



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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October 10, 2018

David Spackman, Esq.
General Counsel
Lahey Health System Inc.
41 Burlington Mall Road
Burlington, MA 01805

RE: Notice of Final Action
DoN Application No. NEWCO 17082413-TO
CareGroup Inc., Lahey Health System Inc., and Seacoast Regional Health Systems

Dear Mr. Spackman:

At their meeting of October 10, 2018, the Commissioner and the Public Health Council, acting together as the Department, voted pursuant to M.G.L. c.111 sections 51-53 and the regulation promulgated thereunder, specifically, 105 CMR 100.735, to amend an approved Notice of Determination of Need, with certain amended and additional conditions. By this vote, the Department amended the approval of the Determination of Need application through which CareGroup, Inc., Lahey Health System, Inc. and Seacoast Regional Health Systems, Inc., intend to affiliate to create Beth Israel-Lahey Health, referred to in the original Application and Notice of Determination of Need as "NewCo", which will function as the sole corporate member of each hospital replacing CareGroup Inc., Lahey Inc., and Seacoast Regional Health Systems as the exclusive parent organization.

This Notice of Final Action incorporates by reference the Staff Report, the Addendum and the Second Addendum to the Staff Report, and the Public Health Council proceedings concerning this application.

This Determination of Need application was reviewed pursuant to M.G.L. c.111 sections 51-53 and the regulation promulgated thereunder, specifically, 105 CMR 100.735. The analysis and finding is based upon a review of the materials submitted, as well as a review, pursuant to 105 CMR 100.735 (D)(1)(c) of the publicly released Final Cost and Market Impact Review (CMIR) approved by the Health Policy Commission (HPC) on September 27, 2018.

With certain Other Conditions, set forth below, the Department finds that the Applicant, now Holder has met each DoN factor and approves this Determination of Need application pursuant to 105 CMR 100.735. Approval is subject to 105 CMR 100.735(D)(3) relative to noncompliance, to the Standard

Conditions relevant to Transfers of Ownership, and additional requirements which shall become Other 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 as well as each of NewCo's subsidiary hospitals, and physician organizations, reported by each of the health insurance coverage categories reported on by the Center for Health Information and Analysis (CHIA).¹

- i. Private Commercial – Overall
- ii. Private Commercial – MA Health Connector QHPs (Subsidized and Unsubsidized)
- iii. MassHealth – Overall
- iv. MassHealth – Managed Care Organizations (MCO)
- v. MassHealth – Accountable Care Organizations (ACO)
- vi. Senior Care Options, One Care, PACE
- vii. Medicare Fee-for-Service (Parts A and B)
- viii. Medicare Advantage

c. A description of the current network participation of NewCo as well as each of NewCo's subsidiary hospitals, and physician organizations, including but not limited to the number of:

- i. Limited network products;
- ii. Tiered products, including NewCo's and each subsidiary hospitals' and physician organization's tier level for each of these products;
- iii. Other commercial products;
- iv. MassHealth Fee for Service;
- v. MassHealth Managed Care Organizations;
- vi. MassHealth Accountable Care Organizations;
- vii. Senior Care Options, One Care, PACE;
- viii. Medicare Fee for Service; and
- ix. Medicare Managed Care Organizations.

¹*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>

d. A description of the measures by which the Holder will define itself as a high-value network.

e. A description of efforts to expand or integrate care delivery; improve population health; address access including for patients with behavioral health needs; and other initiatives that are intended or expected to improve patient care, including the timeframe proposed to implement such efforts and initiatives.

f. A description of efforts and the impact of those efforts, including measurable metrics, to reduce community appropriate inpatient volume at academic medical centers within NewCo.

g. A description of efforts to identify and address barriers to access, including for patients insured by or through MassHealth.

2. For the duration of the reporting period mandated by 105 CMR 100.310 (L) and this Notice of DoN, the Holder will provide the following:

a. A report on the measurable achievement toward the measures set out in Attachment 4.

b. Updates on the payer mix of NewCo, as well as each of NewCo's subsidiary hospitals and physician organizations as outlined in 1.b.

c. Updates on network participation of NewCo, as well as each of NewCo's subsidiary hospitals and physician organizations as outlined in 1.c.

d. Updated information on the measures and efforts provided in 1.d, 1.e, and 1.f.

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.

g. A report on the impact of NewCo's efforts to address barriers to access as described in 1.g and condition 9.

h. A report detailing the Holder's implementation of and the impact of the plan submitted pursuant to condition 9.

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.

4. With its annual report outlined in condition 2, the Holder shall submit a plan detailing:
 - a. How the savings reported pursuant to condition 2.f will be used to improve the quality of patient care and access to services, particularly related to behavioral health and primary care, the portion of those savings going to such initiatives.
 - b. The Holder shall update this plan and report annually.
5. With its annual report to the Department, the Holder will notify the Department whether the Holder or any of its subsidiary entities has been referred by the Center for Health Information and Analysis (CHIA) to the Health Policy Commission (HPC) pursuant to M.G.L. c. 12C § 18 during the prior calendar year. A violation of condition 5 shall not additionally subject the Holder to the provisions of 105 CMR 100.735(D)(3).
6. In the event that CHIA refers the Holder or any of its subsidiary entities to the HPC, pursuant to M.G.L. c. 12C, §18, and CHIA determines that the weighted average Total Medical Expense (TME) for all subsidiary entities across payers is above the Cost Growth Benchmark (CGB) as determined pursuant to M.G.L. c. 6D, § 9, then the Holder shall notify the Department within 10 days of such determination and within that time shall provide to the Department a copy of any information developed by CHIA related to said determination, including material that identifies or quantifies the amount of TME for each subsidiary entity. In the event of such a determination, the Holder shall develop a community provider investment plan, subject to Department approval, that supports the Holder's behavioral health, and primary care services, and supports the Holder's subsidiary and affiliated community hospitals and community health centers. The Holder shall invest such portion of TME in excess of the CGB, as agreed to by the Department and the Holder, pursuant to the community provider investment plan. A violation of condition 6 shall not additionally subject the Holder to the provisions of 105 CMR 100.735(D)(3).
7. In the event that the Holder is required by the 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.
8. 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 Notice of DoN, and this information shall be updated annually in accordance with the Regulation. Pursuant to 100.310(Q) and this Notice of DoN, All Standard and Other Conditions attached to the Notice of Determination of Need shall remain in effect for a period of ten years following completion of the project for which the Notice of Determination of Need was issued.

9. No later than six months from the date that the transaction is complete, the Holder shall submit a proposal for review by the Department detailing how it will address the low percentage of MassHealth in its payer mix. The Holder must ensure that this proposal is developed with the direct involvement of the Holder's contracting affiliate hospitals. During the pendency of this DoN, the Holder shall make all good faith efforts to ensure that neither the Holder's MassHealth payer mix, nor that of any of the Holder's subsidiary hospitals, as that payer mix includes, but is not limited to inpatients; patients utilizing behavioral health; and primary care services, shall decrease. For the purposes of this condition 9, the Holder shall not consider the MassHealth payer mix of its contracting affiliates and/or any disproportionate share hospitals. If, during the pendency of the DoN, the Department determines that the MassHealth payer mix of the Holder or any of its subsidiary hospitals has materially decreased, then the Holder shall submit a plan to the Department detailing its plan to increase its MassHealth payer mix. The plan shall be submitted no later than six months after such time as the Department notifies the Holder that such a plan is required. The Holder shall provide with its annual report to the Department a report on implementation of said plan.

10. The Holder shall develop a plan for review and approval by the Department through which, within two years of the approval of the DoN, all employed physicians and other licensed providers who are authorized to participate in MassHealth, shall have applied to participate in MassHealth (the Plan). The Holder shall certify annually thereafter its continuing compliance with the intent of the Plan that all employed physicians and other licensed providers who are so authorized are participating in MassHealth and its contracted managed care entities.

11. In the event the HPC has not, within five years after the merger is completed, conducted or indicated it will conduct a cost and market impact review (CMIR) in accordance with M.G.L. 6D § 13 then the Department will request that HPC conduct, and the Holder shall submit to, a CMIR conducted by the HPC pursuant to its authority under M.G.L. 6D, §§ 2 and 5, to "monitor and review the impact of changes within the health care marketplace" and "protect patient access to necessary health care services". Findings contained within that CMIR shall be used by the Department to assess compliance by the Holder with the requirements of the DoN at the time the report is completed and on an on-going basis for the remainder of the reporting period.

Ongoing compliance with all conditions and all terms of the DoN is, pursuant to the Regulation, a precondition to the filing of any future DoN by the Holder.

Sincerely,

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Nora J. Mann, Esq.
Director – Determination of Need Program

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cc: Sherman Lohnes, Director, Division of Health Care Facility Licensure and Certification
Rebecca Rodman, Deputy General Counsel
Samuel Louis, Office of Health Equity
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Katherine Mills, Health Policy Commission
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