

Memorandum to the Commissioner

APPLICANT: BMC Health System, Inc.

PROJECT NUMBER: BMC Health System, Inc. - Emergency Application (DoN Application # BMCHS--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 St. Elizabeth's Medical Center of Boston, Inc. ("SEMC") 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 The Applicant provides

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 II d/b/ Saint Elizabeth's Medical Center, the new corporate entity that will comprise SEMC; (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.

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. 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 SEMC, 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 SEMC, the Applicant, through its corporate affiliate BMC Community Hospital Corporation, entered into an Asset Purchase Agreement (“APA”) to buy certain assets and liabilities of SEMC. These assets and liabilities are being assigned to another of the Applicant’s corporate affiliates, BMC Community Hospital Corporation II.

The Applicant uses SEMC’s 2021 CHNA to emphasize the nature of the emergency; it outlines the health care needs of local residents including high rates of chronic disease, such as cardiovascular conditions, behavioral health, Diabetes, obesity, and high blood pressure and the needs assessment also discusses how area residents are impacted by the social determinants of health, including housing instability, higher rates of poverty, and a lack of access to care.

Consequently, the Applicant asserts, since the Emergency Situation necessitates the potential closure of SEMC, the public health of Boston area residents, particularly those individuals in the neighborhoods of Allston-Brighton, West Roxbury, Waltham, Watertown, Back Bay, Brookline, Newton and Weston (“Service Area”) that rely on the hospital for all aspects of care, including emergency services is threatened.

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

BMC Community Hospital Corporation II d/b/a St. Elizabeth’s Medical Center is the new corporate

Elizabeth’s Medical Center. The Applicant owns 49% of Tellica Imaging – Massachusetts, LLC, a Delaware corporation formed to provide imaging services to residents in Massachusetts.

entity that BMCHS formed in response to the bankruptcy of Steward Health Care. SEMC's 2021 Community Health Needs Assessment outlines health care services provided by the hospital including inpatient and outpatient care, as well as family medicine, cardiovascular care, women and infants' health, oncology, neurology, and orthopedics.

The Applicant is seeking a Transfer of Ownership of SEMC to BMC Community Hospital Corporation II ("Proposed Project"), so it may so it may continue the operations of the 306-bed academic medical center located at 736 Cambridge Street, Boston, 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, the Applicant states, the loss of this vital institution will create a substantial hardship on the greater Boston community and surrounding towns, particularly under-resourced communities still seeking to recover from the COVID-19 pandemic. SEMC is licensed as a maternity and neonatal ICU provider.³ The Closure of SEMC would place an additional burden on other area health care providers who would need to accommodate additional patients as shown under *Staff Analysis*. 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 Applicant notes that SEMC operated a fifteen (15) bed inpatient geriatric psychiatry unit at Carney Hospital in Dorchester which closed on August 31, 2024, and requests that the Department designate these 15 inpatient geriatric psychiatry beds as out-of-service. The Applicant affirms its commitment to ensuring access to critically needed inpatient psychiatry beds as a result of the ongoing behavioral health emergency in the Commonwealth. The designation of these 15 beds as out of service will allow the Applicant to determine the best processes for bringing these beds back into service as quickly and safely as possible.

The total value of the Proposed Project based on the Asset Purchase Agreement ("APA") is \$140,000,000, which includes the acquisition of both SEMC and Good Samaritan Hospital.⁴

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 SEMC provides vital health care services to its patients and that the Proposed Project will ensure continued access to health care services in the greater Boston area. The loss of a health care provider, and a lack of available health care services in the service area would

³ With the lack of reporting by Steward the Department is unable to confirm activity levels.

⁴ The Applicant state's that *"It is subject to adjustment per the terms of the Asset Purchase Agreement."*

measurably harm residents, particularly those who face persistent SDOH challenges. The Applicant asserts the 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.

The Applicant affirms its commitment to providing a continuum of care at SEMC, including the provision of a comprehensive range of services such as primary care, cardiology, cancer care, surgery and other inpatient services, as well as emergency care. The provision of all services at SEMC, including maternal and child health services (such as obstetrics, newborn nursery, and NICU services) is subject to the availability of staff, and ensuring quality and patient safety standards which the Holder will report on as outlined in the Other Conditions. Accordingly, the Applicant intends to complete a robust evaluation of all service lines at SEMC in the coming months.

Staff Analysis

Staff notes that the dire financial situation resulting in the Steward bankruptcy filing is well documented and reported and has left SEMC 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 SEMC there are six hospitals (Tufts Medical Center, Massachusetts General, Brigham and Women's, Beth Israel, Boston Medical Center) with a total of 2,608 licensed beds. With the exception of BMC, none has all of their beds fully staffed (~2,443 are staffed.) Using licensed beds to define occupancy rates, rates range from ~54% at SEMC to ~106% at BMC. SEMC comprises ~6% of the regional med/surg bed capacity and saw approximately 6% of the total visits. For this volume to be absorbed at the other hospitals in the region ~220 beds would be required. Staff finds that there is not capacity to absorb this med/surg volume and ED capacity would be further strained if SEMC were to close.

Hospital ⁵	Emergency Visits		med/surg occupancy rate (occupied/ licensed)		occupied m/s beds		licensed m/s beds	
	2023	2024 (weeks 1 - 26)	2023	2024 (1/1 - 6/30)	2023	2024	2023	2024
Tufts Medical Center	48,355	24,538	104%	97%	202	197	195	204
Massachusetts General Hospital	147,920	74,083	89%	90%	701	708	789	789
Brigham & Women's Hospital	16,403	59,380	101%	100%	626	620	617	620
Boston Medical Center	138,817	67,237	111%	106%	294	301	265	283
Beth Israel Deaconess Medical Ctr	62,543	31,583	93%	96%	515	533	556	556
SEMC	35,094	16,430	63%	54%	93	84	148	156
Total	549,132	273,251			2,431	2,443	2,570	2,608

Data below show SEMC 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).

SEMC	FY17	FY18	FY19	FY20	FY21	FY22
Inpatient Discharges	13,349	13,466	13,467	13,069	13,638	12,760
Inpatient Days	73,263	74,737	75,356	73,939	80,132	78,307
Average LOS	5.49	5.55	5.6	5.66	5.88	6.25
Outpatient Visits	131,604	123,786	132,708	116,854	127,584	

Staff also notes that SEMC is a high public paying hospital with public payer mix of 67.7%.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

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.

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

Situation and an urgent need for patients residing in the 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. Additionally, staff recommends that the request by the Applicant that the Department designate these 15 inpatient geriatric psychiatry beds as out-of-service be approved. 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).

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 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”).

⁷ 105 CMR 100.100 Definitions

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)

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.