

Memorandum to the Commissioner

APPLICANT: BMC Health System, Inc.

PROJECT NUMBER: BMC Health System, Inc. - Good Samaritan Medical Center - Emergency
Application: DoN Application #BMCHS-24090517-EA

Filing DATE: September 9, 2024

Introduction

This memorandum presents, for Commissioner's Review and action, the Determination of Need (DoN) Program's recommendation pertaining to a request by BMC Health System, Inc. ("the Applicant") for an Emergency DoN pursuant to 105 CMR 100.740.

The Applicant files this Emergency Application seeking approval of the Transfer of Ownership¹ of Good Samaritan Medical Center ("Good Samaritan") from Steward Health Care System, LLC.

There is neither a Community Health Initiative (CHI) contribution nor a DoN filing fee required for an Emergency DoN. As required by 105 CMR 100.740(A), the Applicant must explain the following: 1) the identity of the Applicant, 2) the nature of the Emergency Situation, 3) the nature, scope, location, and projected costs of the proposed project, and 4) that the proposed project will address the emergency situation, and that without issuance of a notice of determination of need, the public health will be measurably harmed.

1. Identity of The Applicant

The Applicant, BMC Health System, Inc., is a Massachusetts non-profit integrated health care system and is the sole corporate member of six corporate affiliates.²

¹ Transfer of Ownership is defined in the applicable regulations at 105 CMR 100 as including but not being limited to "(1) A transfer of a majority interest in the ownership of a Hospital or Clinic; (2) In the case of a privately-held for-profit corporation, transfer of a majority of any class of the stock thereof; (3) In the case of a partnership, transfer of a majority of trustees; (4) In the case of a trust, change of the trustee or a majority of trustees; (5) In the case of a nonprofit corporation, such changes in the corporate membership and/or trustees to constitute a shift in control of the Hospital or Clinic as determined by the Commissioner; or (6) In the case where foreclosure proceedings have been instituted by a mortgagee in possession of a Hospital or Clinic. For the purposes of 105 CMR 100.000, Transfer of Ownership may also mean any change in the ownership interest or structure of the Hospital or Clinic, or of the Hospital or Clinic's organization or parent organization(s), such that the change results in a shift in control of the operation of the Hospital or Clinic, as determined by the Commissioner."

² 1) Boston Medical Center Corporation, the Applicant's academic safety net hospital; (2) BMC Community Hospital Corporation d/b/a Good Samaritan Medical Center, the new corporate entity that will comprise Good Samaritan; (3) Boston Medical Center Health Plan, Inc.; (4) Clearway Health, LLC; (5) BMC Insurance Co., Ltd. of Vermont; ; and (6) BMC Community Hospital Corporation II d/b/a St. Elizabeth's Medical Center, the new corporate entity that will comprise St. Elizabeth's Medical Center. The Applicant owns 49% of Tellica Imaging – Massachusetts, LLC, a Delaware

The Applicant provides primary, specialty, and tertiary care through its subsidiaries, affiliates, and community health care center partners. It also provides access to a managed care organization, an accountable care organization (“ACO”), and other health related programs.

The Applicant states that many of the patients it serves are under-resourced populations facing social determinants of health (“SDOH”) barriers, as well as health disparities. Boston Medical Center Corporation d/b/a Boston Medical Center (“BMC”), the Applicant’s academic safety net hospital with its main campus located at One Boston Medical Center Place in Boston, is licensed to operate 616 beds. The Applicant notes it is one of the largest safety net hospitals in New England, as well as one of the busiest trauma and emergency services in New England. BMC provides a wide range of emergency, outpatient, and inpatient services, with over seventy (70) medical specialties and subspecialties and is the primary teaching affiliate for the Boston University Chobanian & Avedisian School of Medicine.

2. Nature of the Emergency

The Applicant indicated that this is an Emergency Situation due to Steward Health Care System LLC (“Steward”) and its affiliated debtors, including Good Samaritan, filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (“Emergency Situation”). Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, and in an effort to preserve patient care and prevent the closure of Good Samaritan, the Applicant, through its corporate affiliate BMC Community Hospital Corporation, entered into an Asset Purchase Agreement (“APA”) to buy certain assets and liabilities of Good Samaritan.

The Applicant uses the 2021 CHNA to emphasize the nature of the emergency; it outlines the health care needs of residents including high rates of chronic disease, such as Diabetes, cardiovascular conditions, and obesity; and it discusses how area residents are deeply impacted by the SDOH challenges, including housing instability, lower levels of education, higher rates of poverty and a lack of access to care. The report outlines that “many focus group participants brought up access to care as a major concern.”

3. Proposed Project: Nature, Scope, Location, and Projected Costs

BMC Community Hospital Corporation d/b/a Good Samaritan Medical Center is the new corporate entity that BMCHS formed in response to the bankruptcy of Steward Health Care. The Emergency Situation necessitates the acquisition of Good Samaritan to avert its potential closure which would threaten the public health of Brockton area residents, and the additional twenty-two (22) neighboring communities that rely on the hospital for all aspects of care. Good Samaritan’s 2021 Community Health Needs Assessment (“CHNA”) outlines health care services provided by the

corporation formed to provide imaging services to residents in Massachusetts.

hospital including comprehensive inpatient, outpatient, and Level III Trauma emergency services. The hospital also offers Centers of Excellence care in orthopedics, oncology, and cardiology, specialized care in surgery, family-centered obstetrics with a level-two nursery, and advanced diagnostic imaging.

The Applicant is seeking an Emergency Transfer of Ownership of Good Samaritan (“Proposed Project”), so it may continue the operations the 224-bed acute care hospital located at 235 North Pearl Street, Brockton, MA 02301 so as to preserve access to care for area residents thereby preventing the harm to public health of the patients in the hospital’s service area that would be caused by its abrupt closure.

Accordingly, without the Transfer of Ownership, the loss of this vital community institution would create a substantial hardship on the greater Brockton community and surrounding towns, as well as other area health care providers who must absorb additional patients in need of services. The closure of Good Samaritan would tax an under-resourced community still recovering from the COVID-19 pandemic and the 18-month closure of Signature Brockton Hospital. With the majority of local residents faced with barriers to obtaining access to care, such as a lack of transportation and lack of insurance, the closure of Good Samaritan would exacerbate SDOH disparities.

The Applicant stresses that this Proposed Project will ensure that area residents have access to urgent and emergent health care services, acute inpatient and outpatient services and it will ensure that under-resourced populations have continued access to timely services, addressing disparities, and promoting health equity.

The total value of the Proposed Project based on the Asset Purchase Agreement (“APA”) is \$140,000,000, which includes the acquisition of both St. Elizabeth’s Medical Center and Good Samaritan.³

4. Demonstration that the Proposed Project will address the Emergency Situation, and that without issuance of a Notice of Determination of Need, the public health will be measurably harmed.

The Applicant states Good Samaritan provides vital health care services to its patients and that the Proposed Project will ensure continued access to health care services in the greater Brockton area with no loss in available capacity. The loss of a health care provider, and a lack of available health care services in the greater Brockton area would measurably harm residents, particularly those who face persistent SDOH challenges. The Applicant’s Proposed Project will ensure continued availability of high-quality acute inpatient and outpatient services without disruption; and it aims to meet the needs of residents and prevent lengthening delays for care that have been persistent since the COVID-19 pandemic, as well as Signature Brockton Healthcare’s 18-month closure and

³ The Applicant state’s that *“It is subject to adjustment per the terms of the Asset Purchase Agreement.”*

recent reopening,⁴ leaving high demand for health care services in the area.

Staff Analysis

Staff notes that the dire financial situation resulting in the Steward bankruptcy filing is well documented and reported and has left Good Samaritan in a situation where it has been under financial constraints leading to underinvestment in infrastructure and operations. The Applicant reports that it does not have full access as to the extent of the damage caused by the current situation or what resources will be needed to bring it back to a fully functioning healthy entity. (Staff recommends annual reporting on the Status of the facility in Other Conditions.)

In the service area of Good Samaritan there are six hospitals (Signature Hospital Brockton, Southshore Hospital, and the Beth Israel hospitals in Plymouth, Needham, and Milton) with a total of 720 licensed beds. Some of the hospitals are fully staffed and two are operating at surge capacity (Southshore, and BI Plymouth). Generally, hospitals are struggling to staff all licensed beds. Occupancy rates, when calculated based upon the licensed beds range from ~79% (BI Milton) to 131% Southshore Hospital. With the reopening of Signature Healthcare of Brockton, the exceptionally high occupancy is likely to decline. Good Samaritan comprises ~23% of the regional med/surg bed capacity and saw ~23% of the total ED visits. Good Samaritan. For this volume to be absorbed at the other three hospitals in the region ~186 beds would be required. Staff finds that there is not capacity to absorb this med/surg volume and ED capacity would be further strained.

Hospital ⁵	Emergency		med/surg occupancy rate (occupied/ licensed)		occupied m/s beds		licensed m/s beds	
	2023	2024 (weeks 1 - 26)	2023	2024	2023	2024	2023	2024
Good Samaritan	72,877	34,666	90%	88%	152	148	168	168
Signature Healthcare (Brockton)	6090	Closed	78%	Closed	102	Closed	131	Closed
South Shore Hospital	123,631	63,661	128%	131%	354	376	276	287
BI- Plymouth	52,355	26,545	119%	111%	143	133	120	120
BI-Milton	40,480	24,361		~79%		~74		94
BI- Needham	28,328	17,505		~86%		~44		51

⁴ Signature Brockton Healthcare experienced a major fire that forced its closure. It reopened on Tuesday, August 13, 2024.

⁵ These data are based on the Massachusetts Department of Public Health, Health Care Capacity Dashboard, including Syndromic Surveillance Program, Division of Surveillance, Analytics and Informatics, Bureau of Infectious Disease and Laboratory Services, Massachusetts Department of Public Health. WebEOC is an industry-standard, secure, cloud-based platform specifically built to enhance situational awareness and information gathering capabilities of Emergency Management organizations. Per CMS-3401-IFC, hospitals are required to report a series of data points, including numbers on bed capacity and occupancy, which are collected by MADPH in WebEOC and reported to the federal level on behalf of the facilities.

Total	323,761	166,738			751	775	695	720
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Data below show Good Samaritan utilization during FY17 to FY22 (FY23 and FY24 are not included as Steward has not provided the state with financial and inpatient data for those fiscal years).

Good Samaritan Medical Center	FY17	FY18	FY19	FY20	FY21	FY22
Inpatient Discharges	16,571	17,317	15,931	14,931	14,600	12,991
Inpatient Days	73,545	76,511	73,985	67,833	67,998	59,949
Average LOS	4.44	4.42	4.64	4.54	4.66	4.58
Outpatient Visits	76,549	78,389	77,410	61,902	68,299	

Staff also notes that Good Samaritan is a high public paying hospital with public payer mix of 69.9%.⁶ The persistent need for access to health care for under resourced populations is well documented in Massachusetts, and a cessation of these services would create an undue burden on patients and their families in terms of unnecessary delays in treatment, travel, and time off from work thereby potentially resulting in negative public health outcomes.

As such, staff finds the Applicant made a convincing case that there is indeed an Emergency Situation and an urgent need for patients residing in Brockton and surrounding communities, to have uninterrupted continuity of care and access to local services.

Findings

The definition of *Emergency Situation* includes “...a situation involving either:

- (1) a Government Declaration of emergency or a Catastrophic Event; or
- (2) an existing Health Care Facility which the Commissioner determines has been destroyed, or otherwise substantially damaged, or where there is a clear and present danger of such damage, such that the damage could substantially impact public health...”⁷

Based upon a review of the Proposed Project as submitted by the Applicant, DoN staff recommend that the Commissioner determine that this transaction is in response to an Emergency Situation, as defined in 105 CMR 100.100. Staff further finds that the Applicant convincingly demonstrates that the Proposed Project will address the Emergency Situation and that without the issuance of a Notice of Determination of Need, the public health will be measurably harmed. Staff further recommend that, in light of the urgent need to maintain access to and continuity of care, certain notice and comment regulations be waived, specifically pursuant to 105 CMR 100.435(D) and 105 CMR 100.440 (B), and the related sections of 105 CMR 100.405(C)(2).

⁶ Based on the FY 2022 Cost Report, <https://www.chiamass.gov/high-public-payer-hospitals>

⁷ 105 CMR 100.100 Definitions

Based on review of the materials submitted and additional analysis, staff recommend that the Commissioner issue a Notice of Determination of Need, subject to all Standard Conditions set out in 105 CMR 100.310(A) except 100.310(A)(5), (6), (7), (9), (10) and (13).⁸

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 Good Samaritan into the operations of BMC with definable benchmarks. The Holder will report on the fiscal and operational health of Good Samaritan 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 Good Samaritan’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 Good Samaritan (“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

⁸ (B)(1) A Determination of Need Application for Transfer of Ownership pursuant to 105 CMR 100.735 is exempt from 105 CMR 100.310(A)

material or prolonged reduction of any essential service at Good Samaritan 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 Good Samaritan 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 Good Samaritan 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 Good Samaritan 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 Good Samaritan 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 Good Samaritan 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 Good Samaritan 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.