

March 6, 2020

Via Email and Hand Delivery – Return Receipt Requested

Margo Michaels, MPH
Director, Determination of Need Program
Department of Public Health
250 Washington Street
Boston, MA 02108

**BARRETT
& SINGAL**

Re: Franklin MRI Center, LLC
Determination of Need Application # 19102412-HS
Change in Service to Add MRI at Baystate Wing Hospital

Dear Ms. Michaels:

On behalf of Franklin MRI Center, LLC ("Applicant"), we write to thank the Department of Public Health ("Department") for its diligence in reviewing the above-captioned Determination of Need ("DoN") Application relative to a change in service to add a part-time mobile MRI at Baystate Wing Hospital. Pursuant to 105 CMR 100.510(C), we write to submit written comments on behalf of the Applicant regarding certain of the proposed conditions contained in the Department's Staff Report to the Commissioner (the "Staff Report"). We offer the following comments.

In Condition 2, the Department requests that the Applicant report annually on the improvement of certain Required Measures for Annual Reporting ("Required Measures"). The Applicant has carefully reviewed these Required Measures and respectfully requests that Required Measure 2 be eliminated because it is not applicable to the Applicant. Specifically, Required Measure 2 requires the following:

2. Imaging Efficiency Measures*

As is required for calendar year (CY) 2020 payment determinations, the Holder will report on one CMS Outpatient Imaging Efficiency (OIE) measure that are publicly reported within the Hospital Outpatient Quality Reporting (OQR) Program:

- a) MRI Lumbar Spine for Low Back Pain (OP-8).

This publicly reported OIE measure is calculated using data from hospital outpatient claims paid under Medicare's Outpatient Prospective Payment System (OPPS).

***If improvement (e.g., decrease or increase from baseline) is not achieved, Holder shall report on reasons why and outline plans for improvement.**

This measure is used by CMS with respect to hospital outpatient departments that are reimbursed under the Medicare Hospital Outpatient Prospective Payment System ("OPPS"). To this point, the Applicant emphasizes that it is licensed as a clinic and is enrolled in the Medicare Program as an Independent Diagnostic Testing Facility ("IDTF") reimbursed under the Medicare Physician Fee

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Schedule ("MPFS"). Accordingly, CMS does not require this measure for IDTFs reimbursed under MPFS. Moreover, the measure is claims-based, meaning that the provider submits claims to Medicare for OPFS reimbursement and Medicare then reviews the claims to evaluate compliance with this measure. As the Applicant will not be submitting claims to Medicare under OPFS, Medicare will not be performing such an analysis of the Applicant's services.

To the Applicant's knowledge, there is no equivalent measure of this nature for IDTFs. Moreover, at this time, the Applicant does not feel that it can internally replicate this measure given that it is of a claim-based nature, as is explained above. To that end, the Applicant is not able to comply with this Required Measure. Accordingly, we respectfully request that Required Measure 2 be eliminated as a condition of the DoN approval.

The Applicant appreciates your consideration of this request. Please contact Crystal Bloom, Esq. or me if you have any questions regarding this letter and our proposed changes.

Sincerely,



Andrew S. Levine

cc: DPH DoN
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