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September 24, 2024

VIA electronic mail

Notice of Final Action: BMC Health System, Inc. – Saint Elizabeth’s- Emergency Application (DoN Application # #BMCHS-24090514-EA -EA)

Dear Attorney Sexton,

The Department received the submission for an Emergency Determination of Need (DoN) on September 9, 2024, on behalf of BMC Health System, Inc. (“the Applicant”).

This shall serve as notification that, based on the information provided by the Applicant and staff analysis, and pursuant to M.G.L. c. 111, § 25C and the regulatory provisions of 105 CMR 100.000 et seq, including 105 CMR 100.740 (Emergency Applications), the Chapter 11 bankruptcy filing by Steward Health Care and resulting potentially imminent closure of St. Elizabeth’s Medical Center (“SEMC”) constitutes an Emergency Situation. As a result, I hereby approve the Emergency DoN for the Transfer of Ownership of SEMC to BMC Health System, Inc (“BMCHS”).

The Transfer of Ownership will address the Emergency Situation and I find that without issuance of an Emergency DoN the public health will be measurably harmed due to access challenges and potential disruptions in patients’ treatment.

The total value of the Proposed Project based on the Asset Purchase Agreement (“APA”) is \$140,000,000, which includes the acquisition of both Good Samaritan Hospital and SEMC. The Applicant state’s that *“It is subject to adjustment per the terms of the Asset Purchase Agreement.”*

This Notice of Final Action incorporates by reference the Memoranda concerning this Application and is subject to all applicable standard and other conditions. As Commissioner, I

may subsequently require a full Application for Determination of Need consistent with 105 CMR 100.405.

In compliance with the provisions of 105 CMR 100.310(A)(2) and (11), the Holder shall submit an Acknowledgment of receipt to the Department (attached) and also include a written attestation of participation or intent to participate in MassHealth.

Other Conditions

In establishing Conditions, the DoN Program ("Program") acknowledges that due to the Emergency Situation at the time of closure, the Holder reports that it does not have full access to information that would provide an accurate picture of the operations of the Hospital. In the interest of ensuring ongoing viability of the Hospital, the Holder will report to the Department on the following:

1. Within six months of the transaction's closing ("the Closing"), the Holder will provide the Department with an initial assessment of the condition of the facility and its operations and an integration plan for incorporating SEMC into the operations of BMC with definable benchmarks. The Holder will report on the fiscal and operational health of SEMC and its ability to achieve its stated benchmarks and measures annually for five years following the Closing ("the Reporting Period").
2. Within six months of the Closing, the Holder will propose measures to assess the impact of the Transaction, including (1) clinical quality metrics such as patient mortality; (2) patient safety, as measured by Patient Safety Indicator (PSI) events; (3) patient experience scores, as measured through patient survey responses; and (4) health equity, as measured by the MassHealth health equity incentive program metrics. As part of its report to the Department, within one year of the Closing, and annually for five years, the Holder will report on SEMC's ability to achieve its stated benchmarks and measures.
3. Within 12 months of the Closing, the Holder will submit a plan outlining ongoing service provision by the Holder, including at SEMC ("the Plan"). The Plan must address the duration of the reporting period and include an analysis of utilization patterns by service line since the Closing, budgeted and actual Full Time Equivalent (FTE) staffing for each service line, a data supported assessment of community need, and a summary reflecting the Holder's good faith expectations for potential modification of services, including potential closures or reductions, to any service during the Reporting Period. The Plan must also include how the Holder will engage in reasonable efforts to inform the public and relevant stakeholders of any such service reductions or closures or other changes with likely impact on the patient panel or local communities.

4. To allow for Program monitoring of the Holder's implementation of the Plan on a quarterly basis during the Reporting Period, the Holder must inform the Program of any anticipated material or prolonged reduction of any essential service at SEMC during the upcoming quarter. In any such notice, the Holder will provide an analysis of utilization patterns since the Closing, budgeted and actual FTE staffing for each of the services referenced for reduction, a data supported assessment of community need, and rationale for the reduction the service, including alternatives considered and alternative sites where access can be reasonably assured for its Patient Panel. Following a notice of anticipated reduction of any essential service at SEMC during the Reporting Period which is not outlined in the Plan, the Holder may be referred to the Public Health Council for review of the long-term implications of such reduction and compliance with the DoN approval.
5. In its first report to the Department, due 6 months after this approval and annually thereafter during the Reporting Period, the Holder will provide the following:
 - a. A report that details the current payer mix of SEMC reported by each of the health insurance coverage categories reported on by the Center for Health Information and Analysis (CHIA).
 - 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
 - b. A description of the current network participation of Holder including but not limited to the number of:
 - i. Limited network products;
 - ii. Tiered products, including Holder'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.
 - c. A description of efforts to identify and address barriers to access, including for patients insured by or through MassHealth.
 - d. If, during the pendency of the DoN, the Department determines that the MassHealth payer mix of SEMC has materially decreased since the Closing, 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.
6. The Holder will make good faith efforts to ensure continuity of care for patients through good faith efforts to participate in the same insurance plans that SEMC participated in as of the Closing and, to the extent possible, at the same rates through the end of the applicable payer contract period.
7. 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 employed licensed providers at SEMC who are authorized to participate in MassHealth, shall have applied to participate in MassHealth (the MassHealth Plan). The Holder shall certify annually thereafter during the Reporting Period its continuing compliance with the intent of the MassHealth Plan that all employed physicians and other employed licensed providers who are so authorized are participating in MassHealth and its contracted managed care entities.
8. The Holder will make good faith efforts to offer jobs to the individuals who had been employed at SEMC as of the Closing by offering continued employment following the Closing, on the same terms as feasible.

The Commissioner may subsequently require a full Application for Determination of Need consistent with 105 CMR 100.405. Ongoing compliance with the 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,

[signature on file]

Robert Goldstein, Commissioner

cc:

Jaclyn Gagne, Chief Deputy General Counsel Health Care Licensure
Stephen Davis, Division of Health Care Facility Licensure and Certification
Hilary Ward, Division of Health Care Facility Licensure and Certification
Samuel Louis, Office of Health Equity
Pavel Terpelets, Deputy Director of Institutional Programs OLTSS, MassHealth
Katherine Mills, Health Policy Commission
Eric Gold, Attorney General's Office
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