

January 27, 2021

By Email: dph.don@state.ma.us

Lara Szent-Gyorgyi, MPA
Director, Determination of Need Program
Department of Public Health
67 Forest Street
Marlborough, MA 01752

Re: Determination of Need (“DoN”) Application Mass General Brigham Inc. – Multisite - 21012113-AS Application (“Application”)

Dear Director Szent-Gyorgyi:

Mass General Brigham Incorporated (“MGB” or “Applicant”) is hereby providing written comments with respect to the independent cost analysis (“ICA”) concerning the Application that was prepared as required by the Department of Public Health (“DPH”) Determination of Need (“DoN”) Program. As outlined in the ICA Executive Summary, DPH required the ICA in order to conclude whether the proposed project outlined in the Application is consistent with The Commonwealth’s health care cost containment goals. In accordance with the DoN regulations, DPH selected the independent economist, Charles River Associates (“CRA”) and the ICA was performed at the Applicant’s expense. DPH developed the scope and terms of the analysis and required CRA to address two primary elements: (i) the effects of the proposed project on prices of and competition for health care services in Massachusetts; and (ii) the effects of the proposed project on the utilization of health care services in Massachusetts and the capacity of health care providers in Massachusetts to render those services. DPH has accepted the ICA as meeting DPH’s requirements for the independent cost analysis.

The ICA reaches the following conclusions, which support that the Applicant has demonstrated that the proposed project is consistent with Massachusetts’ health care cost containment goals:

- Among patients residing in the service areas of the proposed Ambulatory Care Centers who received an outpatient service that would be offered at the proposed Ambulatory Care Centers, a significant fraction either recently received care at a Mass General Brigham facility or recently received care from a Mass General Brigham primary care provider.
- The populations of the service areas of the proposed Ambulatory Care Centers are projected to increase by between five and seven percent from 2020 to 2030; growth in the age 65 and older population (who tend to use more health care services) is projected to grow between 30 and 39 percent over this period.
- MGB’s “shares associated with the proposed project are modest and unlikely to meaningfully change the system’s bargaining leverage with health insurers. Rather, the weight of the economics literature suggests that allowing health care providers to enter an area or expand their presence there lowers health care prices and reduces expenditures on health care services.”

- The impact that the projects are expected to have on existing labor market conditions is “very modest”.

On January 25, 2022, the Health Policy Commission (“HPC”) voted to submit to DPH a combined comment letter regarding the ICA prepared in connection with the Application, and the independent cost analyses submitted in connection with DoN Application Massachusetts General Hospital # MGB-20121612-HE (the “MGH Application”) and DoN Application Brigham and Women’s Faulkner Hospital # MGB-20121716-HET (the “BWFH Application.”) The HPC’s comment letter is posted on the HPC website: <https://www.mass.gov/doc/hpc-public-comment-mgb-determination-of-need-applications/download>. The HPC’s comments extend well beyond the ICA, effectively trying to insert the HPC into the purview of the DoN Program in reviewing the merits of the DoN Application.

While DPH must consider the HPC’s comments, it also must not give those comments greater weight than the ICA and DPH’s own analysis of the Application. While the conclusions of the ICA and the HPC do not align, DPH must recognize the context and limitations of the HPC’s comment letter. The HPC’s comment letter is highly speculative throughout. While we will not undertake a point-by-point review of the HPC’s comment letter or comparison with the ICA, we note the following general observations:

First, while the HPC’s main focus is cost, the DoN Program is also charged to consider access to care. The HPC seems to suggest that MGB patients should not be able to access MGB care in their community; if our patients want to continue receiving care from MGB, then the HPC’s view is that they should continue to travel to MGB’s higher cost hospital options, which the HPC views as preferable to a lower cost MGB option in the community. According to the HPC, if MGB patients don’t like the inconvenience, they can use local non-MGB providers. The HPC would remove MGB patients’ choice and direct them to providers that they do not choose to use, which is equivalent to government directed, rationed care. This is especially concerning in light of accessibility and capacity challenges that existed before and have been highlighted by the COVID-19 pandemic.

The HPC is critical of the ICA’s use of percentages rather than raw numbers for a number of its findings. However, the ICA uses percentages to put its analysis into context. For example, even if one accepts HPC’s conclusion that Mass General Brigham’s three (3) Determination of Need applications will increase annual healthcare spending by as much as \$90.1 M, such an increase would only represent 0.15% of the total annual health care spend in MA (source: HPC Cost Trends Report 2018). That is neither substantial nor significant as the HPC has alleged, especially when considered in the context of national inflation that is currently at 7%. (US Bureau of Labor Statistics). The HPC’s use of raw numbers without context is, at best, inflammatory.

Further, while the HPC acknowledges the fact that the proposed ambulatory projects are likely to result in decreased costs, in doing so they minimize the estimated cost savings by making assumptions that are not supported by the facts. For example, the HPC assumes that all patients who choose to receive care from the proposed Ambulatory Care Centers would otherwise have received care from non-MGB providers in the area. This assumption does not reflect the 227,000 MGB patients in the communities surrounding the proposed Ambulatory Care Centers who currently receive care at other MGB facilities. HPC also speculates that the cost-savings resulting from shifting procedures to the Ambulatory Care Centers (including the \$3.4 M that the HPC acknowledges will be saved in connection with commercial spending for ambulatory surgery, MRI and CT services performed at the proposed Ambulatory Care Centers) will be off-set because capacity at the other MGB facilities will be back-filled, which ignores the fact that the purpose of the proposed Ambulatory Care Centers is to increase access to care for MGB patients closer to home. The HPC also fails to

acknowledge that other MGB facilities are at or over capacity, and that the Ambulatory Care Centers will alleviate some of the pressure on the other MGB locations.

HPC's suggestion that "each of the projects is likely to increase MGB's market share and bargaining leverage with commercial payers" is not consistent with the conclusions of the ICAs that are based on a rigorous analysis of the HHI index, not on unsubstantiated supposition. Specifically, the HPC fails to recognize that, through the proposed Ambulatory Care Centers MGB is entering the markets of these proposed Ambulatory Care Centers (and expanding its presence in Westwood) to offer services including ambulatory surgery and MRI and CT imaging services that are not currently provided by MGB in the area. MGB does not have a presence as a provider in these communities comparable to the proposed Ambulatory Care Centers; it is this entry into the market that the ICA correctly attributes to lowering health care prices and reducing expenditures on health care services.

The HPC analysis, unlike the ICA, did not include an analysis of the impact of the Mass General Brigham plans on Medicare or Medicaid spending. The ICA found that both the Brigham Faulkner project and the Ambulatory Care Center project would result in savings for Medicare and Medicaid patients. Mass General Brigham serves more MassHealth patients than any other system in Massachusetts and is proud to care for all patients regardless of their ability to pay.

The ICA confirms that the proposed project is consistent with The Commonwealth's health care cost containment goals and supports that the Application meets the DoN factors of review.

The HPC's comment letter also suggests that the Application and the ICA fail to consider all aspects of the proposed project. For example, the HPC criticizes the ICA for failing to address the impact of primary care and other professional services at the Ambulatory Care Centers, but these services are not subject to DoN review. The Application (and supplemental responses to DPH) appropriately provides the most detailed information on ambulatory surgery and MRI and CT imaging services as is required by the DoN process. We also note that, in connection with the Application, MGB provided information to DPH regarding the projected performance of the proposed Ambulatory Care Centers.

Finally, the HPC references materials that MGB provided to the Office of the Massachusetts Attorney General that were prepared for an entirely different purpose. The figures that the Attorney General's office references in its Examination of Health Care Cost Trends and Cost Drivers report issued in connection with the HPC's 2021 Cost Trends Hearing (the "Report") are not relevant to the proposed Ambulatory Care Centers; rather, they are selected information from a 2018 preliminary "proof of concept" analysis the purpose of which was to help MGB determine if an ambulatory strategy was worthy of funding further efforts to develop more detailed models). The information that is properly relevant to the Ambulatory Care Center project is contained in the Application and in the supplementary materials that the Applicant has provided to DPH.

Of course, the only ambulatory care locations currently at issue are those proposed in the Application. Any future MGB projects would need to undergo applicable regulatory review, including DoN review if required.

We urge the Department's favorable and timely action to allow the project to move forward. We appreciate the DoN Program's time and thoughtful review of the Application.

Respectfully,

A handwritten signature in black ink, reading "John Fernandez". The signature is written in a cursive style with a large, looped "J" and "F".

John R. Fernandez
President, Mass General Brigham Integrated Care
President, Mass Eye and Ear

R. Rodman, Esq.
T. McNamara
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