

October 30, 2023

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

Re: DON Application – Berkshire Health Systems, Inc. #BHS23072710-OL

Dear Mr. Renaud:

My name is Debbie Richardson. I am the Vice President of Talent Management at Integritus Healthcare (IHC). We are a not-for-profit provider of post-acute care, long-term healthcare, hospice and senior housing based in Massachusetts. Of the more than 2,300 residents and patients we serve in total, approximately 1000 of them reside in Berkshire County.

In June of 2023, we learned from the media that Berkshire Health Systems (BHS) announced that they would be seeking federal and state approval to re-open up to 25 inpatient beds at its North Adams Campus and designation as a Critical Access Hospital (CAH). In September, BHS filed their Determination of Need (DON) application with the Massachusetts Department of Public Health (DPH). As you might imagine, this news was received throughout northern Berkshire County with enthusiasm and excitement. Integritus Healthcare, as a long-time provider of critical post-acute, skilled nursing services in northern Berkshire County, was also pleased to hear that there would be increased access to acute care services in this part of the county where we have two skilled nursing facilities, one in North Adams and one in Williamstown.

There are two issues that were most disturbing about learning of the new designation of CAH. The first is the ability to “swing” the inpatient beds to skilled nursing home beds. Currently, there are a sufficient number of nursing home beds in northern Berkshire County to serve the population there. Adding more nursing home beds to the marketplace will lead to disruption in the market that will very likely have an unfavorable effect on the long-term viability of WTC & NAC. The utilization focus of hospital swing beds will be on Medicare and will erode margin for the northern Berkshire homes. This erosion will require corrective actions that may lead to downsizing or elimination of services at WTC and NAC. The reduction in nursing home services for this market will create access issues for residents and families of northern Berkshire that will require them to travel further for long term care and short-term rehab skilled nursing care. So, while they will have more proximate access to acute care services at NARH, they will have more distant access to nursing home service. A community health needs assessment has been requested by the Ten Tax Payer group formed under the Mass Senior Care Association.

The second issue is the workforce or lack of a workforce in not only in Berkshire County in general but more substantively in Northern Berkshire. Currently the vacancy rates for Integritus in northern Berkshire County for Certified Nursing Assistants (CNAs) and licensed nurses are 64% and 28% respectively, and 52% and 42% respectively in all of Berkshire County. For Integritus, this translates into needing to recruit 57 FTE's of certified nursing aides and 12 FTE's of licensed nurses to our nursing homes in Williamstown and North Adams and 170 FTE's of certified nursing assistants and 76 FTE's licensed nurses in our Berkshire County affiliates. Finding these individuals in this market is exacerbated by a reimbursement formula that underfunds cost. Nonetheless, we fill these vacant positions with expensive temporary nurses who charge a premium of 70% or more, costing 3.7M for these tow northern Berkshire County facilities. Neither of these models is sustainable and every day we juggle this workforce timebomb, waiting for it to explode on news of a relocation or retirement of one of our staff.

The hospital's critical access designation will provide it the ability to receive reimbursement for allowable costs plus a 1% profit. This creates an opportunity for the hospital to pay wages that exceed what nursing homes can pay based on their reimbursement which underfunds their costs. This reimbursement inequity, despite the acute and post-acute providers serving the same geography, provides the hospital an advantage in wages that could create incentives for our existing staff to migrate to the hospital for employment. This will have the effect of also destabilizing the services at WTC and NAC creating recruitment and retention challenges that exacerbate an already challenging landscape. In addition, we understand that staff may return to work at NARH from Berkshire Medical Center only creating another down stream challenge in the central Berkshire County area where we have additional (3) nursing facilities all struggling with vacant hours and filling with travel personnel.

In closing I ask that you strongly consider the points that I have outlined above and ask the following:

- That the Determination of Need program limit the number of swing beds that NARH can access and use to 2 versus the current allowable number 18.
- That a community health needs assessment to be completed.
- That a 2-year moratorium be implemented on recruiting our staff by requiring NARH to staff with travel nursing and agency personnel that are not already assigned to our facilities, so the labor market is not destabilized.

Thank you,



Debbie Richardson
Vice President Talent Management

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

Re: DON Application – Berkshire Health Systems, Inc. #BHS23072710-OL

Dear Mr. Renaud:

As Vice President of Quality Management for Integritus Healthcare, having worked in the post-acute/SNF industry since 1991. I see, and have reaped, the benefits of collaborative acute care hospital partner relationships. Neither patients or employees in the nursing home sector could do without our hospital partners. For that reason, I am in support of North Adams Regional Hospital (NARH) reopening. The benefit to our Northern Berkshire Community will be that patients have access to a community hospital for acute care in their “backyard”/locally. The staff have comfort knowing patients of our nursing homes will be triaged in the Emergency Department much closer to “home.” For that I am grateful.

What I am concerned about is the potential negative effects that the reopening of the NARH will have on our post-acute care staff and residents. First, there is the reimbursement factor. The hospital’s critical access designation will provide it the ability to receive reimbursement for allowable costs in addition to a 1% profit. We, at the SNF, are not reimbursed at a rate that even covers the cost of care or services. This creates an opportunity for the hospital, unlike the nursing home, to pay wages that exceed what we can pay. This reimbursement disparity, despite the acute and post-acute providers serving the same geography/patients, provides the hospital an advantage in wages which could create incentives for our own SNF staff to migrate to the hospital for employment. This will have the effect of also disrupting the services at our two nursing homes, Williamstown Commons and North Adams Commons creating recruitment and retention challenges that exacerbate an already challenging staffing landscape.

Second, studies show there are a sufficient number of nursing home beds in Northern Berkshire County to serve the existing population. Adding more nursing home beds to the geography will lead to disruption in the marketplace. This disruption will very likely have an unfavorable effect on the long-term viability of Williamstown Commons and North Adams Commons. The primary focus here is the utilization of hospital swing beds. The Medicare patient population will erode fiscal strength for the northern Berkshire homes. This may require corrective actions such as downsizing or elimination of services at Williamstown or North Adams Commons. If that were to occur, this will create access issues for residents and families of northern Berkshire that will require them to travel further for long term care and short-term rehab skilled nursing care. So, while they will have more proximate access to acute care services at NARH, they will have more distant access to nursing home

services. As a nurse, and a person who sees the patients/residents of our nursing homes each day, I suspect that limiting nursing home access for long term care will have a negative impact on the families/loved ones of our residents. I could not imagine traveling to Central or Southern Berkshire County to visit my loved one due to lack of nursing home beds in North County. The destabilization the inequities explained above will create could cause just this effect. For that I am requesting the following:

- 1) Requesting that the Determination of Need program limit the number of swing beds that NARH can access, and use, to 2 versus the current allowable number 18.
- 2) Impose a 2-year moratorium on recruiting our staff, and our agency staff, by requiring NARH to staff with traveling agency nursing so the labor market is not destabilized.
- 3) Ask for a community health needs assessment to be completed. A community health needs assessment has been requested by the Ten Taxpayer group formed under the Mass Senior Care Association.

Sincerely,

Jill Landis, RN, VP of Quality Management
Integritus Healthcare
75 North St
Pittsfield, MA 01201

October 25, 2023

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

Re: DON Application – Berkshire Health Systems, Inc. #BHS23072710-OL

Dear Mr. Renaud:

Good evening, Director Renaud, my name is Bill Jones, and I am the President and CEO of Integritus Healthcare f/k/a Berkshire Healthcare Systems. Integritus Healthcare is the largest not for profit provider of senior living, nursing home and hospice services in the Commonwealth of Massachusetts. We are headquartered in Pittsfield, Massachusetts but serve the entire state including communities on the North Shore, Cape Cod, South Coast, Pioneer Valley, and Berkshires. While our roots are in Berkshire County, our presence in each of these communities spans nearly 35 years of not for profit, mission-based services to those who need us. We are a values-based organization, strategic in the service line offerings we support while determined to create exceptional customer experiences that will lead to a preference for an Integritus affiliate when needed. Every day we care for and serve more than 2,300 individuals and employ more than 3,000 staff across the state.

Our mission statement speaks to the commitment and purposeful work we do each day. It states that we are a consumer centered, not-for-profit organization committed to fulfilling the health and residential needs of the population in the communities we serve. I have had the privilege of being part of this organization for thirty-five years and leading it for the past decade and I am continually impressed each day with the level of professionalism, empathy and determination brought forward by team members across the organization who have dedicated themselves to senior care.

In late June of this year Berkshire Health Systems (BHS) announced that they would be seeking federal and state approval to re-open up to 25 inpatient beds at its North Adams Campus and designation as a Critical Access Hospital (CAH). In September, BHS filed their Determination of Need (DON) application with the Massachusetts Department of Public Health (DPH). As you might imagine, this news was received throughout northern Berkshire County with enthusiasm

and excitement. Integritus Healthcare, as a long-time provider of critical post-acute, skilled nursing services in northern Berkshire County, was also pleased to hear that there would be increased access to acute care services in this part of the county.

Integritus' relationship with BHS goes back more than 30 years and the relationship is one that has been built on collaboration and a mutual desire to serve the health and residential needs of the residents of Berkshire County.

There are numerous programs and initiatives that both organizations have joined forces on that have created exceptional outcomes in care and services. Examples include behavioral health, chronic ventilator care, telehealth, geriatric psychiatric services, education, shared pandemic staffing plans, to name but a few. This partnership and shared commitment to Berkshire County has been a source of strength, innovation, and success for both organizations.

Integritus Healthcare has conveyed its support and gratitude to BHS leadership and elected officials who have collectively reinvigorated North Adams Regional Hospital (NARH). At the same time, we have noted that healthcare regulatory and reimbursement policy often comes with nuances that are invariably complex. That is certainly the case here as well and we have concerns for their implications on the continuum of care, including nursing homes.

Those complexities reveal themselves in the DON filing. By regulatory policy BHS will be able to utilize a component of the Critical Access Hospital designation to have 18 medical/surgical beds certified for use as swing beds for subacute care. This means that BHS could effectively use up to 18 of its beds at North Adams Regional Hospital as nursing home beds in accordance with CAH policy and guidelines. The CAH policy guidelines also entitle BHS to receive reimbursement for their allowable costs from Medicare and Medicaid plus a 1% profit. Nursing homes throughout the Berkshire's including our two nursing homes in Williamstown and North Adams will not be entitled to this reimbursement benefit. In fact, in stark contrast these two nursing homes costs are not reimbursed fully by Medicaid. In the year ended December 31, 2022, both nursing homes costs were underfunded by \$4.7M. For the six Integritus nursing homes throughout Berkshire County, their combined costs were underfunded by \$13.3M.

Think about that for a minute, one CAH nursing home will be reimbursed cost plus a 1% profit, while the two other nursing homes in the same market will be reimbursed less than its cost. In addition, the CAH nursing home will not be regulated nor surveyed in the same way as the two other nursing homes. This disparity must be corrected. That can be accomplished by extending the critical access designation to the community the CAH serves such that all inpatient providers (hospitals and nursing homes) within a critical access community should be able to compete on a level playing field including the same critical access reimbursement system. Without that, the combination of this enhanced reimbursement coupled with the ability to swing beds to use as subacute nursing home beds presents a very real threat to the viability of the continuum including our two nursing homes in northern Berkshire County, Williamstown Commons (WTC) and North Adams Commons (NAC).

Williamstown Commons and North Adams Commons have been providing short term rehabilitation and long-term care services to the residents of northern Berkshire County for 59 years. They are American Healthcare Association National Bronze and Silver Quality Award recipients and are currently rated as 3 and 4 stars by CMS. They are “home” for approximately 225 frail, medically complex residents who come to us from the surrounding towns in this part of the state. Families rely on us to provide the care that they no longer can in a home environment. And those who only need our services for a short time to recover from an illness or surgery depend on being able to access these services near where their homes, families and loved ones are. The social aspect of their recovery is equally important to their clinical care. Making visitation and social connections convenient is an important element to the overall wellness of all our residents. Access to this part of the healthcare continuum is critical to the residents of this rural part of Massachusetts.

They do not want to go to Bennington, Vermont or Pittsfield for their nursing home care. In fact, they repeatedly tell us of their preference for receiving their nursing home care in northern Berkshire County. In our 2023 customer satisfaction surveys administered by a third-party vendor called “Align”, residents and families turned out in significant numbers to rate our nursing homes on the question “Would you recommend this facility to others.” For Williamstown Commons, 72% of residents and families responded while 79% responded at North Adams. For Williamstown, 87% of the respondents answered Good to Excellent and at North Adams 90% of the respondents rated Good to Excellent on the question. Our families and residents are receiving the care and customer experiences that underscore the tremendous value of these nursing homes in the quality of their care.

As previously noted, the Medicaid program underfunds costs for indigent, long term care residents who reside in nursing homes across the Commonwealth and in Berkshire County. Integrity, as do most providers of skilled nursing services, relies on Medicare revenues from short-stay patients in nursing homes to pay that short fall. We believe that the swing bed policy will shift Medicare revenues away from the continuum of care including our two nursing homes in northern Berkshire County. In conjunction with the reimbursement disadvantage I previously noted, I am concerned about our ability to support and maintain access to long term care and short-term rehabilitation services in northern Berkshire County.

An associated concern is the shortage of nursing personnel and ancillary support staff throughout Berkshire County and especially in northern Berkshire County. Currently the vacancy rates in northern Berkshire County for certified nursing aides (CNAs) and licensed nurses are 64% and 28% respectively, and 52% and 42% respectively in all of Berkshire County. For Integrity, this translates into needing to recruit 57 FTE’s of certified nursing aides and 12 FTE’s of licensed nurses to our nursing homes in Williamstown and North Adams and 170 FTE’s of certified nursing aides and 76 FTE’s licensed nurses in our Berkshire County affiliates.

Finding these individuals in this market is exacerbated by a reimbursement formula that underfunds cost. Nonetheless, we fill these vacant positions with expensive temporary nurses

and traveling nurses from other states who charge a premium of 70% or more with a cost of \$3.7M for the two northern Berkshire nursing homes. Neither of these models is sustainable and every day we juggle this workforce timebomb, waiting for it to explode on news of a relocation or retirement of one of our staff. Thinking of our long-term future, we are making considerable efforts to invest in the pipeline for CNAs and licensed staff (most notably our collaboration with McCann Technical School and our program to pay for class time as worked time, our support of the new MCLA nursing program and our long-term partnership with Berkshire Community College). These efforts take money and time to bear fruit and it is unclear how we will gain traction from these and other strategic efforts to recruit and retain staff in an environment that includes critical access designation only to the new acute care hospital. Frankly, we expect that this new paradigm will likely provide an incentive for existing Integritus staff to migrate to the CAH.

This labor attrition, coupled with the revenue deficit, will likely undermine our ability to deliver the high-quality skilled nursing care that the community has relied on for so many years.

As we have discussed, Integritus Healthcare is not motivated to stop the reopening of NARH. In numerous meetings over the course of the summer and fall we have conveyed that to BHS leadership along with our concerns. In addition, we have shared the scope of our advocacy efforts. As we know healthcare is more than just acute care. It includes the broader continuum of physicians, home care, hospice, outpatient services and skilled nursing. Our advocacy around these issues is motivated by a desire to strengthen the entire continuum of healthcare in all of Berkshire County including northern Berkshire County.

Thank you for your time this evening and for the opportunity to offer our testimony. It is our hope that the public hearing process will lead to further discussion and solutions that ensure that the broader healthcare continuum is not destabilized as a result of critical access policy.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Jones".

William C. Jones
President & CEO

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

RE: DoN Application – Berkshire Health Systems, Inc. # BHS-23072710-OL

Thank you, Director Renaud, for allowing me the opportunity to share with you my testimony at this public hearing. My name is Jackie Felix. I am a resident of northern Berkshire County. I reside in North Adams and my husband Bob is a resident of Williamstown Commons Nursing & Rehabilitation Center.

Bob and I have been married for 25 years. We are both in our 70's and have lived in the Williamstown-North Adams area for most of our life. As we aged it became clear that Bob was struggling with a number of health-related issues. He was a vibrant and engaged man who enjoyed outdoor activities as well as time with friends and family. He has always had an easy, wonderful smile. He enjoys giving and receiving hugs. He is a real joy.

When Bob's Alzheimer's disease progressed, I became increasingly concerned about his safety and how I would be able to care for him. He would run away, or elope, from our home and keeping him safe became my biggest priority. I tried for a long time to keep him at home with me, but eventually it became more than I could safely handle.

I always told myself that I would never put Bob in a nursing home. I think many people tell themselves that. In fairness, it isn't where people aspire to be. As humans we convince ourselves that we are invincible. We don't want to accept our aging or infirmities or reliance on others. So, we convince ourselves that we can take care of it all and make it all work.

I am here to say that this way of thinking can be flawed. We don't do ourselves any favors when we deny that we may need help along the way, and we may need help for an extended period of time like months and years, instead of a few days. Much as I would have loved to care for my husband in our own home, it was not possible. His care needs were too great, and his safety was a constant risk.

When he suffered a stroke in late 2021 on top of his existing diagnoses of Parkinson's and Alzheimer's it became evident that Bob needed more care, and a team of caregivers. Upon his discharge from the hospital, he was sent to a nursing home in Pittsfield that was 26 miles away from where we live and a 50-minute drive one way. I visited him each day. The drive was not only very time consuming, but I returned home each evening exhausted. I could not continue with his placement in that geography – a placement that had been facilitated by his doctor at the hospital.

That's when I worked to get Bob moved to Williamstown Commons Nursing & Rehabilitation Center. This nursing home is 5 miles from my home and now Bob is 10 minutes away from me. I can get to him easily, and I am able to see him whenever I like, or need to, each day.

I can't say enough about this local healthcare resource. I have been so happy with our experience at Williamstown Commons. The staff there treat their residents and families like their own family. When I walk through the halls with our dog Libby, I see staff hugging residents, smiling at them, dancing and doing activities with them. They treat these individuals with dignity, respect, and love. They treat them like they were their grandparents.

Residents, even those with no frequent visitors or local family members, always look clean, well groomed, well nourished, and well cared for. I can stop by the center at any time, on any day, and I consistently see the same thing – engaged, happy, loved residents.

The residents of northern Berkshire County are happy to know that the North Adams Regional Hospital will be returning services to our region. That is truly good news. What I wonder about is if the community understands the impact the reinvigoration of the hospital will have to other healthcare services in this region. This includes nursing homes.

The ability of the hospital to swing medical-surgical beds to nursing home beds has the potential to destabilize nursing homes in this area. If these facilities cannot sustain themselves due to swing beds it will create an access issue for

residents of northern Berkshire County. It will require them to travel almost an hour away to see their loved ones on a regular basis.

I worry that most people won't realize the importance of nursing home access until it is too late and these services are either significantly reduced or not present at all in our communities in Northern Berkshire County. We need these centers to survive and thrive so that others, like Bob and me, can be near each other even if we can't be together in our home.

The thought of not being able to see my husband each day or having to travel a great distance in order to do so is heartbreaking and devastating to me. I know how hard it was for me to do that back in 2021 and I hope I never have to repeat that experience. There is no easy, convenient way to get to other parts of the county for these services, and if they go away the community will suffer as a result of it.

I can put my head down each night and sleep peacefully knowing Bob is safe and well cared for. It also gives me peace of mind knowing that if I need to get to him, I can do so quickly without worry.

I ask you to consider measures designed to help stabilize all parts of healthcare services in northern Berkshire County including nursing homes. Please do not put these important, vital centers at risk.

Thank you very much for your time and for listening to my testimony. I am grateful.

Respectfully submitted,
Jackie Felix

[REDACTED]
[REDACTED]

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

RE: DoN Application – Berkshire Health Systems, Inc. # BHS-23072710-OL

Thank you, Director Renaud, for allowing me the opportunity to share with you my testimony at this public hearing. My name is Christina Hall. I am a nurse and a resident of northern Berkshire County. I have worked at North Adams Commons Nursing & Rehabilitation Center for the past year but have worked in a number of other settings in Berkshire County caring for our community throughout my career. Growing up, my father was in the military, and we moved around a bit. When I was 16 years old, we returned to North Adams which is where my mother is originally from. Much of my immediate family, such as siblings and parents, live in northern Berkshire County.

My mother, who is in her 60s, has had health challenges for a few years. A recent exacerbation of one of her health issues required that she have a brief stay in a nursing home for short term rehabilitation. The goal was to build back her strength so she could return home safely. Fortunately, she was able to admit to North Adams Commons for this part of her care journey.

There were a number of reasons why my mother, and my family, chose North Adams Commons for her care. It was based on the reputation for quality care, the compassion of the people who work in this facility and the fact that it would allow my mother to be close to home and family while she recuperated.

Her experience was excellent and within 16 days she was able to safely discharge home. If you were to ask her, and my family, what her experience was like you would hear about how staff treated her with dignity and respect; they listened to her; and they were quick to resolve any issues that might present. We know that if she needs care in the future, we would be very comfortable in having her return to North Adams Commons.

I worked in health care during the pandemic, and I saw the devastating effect that social isolation from family members had on patients and society as a whole. It underscored to me how important it is to be near our loved ones, and to have access to them when we are unwell and needing their love and support. The availability of local healthcare resources is so important to all of us.

For many older, frailer individuals local nursing homes become their home. It may not be where they thought they would be, but for many I see that it is where they can continue to live rich, meaningful lives. These are lives filled with friendships, connections to caregivers that become like family, and quality time spent with their family members and loved ones. If access to a local nursing home was limited, or non-existent, many families would have great difficulty getting to see their loved ones regularly.

While I am happy to know that North Adams Regional Hospital will be returning as a critical access hospital, I ask that you consider the negative effect that the use of swing beds will have on local nursing homes. If their viability is impacted, it could mean closure. It will also create significant hardship for elders in our community who have no other options and can't travel long distances to see their loved one. Access is key to healthcare, and while access to an acute care hospital is important, of equal importance is access to all parts of healthcare including nursing homes.

I ask you to consider limiting the swing bed utilization in order to preserve and protect valuable nursing homes in our rural community. Our community needs them. Thank you for your time.

Respectfully submitted,
Christina Hall

[REDACTED]

[REDACTED]

From: [Rank Dane A.](#)
To: [DPH-DL - DoN Program](#)
Cc: [Lausier Nicholas](#); [Bragdon Tricia](#); [Meehan Colleen](#)
Subject: DON Application – Berkshire Health Systems, Inc. #BHS23072710-OL
Date: Tuesday, October 31, 2023 2:15:19 PM
Attachments: [Outlook-urmz3wg3.png](#)

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Dennis Renaud, Program Director

Determination of Need Program

Massachusetts Department of Public Health

67 Forest Street

Marlborough, MA 01752

October 31st, 2023

Dear Mr. Renaud,

Please accept my testimony regarding the Determination of Need for the NARH swing bed program in the community.

My name is Dane Rank, I have lived in the area for over 15 years, and was a 14 year Administrator at Thompson House, a nursing home in Brattleboro Vermont. I am very familiar with this Nursing Home market, and the issues we all face in this region. We struggle for patients to fill our beds, and utilize agency staff to fill our Nursing needs; this is an unsustainable predicament.

I am now the Administrator for Charlene Manor, a 123 - bed facility in Greenfield. The Pioneer Valley is a very over-bedded region for Nursing Home beds, and an extended swing bed program would both cost much more per patient, and take staff and patients from good, local facilities that specialize in this type of care already. There is no current need for extra beds. A community needs assessment would recognize this situation easily. For this reason, I ask that you will limit the number of swing beds that NARH can use to 2 instead of the 18 currently allowed.

The bleeding of staff from local facilities to staff these new beds will be catastrophic. At the very least, there should be an imposition of at least a 2 - year moratorium on recruiting our own staff away from our already hard-to-staff facilities.

Thank you very much for your commitment to our community's elders. I hope that you will consider this while understanding the negative affect of this opening on the post-acute care community that is already here, serving the same patients.

**Very Sincerely,
Dane Rank, Administrator**

Charlene Manor
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Because YOU are a Part of US



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The Massachusetts House of Representatives
State Representative Smitty Pignatelli
3rd Berkshire District
State House Room 166, Boston MA 02133-1053

October 31st, 2023

Department of Public Health
Office of the Commissioner
250 Washington St,
Boston, MA 02108

Dear Commissioner Goldstein,

I write this letter to express my support for the Berkshire Health Systems' North Adams Regional Hospital Project. I have spent my legislative career working to highlight the unique needs of the rural communities in my district and throughout Berkshire County and Western MA. From my experience, I am certain this project will have a great impact on healthcare access across the region.

I'm particularly pleased to be able to highlight the work of the Berkshire Health Systems' existing Critical Access Hospital located in the heart of my district-- Fairview Hospital in Great Barrington. Fairview is a true gem—beloved by the community and by regulators alike. They recently were recognized as one of the top 20 Critical Access Hospitals in the country by the Chartis Center for Rural Health and consistently earn top marks with a 5-star rating from CMS for quality patient care.

Berkshire Health Systems is an excellent community partner and has clearly demonstrated, through their work at Fairview, that they have what it takes to run an exceptional Critical Access Facility that is attuned to the needs of both patients and the community. Our Berkshire residents in North County deserve to have this same level of access, attention, and quality care. I am proud to support Berkshire Health Systems and their proposal to bring a Critical Access Hospital to Northern Berkshire.

Sincerely,

A handwritten signature in black ink that reads "Smitty" in a cursive, stylized script.

Smitty Pignatelli
State Representative
3rd Berkshire District
Smitty.Pignatelli@mahouse.gov



October 31, 2023

Dennis Renaud, Program Director
Determination of Need Program
Massachusetts Department of Public Health
67 Forest Street
Marlborough, MA 01752

Dear Mr. Renaud:

I am writing on behalf of Berkshire Health Systems, Inc. ("BHS" or the "Applicant") to provide additional information to supplement the oral testimony that I gave during the October 25, 2023, public hearing (the "Hearing") regarding DON# BHS-23072710-OL, the Determination of Need application for an original license submitted by Berkshire Health Systems, Inc. on September 1, 2023 (the "Application").

These written remarks are intended to offer important context and commentary regarding several issues. First, I want to highlight the overwhelming support for the project that came out during the Hearing. Every speaker expressed general support for the project's primary purpose of returning inpatient hospital care to North Adams and recognized the important need this project seeks to address.

Second, I would like to respond to comments and proposed conditions brought forward from a relative few speakers associated with a Ten Taxpayer Group formed by the Massachusetts Senior Care Association (the "MSCA TTG"). In general, the MSCA TTG speakers raised questions about the impact of designation of all 18 beds for which the Applicant seeks original licensure as "swing beds" by the Centers for Medicare and Medicaid Services ("CMS"). These speakers also expressed general concerns about the ability of local skilled nursing facilities ("SNF"s) to compete for post-acute patients and staff and requested the following:

1. The number of beds authorized for swing bed designation be capped at two beds;
2. An agreement that the Applicant not actively solicit clinical or ancillary staff directly from SNFs located within a 25-mile radius of the hospital for two years;
3. That some form of cost market impact review be conducted in connection with the Application.

(collectively, the "MSCA Proposed Conditions").

Though the MSCA TTG raised valid public policy questions about skilled nursing reimbursement rates and healthcare workforce recruitment, their questions and proposed conditions have wide-ranging implications that cannot be appropriately addressed through a single DoN application.

As further explained below, BHS asserts that the DPH should approve the BHS DoN Application without the MSCA-Requested Conditions to Establish a New Critical Access Hospital in North Adams.

I. Financial Pressures Facing SNFs are a Real but Distinct Issue Which Should Be Considered Outside the Determination of Need Process

1) BHS Has an Interest in Preserving Access to Post-Acute Care in Northern Berkshire County

Since 1987, BHS has been a longtime partner and supporter of the work that MSCA TTG member Integritus (formerly known as Berkshire Healthcare Systems) has carried out in our community. For more than three decades, BHS and Integritus have effectively partnered in numerous clinical areas from behavioral health to respiratory programs to antibiotic stewardship. The opportunities BHS and Integritus have pursued together have created a solid foundation for long-term care, senior housing, and hospice and palliative care in Berkshire County.

Any instability in the healthcare continuum directly harms BHS and its acute care hospitals that face difficult throughput challenges when availability of skilled nursing beds is limited (see Section II(1)(C) below for further discussion on this point). BHS views the flexibility of CMS designated swing beds as a valuable complement to existing post-acute services in Northern Berkshire that it anticipates will help address current throughput issues rather than as a threat to patient access to those important services.

The complementary nature of the swing bed designation for a Critical Access Hospital is demonstrated by the co-existence of swing beds and post-acute services in other communities within the Commonwealth. **Particularly, I would like to emphasize that Integritus operates two skilled nursing facilities in close proximity to Fairview Hospital, BHS's Critical Access Hospital in Great Barrington, MA, which is licensed for up to 25 swing beds, with no prior complaint or notable impact on recruitment.** (Integritus's Fairview Commons is less than three miles away from the hospital, and its Kimball Farms is about 12 miles away.) The two other Critical Access Hospitals in Massachusetts (Athol Hospital and Martha's Vineyard Hospital), which both have swing bed capacity, also are located in close proximity to skilled nursing facilities, with no notable detriments to patient care or competition.

Drawing from our years of experience with Integritus and our understanding of, and interest in protecting, the full spectrum of the healthcare market in Berkshire County, BHS has been and will continue to be an advocate for strong options for skilled nursing care in our community that preserve patient access, choice, and experience. BHS would gladly support raising awareness about the particular funding challenges and financial pressures facing SNFs, especially regarding Medicaid reimbursement rates.

2) BHS Has Demonstrated the Need and Public Health Value of the Project and the MSCA Proposed Conditions are Outside the Scope of the Determination of Need Process

The Applicant appreciates the important role the DoN program plays in the Massachusetts healthcare regulatory scheme to ensure that health care resources are made reasonably available to every person within the Commonwealth (105 CMR 100.001). The DoN Program provides a framework for review of specific projects to determine compliance with six specific review factors (105 CMR 100.210), including demonstrating sufficient need for the project by the Applicant's existing and projected patient panel, as well as adding measurable public health value.

It is important to note that even the MSCA TTG itself, by its stated support for the project during the Hearing, acknowledging both the need and public health value of this project.

Nonetheless, rather than seeking to build public or political support for legislative or other solutions to industry wide reimbursement complaints that have been a longstanding priority of the skilled nursing industry, the MSCA TTG has asked to have conditions imposed on the DoN approval that would undermine the necessary flexibility that is an essential feature of a Critical Access Hospital.

While the Department, pursuant to 105 CMR 100.360, may impose conditions on its DoN approval beyond those mandatory under 105 CMR 100.360, these conditions must be reasonably related to the scope of the project and consistent with the objectives of the DoN program.

The MSCA Proposed Conditions are neither related to the scope of the project nor the objectives of the DoN program. I would like to reinforce that the Applicant's request is for one of Determination of Need for the original licensure of a hospital, not the opening of a SNF or even the eligibility for a federal CMS designation. The imposition of conditions on the basis of these generic issues regarding long-term care reimbursement and workforce availability would be highly unusual and ultimately serve to restrict the Applicant's operational ability to effectively function as a Critical Access Hospital.

Though BHS agrees that the reimbursement rate of SNFs and the staffing shortages in the healthcare workforce are important public policy questions, they have wide-ranging implications that cannot be appropriately addressed through conditions imposed in the context of a single DoN application.

3) The MSCA Request for Further Review of Cost or Market Impacts Is Not Appropriate

During the Hearing, an attorney speaking on behalf of the MSCA suggested that the DPH should require some additional level of cost or market review in connection with the

Application. It was not clear to the Applicant whether the attorney was suggesting that the Health Policy Commission should conduct a Cost Market Impact Review or that the DPH should require an independent cost-analysis pursuant to 104 CMR 100.405.

The Health Policy Commission engages in comprehensive reviews called Cost and Market Impact Reviews (“CMIR”) in connection with certain Material Changes as defined in 958 CMR 7.02. There is no Material Change associated with this Application so the CMIR process is not applicable and any suggestion that the Health Policy Commission should conduct a CMIR is inappropriate in this case.

With respect to an independent cost-analysis pursuant to 104 CMR 100.405, the Determination of Need regulations provide that such request must be made no later than 30 days following the Filing Date. That time has passed.

In any event, as mentioned above, the Applicant has already demonstrated the need and public health value of this project through its Application. Further cost or market review is unnecessary.

II. DPH Should Approve the DoN Application for Original Licensure of a New Critical Access Hospital in North Adams without the MSCA-Requested Conditions

Ultimately, BHS’s goal in opening the new North Adams Regional Hospital is to run an acute care facility. The Application does not seek to create a competing “nursing home,” as the TTG testimony has suggested. All of BHS’s planning and financial projections have been based on the assumption that the Critical Access Hospital will have anywhere from 6-15 patients on average who need acute-care support, a figure derived from BHS’s real experience running a Critical Access Hospital at Fairview in Great Barrington. As part of its Application, BHS noted its intent to also pursue CMS swing bed designation for the flexibility, value, and choice that swing beds can offer our community. We firmly believe that limiting the use of swing beds at the new North Adams Regional Hospital would deprive the community of a valuable option for delivering healthcare and that opening a Critical Access Hospital offers new opportunities for workforce development through new acute care positions that have a net positive impact on our community.

1) Limiting the Use of Swing Beds Would Deprive the Community of a Valuable Option for Delivering Healthcare

BHS is opposed to the MSCA TTG’s proposal to limit the number of swing beds at the proposed Critical Access Hospital. Though I expect this will be clear from testimony submitted by others, I think it is important to emphasize the numerous ways in which Critical Access Hospitals and swing beds allow for quality care and create value for patients, families, and the community, including government stakeholders.

Specifically, swing beds:

- A) Add value to the healthcare experience,
- B) Support personalized patient care,
- C) Help to address issues of patient throughput, and
- D) Enhance the healthcare continuum.

In order to make the most of these important benefits for patients and for public health, it is important that the new Critical Access Hospital maintain flexibility. This will enable BHS to accommodate ebbs and flows in patient volume and acuity. It is also important for BHS to be able to adapt to fluid community need and design services in the best possible way for its patients. Limiting the number of swing beds at the Critical Access Hospital would essentially be removing an important tool from the toolbox.

A) Critical Access Hospital Swing Beds Add Value to the Healthcare Experience

Critical Access Hospitals provide an essential lifeline of government funding to rural communities. In creating the program, CMS specifically included the cost-based reimbursement mechanism in order to offer rural hospitals better opportunities for financial sustainability. If CMS determines that a rural area needs a hospital and merits a Critical Access Hospital designation, that designation comes with the reimbursement mechanism required to maintain services in that location, regardless of how many patients do or do not use the facility.

Stroudwater Associates, on two separate occasions in 2014 and 2023, produced independent reports based on detailed financial and market data to produce recommendations on both the need and feasibility of maintaining inpatient services in North Adams. In both reports, Stroudwater emphasized that the only feasible mechanism for sustaining inpatient services in Northern Berkshire County would be through a Critical Access Hospital designation from CMS.

The suggestion by the MSCA TTG that BHS seeks to profit from the existence of “lucrative swing beds” at the expense of local SNFs simply ignores the core staffing model that hospital medicine is built on and fails to understand the complexities and nuances of federal reimbursement programs. Having a certain number of employees and services on “stand-by,” also known as “core staffing” is key to the successful operation of a Critical Access Hospital and is recognized in the CMS cost-based reimbursement rate. Caring for patients in swing bed status at a Critical Access Hospital actually increases the efficiency of hospital operations and has the impact of **lowering** the cost of care.

For example, the federal government reimburses Critical Access Hospitals for the salary of two nurses, who can each care for up to 5 patients at a time. The two-nurse requirement and the payment remain the same whether there are 6 patients or 10 patients. Increasing the number of patients in beds by adding swing capacity without increasing staffing actually makes the hospital more efficient and the cost to the government per patient encounter decreases.

The MSCA TTG's claims regarding Critical Access Hospital reimbursement rates also fail to consider that stated federal reimbursement rates are subject to certain terms and conditions that modify the final rate received. Specifically, Critical Access Hospitals are not fully funded by CMS—rather, they are reimbursed on a cost basis for certain “allowable costs,” which include services like nursing and support costs, but exclude all provider costs, such as anesthesiologists and hospitalists. Furthermore, Critical Access Hospitals are currently reduced by two percent in reimbursement due to federal sequestration. We fully appreciate that, through the Critical Access Hospital designation, CMS offers a pathway to sustainability for rural healthcare, but would like to emphasize that the federal reimbursement model does not offer the type of “lucrative,” profit-driven opportunity suggested by the MSCA TTG.

B) Critical Access Hospital Swing Beds Support Personalized Patient Care

Since 2004, BHS has cared for patients in swing bed status at Fairview Hospital. Our nearly 30 years of experience has given us insight into the value that swing beds provide to patients, family, and the community, and we are confident that the northern Berkshire Community will benefit from this resource just as the Southern Berkshire community has.

Swing beds offer a transitional or “bridge” opportunity to patients who no longer require acute-level care, but who are not yet ready to return home. Under CMS regulations, swing bed patients can receive various types of skilled rehabilitation (physical therapy, occupational therapy, speech therapy, respiratory therapy) as well as IV infusions, post-surgical care, wound care, nutrition education, disease management education, and social services. Because the swing beds are located within the Critical Access Hospital setting that is governed by length-of-stay requirements, the nature of their stay is short-term. At Fairview, swing patient length of stay is usually between 6 and 12 days.

The decision to continue to address the sub-acute needs of a patient by transitioning their status from an acute care bed to a swing bed is one that must be made jointly by the care team, who evaluates the patient's needs and capabilities. The final decision, however, is ultimately made by the patient themselves, who always has a choice to select their preferred care facility, be it a traditional skilled nursing facility or a swing bed. Without a swing-bed option at the New North Adams Regional Hospital, the only SNF-level care and rehabilitation offered in the Northern Berkshire region are the two facilities owned by MSCA TTG member Integritus.

Patients and families are often glad to support the transition to swing bed status, which does not represent a change in the patient's physical location, but only in the status and level of care received. Swing bed patients experience a seamless transition from acute to post-acute care, while continuing to have the assurance of knowing that they are being cared for within an accredited hospital setting by a 24-hour team of skilled physicians, nurses, and therapists and access to diagnostic services, as needed. They have the convenience of being close to home with family and loved ones and the comfort and familiarity of a small community hospital atmosphere.

One of the key requirements for being admitted as a swing patient is that the patient will be able to learn about taking care of themselves and/or make progress toward recovering strength and mobility so that they can return home. For example, patients who have multiple comorbidities who receive a diabetes diagnosis during their stay as an acute inpatient can spend additional time receiving sub-acute care from skilled registered nurses who can provide critical education about how to manage their new diagnosis, including teaching how to test their blood sugar or administer insulin. Patients who are deconditioned following long periods of illness are also good candidates for swing services—specifically personalized one-on-one physical therapy and rehabilitation.

The other category of patient who benefits particularly from swing bed services are patients who are receiving IV infusions of antibiotics. For patients suffering a serious infection, such as osteomyelitis, an ongoing course of significant antibiotics must be administered at regular intervals, requiring skilled nursing intervention. Often, these patients have a unique constellation of healthcare needs that cannot be easily managed in a traditional SNF.

C) Critical Access Hospital Swing Beds Address Patient Throughput Issues

As you many know, hospitals in Massachusetts and across the nation are facing increased patient wait-times and significant access issues due to major problems with patient throughput, which are largely due to the inability to discharge patients from hospital beds to post-acute care facilities like nursing homes or rehabilitation hospitals. We believe that the availability of swing beds at North Adams Regional Hospital could help to address this crisis by providing convenient, available flexible SNF care that aligns with patient needs.

A report by the Massachusetts Health and Hospital Association, issued in June 2023, details the many complexities of this crisis and describes this backup as “a clogged healthcare system that cannot best serve the commonwealth.” The report also describes how the backup in discharges means that patients requiring hospital-level of care must often wait in the emergency department or other units until acute-care beds become available.

In the Western MA region, an average of 131 patients were waiting to be discharged to post-acute care settings between March 2022 and February 2023. At Berkshire Medical Center (BMC), BHS’s flagship hospital, we typically see between 15-18 patients at any given time who are waiting to be discharged to post-acute care. This means that more than 10 percent of the “barrier” cases seen in Western MA can be found at BMC alone.

Though we acknowledge the many challenges that create these back-ups, ranging from insurance authorizations to workforce shortages at SNFs to lack of legal documentation required for transfer to inter-facility transportation, the problem remains that there are an average of 15 patients who do not need hospital-level of care with delayed discharges at BMC who are occupying beds that could be otherwise occupied by patients with acute needs, resulting in a higher than average number of “Code Full” situations in which the Emergency Department is unable to admit patients due to lack of available inpatient beds.

We strongly believe that the availability of swing beds, as a complement to the inpatient beds at the new North Adams Regional Hospital would provide a welcome opportunity to help ease some of these throughput issues and work toward “unclogging” the system. In fact, one of the ongoing efforts of the Commonwealth to address this situation in partnership with MSCA, has been to create the Skilled Nursing Facility Short-Term Rehab Capacity Program, to temporarily add short-term rehabilitation capacity in all regions of Massachusetts.

D) Critical Access Hospital Swing Beds Enhance the Healthcare Continuum

Our lived experience during the COVID-19 pandemic showed us the incredible value of swing beds to the healthcare continuum in Berkshire County. In March 2020, Berkshire Medical Center reported the first hospitalized COVID-positive patient in the Commonwealth. Shortly thereafter, COVID tore through our skilled nursing facilities, including those owned by Integritus and the DPH froze all admissions to SNFs. Williamstown Commons in North Berkshire was among the hardest hit.

Fairview Hospital’s swing beds took on particular importance during this time, as an alternative location for ongoing skilled nursing and skilled rehabilitation care needed by patients who were legally prohibited from entering a SNF. We were also able to transfer patients who were no longer in need of hospital-level of care from Berkshire Medical Center to the Fairview swing beds to continue their recovery and preserve the availability of acute care beds during the height of the crisis. Swing beds offer the community an important and flexible care resource, whether it be to combat a pandemic or mitigate the impacts of a natural disaster like a flood or the electrical fire that evacuated residents of a south shore hospital in early 2023.

We also envision a future for our North Adams facility in which swing beds could play a pivotal role in treating patients who have substance use disorders. We would like to work with the administration to consider the potential ways in which a Critical Access Hospital with swing beds could meet the needs of patients with substance use disorder or dual diagnosis SUD/behavioral health conditions, many of whom are covered by Medicaid and are often declined for admission at a traditional SNF.

2. Staffing a Critical Access Hospital with New Acute Care Positions Offers Opportunities for Workforce Development, Not Reasons to Impose Limits on the Recruitment or Hiring of Dedicated Healthcare Workers

The MSCA TTG Proposed Condition concerning recruitment and hiring practice is without factual support and may be of suspect legal validity. The request is predicated on an erroneous assumption that the Applicant will have a competitive hiring advantage by receiving Critical Access Hospital reimbursement rates from the federal government, while ignoring the fact that Critical Access Hospitals and SNFs coexist in other markets without any of the problems that the TTG foresees. Those arguments have already been addressed above.

Importantly, as discussed above in Section II(1)(A), the Critical Access Hospital will employ certain “core staff” to service the expected volume of acute care patients. When a patient is in a swing bed, the same staff working with acute patients would generally care for the swing bed patient as well, thereby reducing per patient costs of care. Since BHS does not expect to hire swing bed specific staff devoted to post-acute patients, the MSCA TTG’s argument that swing beds pose a threat to SNF staffing makes little sense, particularly when you consider that individuals speaking on behalf of the MSCA TTG generally expressed support for the original licensure of acute care beds at the Critical Access Hospital.

Regarding staffing generally, as the leading healthcare provider in a rural community, BHS has acknowledged the necessity and critical importance of cultivating and growing our own skilled workforce from within our region. During the Hearing there was testimony describing BHS’s investments on this front. This is the best approach to address current staffing challenges in the healthcare market rather than imposing restrictions that would harm the valued individuals dedicated to caring for patients in our community.

Though certain executive and provider positions may draw candidates from outside the area, the majority of our clinical, technical, and supporting staff is most likely to come from within our own community. This is why we have committed millions of dollars to our workforce pathway programs that offer unique training and scholarship opportunities to help create career pathways and remove barriers that often prevent interested candidates from joining the healthcare workforce.

We expect that the new North Adams Regional Hospital will support between 60 and 70 “new” staff, only some of whom will come to us from outside the organization. They may have been former employees of the hospital and choose to return or they may be residents of northern Berkshire who would like to work closer to home. We have currently posted these positions and seen numerous requests for internal transfer from other units within our organization to North Adams Regional Hospital. Because the number of positions slotted for the new North Adams Regional Hospital is limited, and due to the high level of internal interest, we do not anticipate receiving a substantial number of applications from external healthcare workers and foresee little impact on the workforce of neighboring facilities.

I would also like to highlight another element of our BHS recruiting approach—aligning candidates with their preferred healthcare focus. For hospital staff, providing 24/7 acute-care to patients needing hospital-level of support for issues like heart failure, COPD, or acute UTI is a particular vocation. The care will be primarily an acute style of medicine that is overseen by a hospitalist working in partnership with a care team of consulting physicians, registered nurses, unit assistants, social workers, and other specialty therapists. Not all trained healthcare workers choose to work in this type of environment.

The opportunities offered by the longer-term, more relationship-based nature of skilled nursing care typically appeal to a different type of job candidate. Considering that all of our positions pay competitive, average market rate, we do not expect that our newly available Critical

Access Hospital positions would be a substantial draw for those making a similar wage who have already chosen to perform a different style of health care within a skilled nursing facility.

Conclusion

In summary, the Applicant asserts that the DON application should be approved without conditions since the MSCA Proposed Conditions raise issues that are not appropriately addressed through the Determination of Need process and that are otherwise unnecessary and unwarranted. CMS's inclusion of the swing bed program as an element of Critical Access Hospital operations is a clear recognition by the federal government that swing beds are a helpful tool for providing healthcare in rural communities. Restricting the availability of swing beds or limiting the number of swing beds possible at the new North Adams Regional Hospital campus would eliminate an important tool available to other Critical Access Hospitals across the country.

Imposing conditions that limit the use of swing beds that can be used, not only to provide quality, convenient care for patients in Northern Berkshire, but also to address local and statewide issues with hospital throughput, simply ignores the available healthcare data and privileges the private agenda of the MSCA TTG.

We are confident that our DoN application, supported by independent analysis of Stroudwater Associates, along with the testimony of dozens of elected officials, healthcare experts, and community leaders during the Hearing, demonstrate both the sufficient need and public health value of this project.

On behalf of all of us at Berkshire Health Systems, thank you for your ongoing consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Darlene Rodowicz". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Darlene Rodowicz
President and CEO