

**ADDENDUM TO STAFF SUMMARY FOR DETERMINATION OF NEED  
BY THE PUBLIC HEALTH COUNCIL  
April 4, 2018**

**Introduction**

On March 5, 2018, and pursuant to 105 CMR 100.510, the Massachusetts Department of Public Health (DPH or Department) Staff for the Determination of Need (DoN) Program (Staff) forwarded to all Parties of Record its written Staff Report relative to DoN application NEWCO-17082413-TO filed on behalf of CareGroup, Inc. (“CareGroup”); Lahey Health System, Inc. (“Lahey” or “LHS”); and Seacoast Regional Health Systems, Inc. (“SRHS”), with respect to their intent to affiliate.

In accordance with the regulation, Parties of Record were authorized to submit written comments related to the Staff’s recommendation and any other conditions recommended in the Staff report.

A timely response from the Applicant and two of the Ten Taxpayer Groups (TTGs) was received.

- The TTG organized by 1199/SEIU indicated its concern that the staff report did not directly reference the written comment from TTGs who did not speak at one of the three public hearings.
  - Staff acknowledges that the language in the staff report, in which the testimony and written comment received was summarized under headings “Public Hearing” may have created the misapprehension that staff reviewed and considered only the oral testimony. In fact, staff reviewed over 140 additional pieces of written correspondence including that from the TTGs, considered all the comments, and summarized concerns as they relate to the analysis of the DoN in the staff report.
- The TTG organized by Margaret O’Malley provided a letter and re-sent copies of written comment (including letters) from others, in which it addressed its concerns relative to the impact on Addison Gilbert Hospital (AGH). Specifically they have requested that as a condition to the DoN NewCo must guarantee certain services, including 24/7 availability of emergency surgery and anesthesia are available at AGH at all times. In their request they reference the 2012 approval, by the Department of the merger of Lahey and Northeast Health Systems. The DoN in that case memorialized an existing commitment by the parties to maintain services at AGH for a period of three years.
  - The DoN regulation does not authorize the Department to require specific services at specific facilities. Rather, DoN is concerned with the provision of healthcare services in a manner that addresses quality, cost, and equity, all in the context of public health value; as well as the degree to which a proponent can provide services which improve the coordination of care. Staff believes that the conditions set out in the staff report will offer metrics and transparency needed

to assess the degree to which NewCo will have achieved its commitments under the DoN.

Staff notes that nothing in the DoN process limits the continuing responsibility of licensed hospitals and the role of DPH to ensure compliance with the terms of licensure.

- The Applicant requested a cap on the amount of the CHI contribution required in the event of a finding of non-compliance and sought clarification of the terms Condition 4.
  - Staff declines to recommend a cap on the CHI contribution however, staff has clarified Condition 4 in the staff report that is presented to the Public Health Council (PHC) for review at its April 4, 2018 meeting.
  - New language *in italics*, language removed ~~in strikethrough~~.

### **Other Conditions**

~~4. The Holder will ensure that the health status adjusted total medical expense of the NewCo system does not exceed in any calendar year the health care cost growth benchmark established under M.G.L. c. 6D, §9 for such year. The parties shall annually certify compliance with this section to the Department and provide any requested documentation necessary to assess compliance.~~

4. *In the event that the Holder is required by the Massachusetts Health Policy Commission (HPC) to develop and file a Performance Improvement Plan (PIP) pursuant to 958 CMR 10.00, then the Holder shall report to the Department that the Holder has filed the PIP and is engaged in ongoing efforts to implement the PIP consistent with 958 CMR 10.00. The Holder will timely provide all information necessary for CHIA to perform its analysis required by [M.G.L. c. 12C § 18](#) and for the HPC to determine if the Holder must develop and file a PIP. If the HPC finds the Holder has not fully complied with the requirements of the PIP implementation process, as set forth in 958 CMR 10.00, then, notwithstanding the HPC finding, the Holder shall report to the Department on why the Department should find that the Holder is still in compliance with the terms and conditions of this DoN.*

**Presented for PHC Vote:**

### **Findings and Recommendation**

Pursuant to 105 CMR 100.735, the staff recommends approval of the proposed project. Any approval is subject to 105 CMR 100.735(D)(1)(a) which provides that any DoN shall not go into effect until 30 days following HPC's completed Cost and Market Impact Review and to 105 CMR 100.735(D)(3) relative to noncompliance.

Approval shall be subject to the Standard Conditions relevant to Transfers of Ownership (see Attachment 1) and the following additional requirements which shall become conditions of the DoN:

### **Other Conditions**

1. In its first report mandated by 105 CMR 100.310(L), the Holder will provide the following:
  - a. A report that details, for each measure set out in the Assessment Tool (Attachment 4)
    - i. the baseline measures
    - ii. expected benchmarks;
    - iii. measure specifications; and
    - iv. the anticipated time to meet benchmark.

- b. A description of the current payer mix of NewCo, reported by each of the health insurance coverage categories reported on by CHIA.<sup>1</sup>
      - i. Private Commercial – Overall
      - ii. Private Commercial – MA Health Connector QHPs (Subsidized and Unsubsidized)
      - iii. MassHealth – Overall
      - iv. MassHealth – Temporary
      - v. MassHealth – Managed Care Organizations (MCO)
      - vi. Senior Care Options, One Care, PACE
      - vii. Medicare Fee-for-Service (Parts A and B)
      - viii. Medicare Advantage
    - c. A description of the then-current Network Participation of NewCo, including but not limited to the number of:
      - i. Limited network products;
      - ii. Tiered products, including NewCo’s tier level for each of these products;
      - iii. Other commercial products;
      - iv. MassHealth Fee for Service;
      - v. MassHealth Managed Care Organizations
      - vi. Medicare Fee for Service; and
      - vii. Medicare Managed Care Organizations
    - d. A description of the measures by which the Holder will define itself as a high-value network.
  2. For the duration of the reporting period mandated by 105 CMR 100.310 (L), the Holder will provide the following:
    - a. A report on the measurable achievement toward the measures sets out in Attachment 4.
    - b. Updates on the payer mix of NewCo as outlined in 1.b.
    - c. Updates on Network Participation as outlined in 1.c.
    - d. Updated information on the measures provided in 1.d.
    - e. Updates on the integration of data management systems to support access to patient records and data across the NewCo system.
    - f. A description of the operating efficiencies and savings associated with those operational efficiencies achieved in the past year and cumulatively.
  3. For the duration of the reporting period, the Holder will engage in reasonable efforts to inform the public and relevant stakeholders on the status of the affiliation including any service or other changes with likely impact on the patient panel or local communities.

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<sup>1</sup> *Enrollment Trends Technical Appendix* (Rep.). (2018, February). Retrieved February, 2018, from CHIA website: <http://www.chiamass.gov/assets/Uploads/enrollment/2018-feb/Enrollment-Trends-Technical-Appendix-.pdf>

4. In the event that the Holder is required by the Massachusetts Health Policy Commission (HPC) to develop and file a Performance Improvement Plan (PIP) pursuant to 958 CMR 10.00, then the Holder shall report to the Department that the Holder has filed the PIP and is engaged in ongoing efforts to implement the PIP consistent with 958 CMR 10.00. The Holder will timely provide all information necessary for CHIA to perform its analysis required by M.G.L. c. 12C § 18 and for the HPC to determine if the Holder must develop and file a PIP. If the HPC finds the Holder has not fully complied with the requirements of the PIP implementation process, as set forth in 958 CMR 10.00, then, notwithstanding the HPC finding, the Holder shall report to the Department on why the Department should find that the Holder is still in compliance with the terms and conditions of this DoN.
  
5. Other requirements in terms of the form, frequency and content of the reporting may be set out as contemplated in 105 CMR 100.310(L) and this information shall be updated annually in accordance with the Regulation. Pursuant to 100.310(Q), All Standard and Other Conditions attached to the Notice of Determination of Need shall remain in effect for a period of five years following completion of the project for which the Notice of Determination of Need was issued, unless otherwise expressly specified within one or more Condition. The Department reserves the right, based upon its reasonable discretion, to extend the reporting period for up to an additional five years provided notice thereof is provided to the Holder one year prior to the end of the first five year period.