



February 7, 2024

Dennis Renaud
Director, Determination of Need Program
Department of Public Health
250 Washington Street
Boston, MA 02108

Re: Dana Farber Cancer Institute, Inc. DoN#: DFCI-23040915-HE ("Application")

Dear Director Renaud,

We, the undersigned, write pursuant to the provisions of 105 CMR 100.100 and 100.405. We are all residents of the Commonwealth of Massachusetts and pay taxes within the Commonwealth. We hereby request recognition as a Ten Taxpayer Group and the rights associated with such a designation including notice concerning, and participation in, the review of the above captioned Determination of Need ("DoN") Application filed with the Department of Public Health ("Department") on January 8, 2024.

In addition, pursuant to 105 CMR 100.445, we respectfully request that a public hearing be held with respect to the DoN Application.

We also urge the Department to require an independent cost analysis pursuant to 105 CMR 100.405(D) to provide information as to whether the Proposed Project is consistent with the Commonwealth's cost containment goals. We note that the Health Policy Commission ("HPC") has determined that a Cost and Market Impact Review is necessary to determine the impact of the proposed affiliation between the Applicant and Beth Israel Deaconess Medical Center. Even if the HPC review were focused on the same factors of review that the Department must conduct, the Department cannot wait for the HPC report to make a determination regarding the cost implications of the project because the Department has to act on the Application within the statutorily mandated timeframe. Therefore, the Department should proceed with an independent cost analysis to determine the impact of the proposed project to create a new 300 bed hospital.

The entire DoN regulatory framework requires the Applicant to demonstrate that the proposed project is necessary to meet the need of the Applicant's *own* patients based on historical demand and projected future utilization. We strongly urge the Department to consider the following comments in determining whether the project meets this standard.

1. **Has the Applicant established its own patient panel in accordance with the definition at 105 CMR 100.100?** Patient Panel is defined as: "The total of the individual patients regardless of payer, including those patients seen within an emergency department(s) if

applicable, seen over the course of the most recent complete 36-month period by the Applicant.” The Application states that the Applicant’s patient panel is “based on utilization data for the Applicant’s current licensed beds, as well as an estimate of utilization for patients admitted to BWH [Brigham and Women’s Hospital]-licensed beds under the care of the Applicant’s oncologists derived from the Applicant’s professional claim data. While precise utilization data for all such patients is available to the Applicant as part of its existing collaboration, portions of that data are proprietary to BWH, and the Applicant is restricted from disclosing it in this Application due to confidentiality restrictions.” Based on this description of its patient panel, we do not believe the Applicant meets the regulatory definition of patient panel because the patients were not seen by the Applicant. As such, we believe the Applicant created a patient panel that is based on an estimate of patients historically served by another existing hospital- BWH. These patients are patients of BWH, should be properly counted in the BWH patient panel, and should not also be counted as inpatients seen by the Applicant. BWH will continue to provide hundreds of inpatient beds dedicated to cancer care, even after the 30 beds currently licensed to the Applicant are transferred. Mass General Brigham’s thousands of doctors and researchers remain committed to providing comprehensive cancer care, including medical oncology, cancer surgery, radiation therapy, inpatient and outpatient cancer care, and clinical trials at our two academic medical centers, community hospitals, and health care centers, and even in our patients’ homes. Accordingly, the Applicant’s proposed project may represent an unnecessary duplication of existing resources.

2. **Has the Application demonstrated need for the project consistent with 105 CMR 100.210(1) and Department precedent?** It appears that the need for the project is based on *estimated* historical discharges instead of *actual* historical demand data because the Applicant does not have its own patient panel to support the need for a new 300 bed hospital. Further, it appears that the Applicant bases demand for inpatient beds on cancer incidence rate projections and this could represent inflated demand because not all cancer patients will require an inpatient admission.
3. **Does the proposed project meaningfully contribute to the Commonwealth’s goals for cost containment under 105 CMR 100.210(2)(a)?** Because the Applicant is not a new entrant into the market and receives higher reimbursement from Medicare for its services, the Department should verify the cost implications of the project through an independent cost analysis. Notably, Medicare represents 43% of the Applicant’s payer mix and the Applicant receives enhanced Medicare reimbursement for its services due to its status as a Medicare PPS Exempt Cancer Hospital. The Applicant also has higher commercial outpatient rates, and Medicare inpatient and outpatient reimbursement than others in the marketplace. Even if the Applicant receives lower commercial reimbursement for inpatient services compared to other hospitals, the enhanced Medicare reimbursement the Applicant receives, coupled with its high number of Medicare patients, more than offsets any savings achieved through current commercial rates. With significant increased imaging and radiation oncology services offered through the project, current costs to patients for these services may increase as the Applicant seeks to shift care from existing providers. Moreover, it is unclear whether all patients who will seek care at the proposed new facility will be patients who would have received care from higher cost providers. In fact, because BWH will continue to provide the same services in existing licensed beds, it

is reasonable to assume that in order to fill its new beds, the Applicant will need to admit patients who could otherwise be cared for in lower-cost community settings.

4. **Does the Application independently demonstrate need for additional DoN-required equipment (3 linear accelerators, 2 MRI, 2 CT, 1 PET/CT) consistent with the Department's precedent for review of similar projects?** For example, the Applicant bases its projected volume for imaging on historical utilization by patients in its 30 licensed beds by looking at what percentage of those inpatients required imaging and applying that percentage to 300 beds. We do not believe that the use of a small sample to project the need for a project with 10 times the number of beds is a reliable basis for projecting need. Further, as with its analysis of demand for inpatient capacity, the Application does not use the most recent data available. With respect to radiation therapy specifically, the Applicant requests twice as many linear accelerators as it currently operates (3 more units), which is an increase of a magnitude that has never been approved by the Department. The Department should require a full data-based analysis for the DoN-required equipment consistent with what the Department has required for all prior applications for such requests. Moreover, the request for additional DoN-required equipment should meet all factors of review as DoN-required equipment triggers DoN review independently from the proposed capital expenditure to build a new hospital.

The taxpayer designated to receive all written correspondence relative to the above-captioned DoN Application on behalf of the Ten Taxpayer Group is Christopher Philbin. Materials may be sent to 399 Revolution Drive, Suite 675, Somerville, MA 02145 or via email to cphilbin@mgb.org. The undersigned are acting as agents of Mass General Brigham Incorporated, 800 Boylston Street, Suite 1150, Boston, MA 02199.

Name	Home Address	Signature
1. Giles Boland, MD	[REDACTED]	
2. Timothy F. Galvin	[REDACTED]	
3. Niyum Gandhi	[REDACTED]	
4. R. Scott Gassett	[REDACTED]	
5. Aimee Golbitz	[REDACTED]	
6. Laura Peabody	[REDACTED]	
7. Christopher Philbin	[REDACTED]	
8. Kevin Sanginario	[REDACTED]	
9. Andrew Shin	[REDACTED]	
10. Ron M. Walls, MD	[REDACTED]	