Sent: Thursday, December 4, 2025 4:50 PM
To: 'Boyer, Michelle' <Michelle.Boyer@legislature.maine.gov>; McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>; Cheff, Susan <scheff@pchc.com>; Foley, Robert <Robert.Foley@legislature.maine.gov>; Garratt-Reed, Meg <meg.garratt-reed@maine.gov>; Haggan, David <David.Haggan@legislature.maine.gov>; Kate Ende <kende@mainecahc.org>; Kristine Ossenfort <kristine.ossenfort@elevancehealth.com>; Langlin, Steven <Steven.Langlin@legislature.maine.gov>; Montejo, William <william.montejo@maine.gov>; Nadeau, Karen <Karen.Nadeau@legislature.maine.gov>; Prescott, Adam <aprescott@bernsteinshur.com>; Roger Poitras <rpoitras@intermed.com>; Stivers, Abby <abby.stivers@maine.gov>; Tipping, Mike <Mike.Tipping@legislature.maine.gov>; Trevor Putnoky <TPutnoky@purchaseralliance.org>; Vienneau, Marie <mvienneau@northernlight.org>; Westhoff, Angela Cole <awesthoff@mehca.org>
Subject: RE: December 8 Meeting of the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Dear Representative Boyer,

Commissioners Maguire and Vienneau representing hospitals oppose re-opening the conversation about having state review and control of service closures. The issue was extensively discussed at the second to last meeting, a vote was held and the group opposed it. Hospitals have offered an alternative in good faith regarding labor and delivery services. We lost several votes that we would love to go back and relitigate. We feel we are at the last meeting, and it simply is not fair or equitable to choose some topics for revisitation. We have a significant amount of work to do to simply make sure the report reflects what we support and what we do not. We cannot support going back and trying to substantively change a select few items.

I appreciate your consideration of our perspective on this matter.

Take care,

Christina J. Maguire | President and Chief Executive Officer
Mount Desert Island Hospital & Birch Bay Retirement Village | 10 Wayman Ln, PO Box 8| Bar Harbor, ME 04609
Office: 207.288.5082 | Ext 1330
chrissi.maguire@mdihospital.org| www.mdihospital.org

Mission: To provide compassionate care and strengthen the health of our community by embracing tomorrow's methods and respecting time-honored values.

From: Boyer, Michelle <Michelle.Boyer@legislature.maine.gov>
Sent: Wednesday, December 3, 2025 9:47 AM
To: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>; Cheff, Susan <scheff@pchc.com>; Foley, Robert <Robert.Foley@legislature.maine.gov>; Garratt-Reed, Meg <meg.garratt-reed@maine.gov>; Haggan, David <David.Haggan@legislature.maine.gov>; Kate Ende <kende@mainecahc.org>; Kristine Ossenfort

(2)

<kristine.ossenfort@elevancehealth.com>; Langlin, Steven <Steven.Langlin@legislature.maine.gov>; Chrissi Maguire <Chrissi.maguire@mdihospital.org>; Montejo, William <william.montejo@maine.gov>; Nadeau, Karen <Karen.Nadeau@legislature.maine.gov>; Prescott, Adam <aprescott@bernsteinshur.com>; Roger Poitras <rpoitras@intermed.com>; Stivers, Abby <abby.stivers@maine.gov>; Tipping, Mike <Mike.Tipping@legislature.maine.gov>; Trevor Putnoky <TPutnoky@purchaseralliance.org>; Vienneau, Marie <mvienneau@northernlight.org>; Westhoff, Angela Cole <awesthoff@mehca.org>
Subject: Re: December 8 Meeting of the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Thank you Colleen, Steve and Karen. It's exciting to see the draft report.
I did want to ask Commission members to consider discussing another topic on Monday. I feel that closure of services did not get addressed as fully as I had hoped and would like to make the following recommendation for Members to consider;

Expanding the recommendation to codify notice of closure for Newborn Care and Maternity Care to include all service closures.

Thank you,

Michelle

Michelle Boyer
Maine Representative, District 123

From: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Sent: Tuesday, December 2, 2025 3:32 PM
To: Boyer, Michelle <Michelle.Boyer@legislature.maine.gov>; Cheff, Susan <scheff@pchc.com>; Foley, Robert <Robert.Foley@legislature.maine.gov>; Garratt-Reed, Meg <meg.garratt-reed@maine.gov>; Haggan, David <David.Haggan@legislature.maine.gov>; Kate Ende <kende@mainecahc.org>; Kristine Ossenfort <kristine.ossenfort@elevancehealth.com>; Langlin, Steven <Steven.Langlin@legislature.maine.gov>; Maguire, Chrissi <chrissi.maguire@mdihospital.org>; McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>; Montejo, William <william.montejo@maine.gov>; Nadeau, Karen <Karen.Nadeau@legislature.maine.gov>; Prescott, Adam <aprescott@bernsteinshur.com>; Roger Poitras <rpoitras@intermed.com>; Stivers, Abby <abby.stivers@maine.gov>; Tipping, Mike <Mike.Tipping@legislature.maine.gov>; Trevor Putnoky <TPutnoky@purchaseralliance.org>; Vienneau, Marie <mvienneau@northernlight.org>; Westhoff, Angela Cole <awesthoff@mehca.org>
Subject: December 8 Meeting of the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

Dear Commission members,

As you know, the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State will meet on **Monday, December 8,**

2025 at 10am in Room 208 (EDU) of the Cross Office Building. *Please note that the meeting location has changed from the previous meetings.* The draft meeting agenda is attached.

For your review, we have also attached a draft of the commission's recommendations based on your November 17th meeting. And as requested, we have attached several examples of legislation from other states and NASHP model legislation that seeks to prohibit interference with the professional clinical judgement of licensed health care professionals.

We'll distribute hard copies of these materials on Monday.

If you are planning to participate in the meeting remotely, please let us know that so that we can share the necessary Zoom links with you before the meeting.

Thank you, Colleen, Steve and Karen

Colleen McCarthy Reid, Esq.
Principal Analyst
Office of Policy and Legal Analysis
Maine State Legislature
207-287-1688 (direct)

FOR REVIEW 12/8

McCarthyReid, Colleen

From: McCarthyReid, Colleen
Sent: Friday, December 5, 2025 11:43 AM
To: Boyer, Michelle; Cheff, Susan ; Foley, Robert; Garratt-Reed, Meg; Haggan, David; Kate Ende; Kristine Ossenfort; Langlin, Steven; Maguire, Chrissi; McCarthyReid, Colleen; Montejo, William; Nadeau, Karen; Prescott, Adam; Roger Poitras; Stivers, Abby; Tipping, Mike; Trevor Putnoky; Vienneau, Marie; Westhoff, Angela Cole
Subject: Fw: [EXTERNAL]Response- Commission Recommendations
Attachments: Commission Recommendations HOSPITAL Comments.docx

Dear Commission members.

For your review before Monday's meeting, please see the attached comments on the draft report recommendations forwarded at the request of Commissioners Maguire and Vienneau.

Also, please let us know if you will need the Zoom link to attend remotely. So far we understand only one member will be using Zoom. The link will be sent on Monday morning.

See you all then. Thank you, Colleen

Get Outlook for iOS

From: Chrissi Maguire <Chrissi.maguire@mdihospital.org>
Sent: Friday, December 5, 2025 11:12 AM
To: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>; Boyer, Michelle <Michelle.Boyer@legislature.maine.gov>; Tipping, Mike <Mike.Tipping@legislature.maine.gov>
Cc: Vienneau, Marie <mvienneau@northernlight.org>
Subject: [EXTERNAL]Response- Commission Recommendations

Commission Chairs and Colleen,

Please see attached the comments of Marie Vienneau and me as the hospital representatives to the Commission. We would appreciate your consideration of our concerns.

I would categorize our concerns as follows.

First, our most pressing concern is that the draft report appears to be wrong on a few topics in that it does not accurately represent where we believe the Commission was on those topics. For example, with respect to the Uniform Law Commission's model antitrust law, LD 1972 and Representative Foley's carryover legislation, the report is simply too

(5)

positive. It seemingly endorses these ideas when we explicitly took, we took votes to oppose them – and those votes are nowhere represented in the report. The introduction to the report says that the items identified in the report represent the majority vote or the consensus recommendations of the Commission. There was neither a majority vote nor a consensus recommendation for the three items listed above. These three areas are our most pressing concern.

Second, we are a bit surprised that we are here at the end of our work without working definitions of many of the things we are purporting to regulate, such as "private equity" and "management service organization" and "affordability" etc. It really is hard to develop and convey a position on items without more clarity as to what it is we're talking about. Be that as it may, the report should at least state clearly where an agreed upon definition was identified and where an agreed upon definition was not.

Third, in the three consecutive sections of the report about CON, private equity and regulatory review, we find the report confusing. The report repeatedly makes the statement that there is no regulatory process to in place today to review PE acquisitions of control. That is simply not true for projects that are subject to CON today. It is also not true for projects where a PE firm would be acquiring a Maine non-profit (and all hospitals are non-profit). Those transactions are subject to AG review viz. the AG's oversight of public charities. We feel strongly that these sections need to be clarified as to whether you are recommending further regulation on top of and in addition to CON reviews for projects currently subject to CON, or, if they are describing the need for a regulatory review process only for transactions NOT currently subject to CON.

Fourth, the presentation of the Commission's position on various items changes from section to section. Where there was a Commission vote, the vote is presented. But some votes are never presented...like the vote against the Uniform Law or the two votes against using LD 1972. Other times no vote is presented but simply a statement that the "Commission recommends" or the "Commission believes" something. We think the report should describe how that Commission belief was ascertained when there was no vote. We believe we know, but the report could be more explicit on this.

We would appreciate if these comments could be circulated to the Commission before Monday.

We would note that the comments in the attachment appear under Jeff Austin's name. Please know that we met with Mr. Austin by zoom to discuss these comments and Mr. Austin was our scribe. These comments reflect the position of Marie and myself.

We would also like to make a request. At the previous meeting, we were given a color-coded table of topics for our consideration. The Commission took votes on many of those

items. It would be extremely helpful if staff could provide to the Commission an updated copy of that table WITH the votes the Commission took reflected on the table.

Thank you.

Christina J. Maguire | President and Chief Executive Officer
Mount Desert Island Hospital & Birch Bay Retirement Village | 10 Wayman Ln, PO Box 8| Bar Harbor, ME 04609
Office: 207.288.5082 | Ext 1330
chrissi.maguire@mdihospital.org | www.mdihospital.org

Mission: To provide compassionate care and strengthen the health of our community by embracing tomorrow's methods and respecting time-honored values.

7

Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State

III. Recommendations

At the request of the chairs, individual commission members suggested potential recommendations for consideration by the full commission. The commission discussed each suggested recommendation at the November 5th meeting and took initial straw votes to gauge the commission's interest in continued discussion of each suggestion. During the November 17th meeting, the commission reviewed the results of the straw votes and focused its consideration on those potential recommendations that were of interest to all or a majority of commission members present and voting. (As the designee of the Commissioner of Health and Human Services, Commissioner Montejo abstained and did not participate in the commission's straw votes.) At the December 8th meeting, the commission reviewed the draft recommendations developed over the course of its previous meetings and agreed that this report would include only those recommendations that represented the consensus of all members or were supported by a majority of commission members. Commission members acknowledge that it was not possible to consider and understand all of implications and consequences of these recommendations. The recommendations suggested to the Legislature in this report are based on the information available to members at the time of the meetings and the commission encourages the Legislature to engage commission members and other stakeholders in additional discussion before moving forward. With these considerations in mind, the commission provides the following comments and recommendations. Unless otherwise noted, the recommendations reflect the consensus of all commission members.

Potential Changes Related to the Certificate of Need Program

The commission recommends that the Legislature consider the following changes to the Certificate of Need (CON) program.

- **Increase the monetary threshold in current law that requires CON review and approval to establish a new health care facility based on the estimated cost of the facility from $3 million as of 2012 to the 2025 amount as adjusted to reflect the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index and require that the threshold amount for review be adjusted annually based on the change in that index**

The commission recommends that the CON law be amended to increase the monetary threshold that requires CON review and approval to establish a new health care facility by adjusting the $3 million threshold to the 2025 amount as adjusted by inflation and to require that the threshold amount be adjusted annually based on the change in that index. As required by the Legislature, the commission reviewed the current CON law and noted that the law had not been updated in any significant way for many years. One area the commission focused on during its review was the monetary thresholds in current law that determine whether a particular project affecting Maine's health care delivery system and infrastructure is subject to prior review and approval by the CON program. Under the CON program, there is only one project — the establishment of a new health care facility — that is not updated to reflect any increase due to inflation or a change

in construction costs over time. Commission members believe that the monetary threshold for all types of projects subject to CON review should be updated on an annual basis.

In order to be consistent, the commission recommends that the Legislature amend the CON law so that the monetary threshold that triggers CON review prior to the establishment of a new health care facility is increased from $3 million to the 2025 adjusted amount based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index. The commission also recommends that the law be amended to required that the threshold be adjusted annually based on any changes to that index in the same way other monetary thresholds in the CON law are adjusted.

- **Codify guidance developed by the Department of Health and Human Services, Division of Licensing and Certification to require that hospitals provide at least 120-days' prior notice to the division of a permanent closure of a hospital's labor and delivery unit or of a change in the level of care a hospital provides for maternity and newborn services**

The commission recommends that the Legislature enact legislation to codify ~~guidance~~ the existing voluntary guidelines developed by the Department of Health and Human Services, Division of Licensing and Certification to require that hospitals provide at least 120 days' prior notice to the department of a hospital's permanent closure of a labor and delivery unit or of a change in the level of care a hospital provides for maternity and newborn services. During its meetings, the commission members discussed recent closures of hospital labor and delivery units in rural areas of the State and noted that prior notice of a closure provided the necessary level of transparency to the affected communities but also provided an opportunity for more careful planning to maintain access to maternity and newborn services. While current law does not require CON review and approval before a hospital terminates health care services, the department has developed guidance asking that hospitals provide at least 120 days' prior notice before closing labor and delivery units.
Commissioner Montejo shared that some hospitals were willing to provide notice as provided in the guidance, but that not all hospitals have voluntarily complied. Commissioner Vienneau commented that in some cases circumstances prevent a hospital from giving the full 120-day notice. The commission believes it is important for the department and the public to have prior notice of a closure so that the department can engage with the hospital and other health care providers to plan for the loss of these services and take appropriate steps to transition care to other providers.

- **Expand the criteria considered during a CON review to include consideration of a proposal's impact on affordability and accessibility of health care for all Maine consumers and provide any additional resources needed to implement the expanded scope of review**

The commission recommends that the CON law be amended to expand the criteria considered during review of a proposed project to include consideration of a proposal's impact on the affordability and accessibility of health care for all Maine consumers. The commission learned during its meetings that while the CON review criteria does take into account the financial impact of a proposal on the State's MaineCare program, the review process does not appear to consider and analyze how a proposal may affect health care costs for all Maine consumers,

Commented [JAA1]: First, it should be clear that there was no commission vote. The casual reader will not pick-up on the fact that no vote is referenced. This should be reflected in the report.
Second, several Commission members were reticent to support this until a clear "affordability" criteria was articulated. No such criteria has been proposed or presented, simply the concept.
Third, we thought it was clear that "access and affordability" moving forward as criteria must go forward together or not at all.

including any impact of those costs on access to services and on health insurance premiums paid by employer and individuals. The commission believes it is important that the CON review process be broadened to include consideration of how a proposal, if approved, may impact the affordability and accessibility of care: How will it affect prices for health care services? How will it increase health insurance premiums? How will it affect access to health care services? Because the purposes of CON laws are focused on controlling health care costs and determining whether new spending on health care services meets the needs of the community, the commission feels that the CON review process must consider the impact of a proposal on all Maine consumers by evaluating how it may affect the affordability and accessibility of health care overall.

Commented [JAA2]: This needs a little more work. The paragraph gives examples of what "affordability" means - prices and premiums. It does not give any examples of what accessibility means... see below.

The commission also discussed the importance of accessibility. Some projects may offer lower prices, but only to limited patient populations, such as the commercially insured, while excluding or limiting the access to vulnerable populations like Medicaid recipients and the uninsured. The Commission discussed how affordability and accessibility standards should go together.

The commission also wants to acknowledge that the members had a substantive discussion related to proposed changes to CON review of ambulatory surgical centers. One of the commission members, Rep. Foley, is the sponsor of LD 1890, An Act to Facilitate the Development of Ambulatory Surgical Facilities by Exempting Certain Facilities from the Requirement to Obtain a Certificate of Need, which has been carried over for consideration in the Second Regular Session of the 132nd Legislature. Rep. Foley discussed his intention to propose an amendment to LD 1890 and outlined the potential changes to the original bill that he is considering. It is expected that the Joint Standing Committee on Health Coverage, Insurance and Financial Services will hold a public hearing on LD 1890, as amended by Rep. Foley, in early January. Because final language for Rep. Foley's proposed amendment is still being developed, the commission decided not to put forward a specific recommendation in support of the proposed legislation. However, commission members believe it is appropriate for the Legislature to consider potential changes to the regulation of ambulatory surgical centers under the CON program at the same time as the Legislature considers the recommendations made in this report.

Commented [JAA3]: This is not an accurate representation to us. There was no consensus to suggest that IFS consider the changes. The discussion was about "acknowledgement" nothing more. This reads like the Commission was poised to support the Foley bill, but for a lack of final language. If you re-watch the video, that is not what happened. We all get it, Foley is putting forward an amendment and we all respect that. But no Commission "belief" about the substance was achieved.

Potential Changes Related to the Regulatory Oversight Over Health Care Transactions

The commission recommends that the Legislature consider the following changes related to the regulatory oversight over health care transactions.

- **Require a health care entity to provide notice to the Attorney General about a pending merger or acquisition at the same time a health care entity is required to notify the Federal Trade Commission in accordance with federal law and regulations**

The commission recommends that the Legislature enact legislation to require that a health care entity provide notice to the Attorney General about a pending merger or acquisition at the same time a health care entity is required to notify the Federal Trade Commission in accordance with

federal law and regulations. During its meetings, the commission learned from the Attorney General's Office that, while the Attorney General has independent authority to enforce antitrust laws if a pending merger or acquisition in any industry may create a monopoly, the Attorney General's Office is not notified prior to a pending merger or acquisition. Under federal law and regulations, entities are required to notify the Federal Trade Commission of pending mergers or acquisitions valued at $50 million or more as adjusted to inflation; the 2025 threshold is approximately $126.4 million. Given the increased concern about consolidation of the State's health care delivery system and the potential negative impact of private equity financing, the commission believes it is appropriate to require health care entities involved in any large mergers and acquisitions in the State to notify the Attorney General at the same time notice is provided to the Federal Trade Commission. To that end, the Uniform Law Commission has developed the Uniform Pre-Merger Notification Act to require such notices to states. The commission recommends that the Legislature enact legislation modeled on the uniform law, but specific to health care entities only, to require prior notice of pending mergers and acquisitions to the Attorney General.

- **Require that a health care entity provide notice of a transaction between a health care entity and a private equity company, hedge fund or management service organization when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or a private equity company, hedge fund or management service organization takes operational control over a health care entity**

The commission recommends that the Legislature enact legislation to require that a health care entity provide notice of a transaction between a health care entity and a private equity company, hedge fund or management service organization when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or a private equity company, hedge fund or management service organization takes operational control over a health care entity. The commission acknowledge that private equity companies have invested in Maine's health care entities but there is no mechanism for the reporting of these transactions or for the collection of data about these transactions. The commission believes that it is important for these transactions to be transparent so that State policymakers, regulators and the public know when these transactions occur and that it is necessary to enact legislation to require notice of any transaction.

- **Develop a regulatory process for review and approval of transactions when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity**

A majority[1] of the commission members recommend that the Legislature consider enacting legislation to develop a regulatory process for review and approval of transactions when a private

Commented [JAA4]: This is not right to our memory. It was voted down 8-4. There was no Commission vote to support, even if limited to just healthcare. The Commission was pretty clearly not interested in the model law as no one had reviewed it.
The consensus was simply to have a state law to say that when FTC notice is required, the AG should be given the same notice as well. The bullet heading is correct, this end sentence is not.

Commented [JAA5]: The next three bullets reference "management service organizations". There was a commission conversation about the problem of lumping MSOs in with PE. Without definitions, there are plenty of MSO-type organizations in healthcare today. The Commission even questioned whether existing health systems were being swept in here. This must be addressed. As a further comment, we're at the point of writing the report without definitions...for MSO, private equity, affordability etc. etc. Its really hard to vote not knowing what these things mean. We may all have our own different interpretations.

Commented [JAA6]: This is an overstatement. There is a mechanism if the project is subject to CON which governs acquisition or transfer of control. This proposal should be clarified that it applies to projects NOT OTHERWISE SUBJECT TO CON. Further, this proposal does not make clear to whom notice is being given.
Lastly, if the transaction involves a Maine non-profit being acquired, the Maine AG has a mechanism to review the transaction as part of its "public charities" function.

Commented [JAA7]: This wording is confusing. Is this in addition to CON for projects that are otherwise subject to CON? Is this in place of CON for such projects? Some projects have a regulatory process in place for PE acquisitions if they are subject to CON today. Is this process ONLY for non-CON projects? Clarification would be appreciated.

Commented [JAA8]: MSO issue again...

11

[1] The vote in favor of this recommendation was 7-6 of the members present and voting. In favor were Sen. Tipping, Reps. Boyer and Foley and Commissioners Cheff, Ende, Garratt-Reed and Putnoky. Opposed were Commissioners Maguire, Ossenfort, Poitras, Prescott, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity. While all commission members support a statutory requirement to provide notice to the State when these types of transactions occur, the members supporting this recommendation also believe it is important that there be a regulatory process to review and approve these transactions. These members expressed concerns about the consolidation of the State's health care delivery system and the potential negative impact of private equity financing on competition and health care costs. Members also noted that these types of transactions may also negatively impact access to health care services in the State and the quality of health care services delivered to Maine consumers. The members suggested that legislation should be enacted to authorize State regulators to provide a mechanism for the State to approve, modify or deny such transactions to address these concerns and to monitor the impact of private equity interests on Maine's health care delivery system. During the First Regular and First Special Sessions of the 132nd Legislature, the Legislature considered LD 1972, An Act to Enhance Transparency and Value in Substantial Health Care Transactions by Changing the Review and Approval Process for Those Transactions. The proposed legislation would have established a review process over certain health care transactions, such as transfers of ownership or control, among health care entities, including post-transaction oversight. This proposal may provide a starting point to help guide the development of amended legislation that focuses specifically on transactions when a private equity company, hedge fund or management service organization acquires a majority ownership interest in a health care entity or when a private equity company, hedge fund or management service organization takes operational control over a health care entity.

Commented [JAA9]: Again, this entire section should be clarified for when CON is applicable and when it is not. Also, the Task Force asked for a definition of "private equity" and none has yet been offered in this report.

Formatted: Indent: Left: 0"

Commented [JAA10]: This entire passage should be stricken. The Commission took two votes on LD 1972 - one in whole, one in part - and it was rejected (narrowly) both times. Those votes are not reflected in the report.
Why is there this tacit endorsement of LD 1972 in here? If a Commission member wants to suggest to IFS that LD 1972 be used, so be it. But this report should reflect the fact that LD 1972 was reviewed and rejected.

Potential Changes to Address Role of Private Equity Investment in Health Care

The commission recommends that the Legislature consider the following changes to address the role of private equity investment in health care.

Commented [JAA11]: We are supportive of this.

That said, these back-to-back recommendations are very confusing. They talk about reviewing a change of ownership when private equity is involved. Can someone explain the difference? What does the previous bullet cover? Does it cover projects subject to CON or not.

- **Expand the scope of CON review when there is a change in ownership of an entity to:**
  - **Review and analyze the extent to which the applicant's ownership structure involves a private equity company or real estate investment trust;**
  - **Require that the department contract with a consultant funded by the applicant to review and investigate the prior activities and conduct of the private equity company or real estate investment trust;**
  - **Authorize the department to consult with the Attorney General; and**
  - **Authorize the department to impose conditions on an applicant and to conduct subsequent reviews following a conditional approval of an applicant for CON**

Commented [JAA12]: This bullet is confusing. CON is authorized today to impose Conditions. The CMHC CON approval issued this month has several conditions. What does this bullet mean?

The commission recommends that the Legislature enact legislation to amend the scope of CON review when there is a change in ownership of a health care entity. The members recommend that there should be increased scrutiny using the existing CON process when there is a change in

ownership of a health care entity to review and analyze the extent to which the applicant's ownership structure involves a private equity company or real estate investment trust. As part of this enhanced CON review, the members recommend that the department be required to contract with a consultant funded by the CON applicant to review and investigate the prior activities and conduct of the private equity company or real estate investment trust and that the department be authorized to consult with the Attorney General and to impose conditions on an applicant, including post-transaction reviews following a conditional approval.

❖ **Prohibit any private equity company or real estate investment trust from entering any arrangement with a health care entity for the sale and leaseback of the health care entity's main campus or primary location to the private equity company or real estate investment trust**

Commented [JAA13]: The final wording is very important because there are leaseback and other such arrangements all the time.

The commission recommends that the Legislature enact legislation to prohibit any private equity company or real estate investment trust from entering any arrangement with a health care entity for the sale and leaseback of the health care entity's main campus or primary location to the private equity company or real estate investment trust. During its meetings, the commission learned that this type of practice by a private equity company or real estate investment trust contributed to the significant financial difficulties and closures of several hospitals in Massachusetts and has also led to problems in other states. The commission members believe that the main campus of a health care entity's main campus or primary location should not be used as part of a sale and leaseback arrangement because of the potential financial risk to a health care entity if it is not able to manage the debt payments required for such a transaction. The commission agrees that it is appropriate to ban this practice to protect health care entities from experiencing the financial problems caused by this practice in other states.

❖ **Prohibit any transaction between a health care entity and a private equity company or real estate investment trust in which the ratio of debt to equity is greater than 50%**

A majority[2] of the commission members recommend that the Legislature enact legislation to prohibit any transaction between a health care entity and a private equity company or real estate investment trust in which the ratio of debt to equity is greater than 50%. During its meetings, the commission noted that transactions engaged in by private equity companies and real estate investment trusts in other states with an unbalanced debt to equity ratio has led to financial failures and closures of health care entities. The commission members believe that a private equity company or real estate investment trust that seeks to invest in health care entities located

[2] The vote in favor of this recommendation was 9-4 of the members present and voting. In favor were Sen. Tipping, Rep. Boyer and Commissioners Cheff, Ende, Garratt-Reed, Ossenfort, Poitras, Prescott and Putnoky. Opposed were Rep. Foley and Commissioners Maguire, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

in Maine should be required to maintain a 50/50 ratio of debt to equity so that these transactions do not transfer significant amounts of debt to Maine health care entities that would endanger them financially and put them at risk of closure. The commission agrees that it is appropriate to prohibit transactions that have a debt-to-equity ratio greater than 50% to minimize the financial risk to Maine's health care entities.

❖ **Prohibit any person from interfering with the professional judgment or clinical decision of a licensed health care professional with independent practice authority**

A majority[3] of the commission members recommend that the Legislature enact legislation to prohibit any person from interfering with the professional judgment or clinical decision of a licensed health care professional with independent practice authority. The members supporting this recommendation expressed concern about the potential risks to the professional judgment or clinical decision of health care professionals in Maine if private equity companies or management services organizations establish management practices or policies related to staffing, billing and coding or electronic medical records that may have a negative impact on the ability of a licensed health care professional to practice independently and deliver patient care. While this does not appear to be a problem that health care professionals are currently experiencing, the members supporting this recommendation believe it is warranted to prevent a potential problem.

Commented [JAA14]: Wasn't this narrowed to clinical decisionmaking only.
Clinical decisionmaking is very different than staffing and billing. Staffing is a very standard management decision. Furthermore, carriers interfere with clinical decisionmaking all the time. Does this really apply to "any person" as the first sentence says?
This should also say that the Commission recommended that the the Boards of Licensure and others like MMA need to be involved.

Potential Recommendations with Broader Scope

The commission recommends that the Legislature consider the following recommendations with a broader scope.

❖ **Recommend that the Legislature re-establish statewide health care services planning by increasing coordination and information sharing between state agencies responsible for community health needs assessments, regional public health planning and implementation of the rural health transformation program**

The commission recommends that the Legislature enact legislation to reestablish a statewide planning process for health care services. Until its repeal in 2011, the State required the development of a statewide health plan and the Commissioner of Health and Human Services was required to consider the state health plan when making decisions during the CON review process, such as whether to approve new health care facilities, expand health care services or make capital expenditures and investments in health care facilities or medical equipment. The commission believes such a planning process is needed to improve coordination and

[3] The vote in favor of this recommendation was 7-6 of the members present and voting. In favor were Sen. Tipping and Reps. Boyer and Foley and Commissioners Ende, Garratt-Reed, Ossenfort and Putnoky. Opposed were Commissioners Maguire, Ossenfort, Poitras, Prescott, Vienneau and Westhoff. Commissioner Montejo abstained and Sen. Haggan was absent.

communication among the state agencies that make health care-related planning and regulatory decisions to ensure that the State's health care delivery system and infrastructure can meet the needs of all Maine consumers to ensure access to needed health care services. It is important that the criteria for CON review include consideration of the most current information and strategic planning for statewide public health and health needs.

- **To the maximum extent possible, recommend use of federal grant funding through the Rural Health Transformation Program to support the sustainability of rural health care providers**

The commission recommends that the State use any federal grant funding received under the federal Rural Health Transformation Program to support the sustainability of rural health providers to the maximum extent possible. During the commission's work, the Department of Health and Human Services and the Governor's Office of Policy Innovation and the Future were working to develop the State's application for the Rural Health Transformation Program. Rural hospitals in the State face increasing financial pressures to maintain services and commission members are concerned about the potential for hospital closures. The commission believes that the State needs to make every effort to ensure the sustainability of rural health care providers. The commission strongly suggests that financial assistance targeted to support the sustainability of rural health providers must be a high priority for funding disbursed under the federal Rural Health Transportation Program.

- **Prohibit provider non-compete clauses and non-disparagement clauses in contracts with licensed health care professionals**

A majority[4] of the commission members recommend that the Legislature enact legislation to prohibit provider non-compete clauses and non-disparagement clauses in contracts with licensed health care professionals. The commission noted that Maine law prohibits non-compete clauses in certain contracts with veterinarians and Sen. Tipping explained that the Legislature acted in that area because concerns were raised about a loss of access to veterinary care. The commission members believe that the ability of licensed health care professionals should not be restricted by non-compete clauses and that providers should not be restricted from speaking about the employment practices of health care providers that may have led to changes in employment, especially if the health and safety of patients may be at risk. Members suggested that physicians and other licensed health care professionals should not be restricted in the areas they practice because it is important to maintain access to care, especially in rural areas. While members recognized that employers of physicians and other health care professionals have invested significant resources in their employees, these financial factors did not persuade a majority of

[4] The vote in favor of this recommendation was 8-4 of the members present and voting. In favor were Sen. Tipping, Rep. Boyer and Commissioners Cheff, Ende, Garratt-Reed, Maguire, Putnoky and Westhoff. Opposed were Rep Foley and Commissioners Ossenfort, Poitras and Prescott. Commissioner Montejo abstained and Sen. Haggan and Commissioner Vienneau were absent.

members that employers should be able to use non-compete clauses in their contracts. The members supporting this recommendation also believe that physicians and other licensed health care professionals should be able to raise concerns about any potential negative impacts they have identified when private equity companies or management services organizations participate in the State's health care delivery system.

❖ **Recommend that the Legislature consider the creation of a task force to study the demand for long-term care to determine the appropriate number of long-term care beds and to increase nursing home bed capacity statewide**

A majority[5] of the commission members recommend that the Legislature consider the creation of a task force to study the demand for long-term care in the State to determine the appropriate number of long-term care beds that are needed and to increase the capacity for long-term care beds statewide to meet those needs. The commission members supporting this recommendation agreed that long-term care is an urgent priority given Maine's demographics. Current federal and State requirements related to long-term care and nursing home bed capacity, to reimbursement rates for care and to staffing ratios limit the ability of long-term care providers to expand or to build new facilities to meet the demand for long-term care services throughout the State. The members believe that planning for long-term care needs is unique and that policymakers should address policy questions about the sustainability of the State's long-term care infrastructure separately.

[5] The vote in favor of this recommendation was 10-1 of the members present and voting. In favor were Sen. Tipping, Rep. Foley and Commissioners Cheff, Ende, Maguire, Ossenfort, Poitras, Prescott, Putnoky and Westhoff. Opposed was Rep. Boyer. Commissioners Garratt-Reed and Montejo abstained, and Sen. Haggan and Commissioner Vienneau were absent.