PUBLIC HEALTH COUNCIL

A regular meeting of the Massachusetts Department of Public Health's Public Health Council was held on Wednesday, November 14, 2007, 10:00 a.m., at the Department of Public Health, 250 Washington St., Boston, Massachusetts in the Henry I. Bowditch Public Health Council Room. Members present were: Chair John Auerbach, Commissioner, Department of Public Health, Ms. Helen R. Caulton-Harris, Mr. Harold Cox, Dr. John Cunningham, Dr. Michèle David (arrived at 10:15 a.m.), Dr. Muriel Gillick, Mr. Paul J. Lanzikos, Ms. Lucilia Prates Ramos, Mr. José Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman, Dr. Alan C. Woodward and Dr. Barry S. Zuckerman. Dr. Michael Wong was absent. Also in attendance was Attorney Donna Levin, General Counsel, Department of Public Health.

Chair Auerbach announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance. Chair Auerbach noted the changes in the order the docket items would be heard as follows: 1) Tobacco Control, 2) Baystate Medical Center Determination of Need Application, 3) Final Promulgation of Amendments Regarding Adjudicatory Cases, and 4) the Hospital-Acquired Infection Regulation proposal. He noted further that there would be a two-minute break after the presentation to give people time to leave etc. He asked the Council Members to introduce themselves. The Council Members introduced themselves to the audience.

PRESENTATION: "REINVIGORATING TOBACCO CONTROL IN MASSACHUSETTS", By Dr. Lois Keithly, Director, Massachusetts Tobacco Control Program:

Chair Auerbach made introductory remarks, "The first item on the agenda is, as I said, a very exciting one. There are few issues that are more important in terms of Public Health than the issue of tobacco control and, for many years, the groundbreaking work that was done on tobacco control in Massachusetts suffered from a series of very dramatic budget cuts that required the elimination of a number of effective programs. We are very happy now that, with legislative support and with gubernatorial support, we have seen a reversal of those cuts, and we are seeing new funds being added once again to this critically important Public Health area, where we know many lives are at stake. And so, to present some of the recent achievements and new plans, I am very delighted to introduce the Director of the Department of the Tobacco Control Program, Dr. Lois Keithly. Dr. Keithly, thank you, and we look forward to your presentation."

Dr. Lois Keithly described her programs accomplishments for 2007:

- Governor Patrick recommended 16 million dollars for the program; the legislature appropriated 12.75 million dollars, an enormous and substantial increase in funding;

- Restoration of funding for compliance checks on retailers who sell to minors (illegal sales rates to youths have been cut in half during the past year);
- Under 27/Under 18 counter marketing campaign: creating a presence in the retail store environment;
- The84.org campaign targets young people where they live, which is on-line, and it gets it names from the 84 percent of middle and high school students who choose not to smoke cigarettes;
    - Conducted a film short contest (160 youth participated developing 30 film shorts describing the effect of tobacco upon youth);
    - 50 mini-grants to help youth groups and school programs tackle tobacco locally through civic engagement;
- Media campaign to start the next day (November 15) on the anniversary of the Great American Smokeout;
- Target anti-smoking campaign on high risk communities, the state's most vulnerable populations, including residents on MassHealth, those that do not have health insurance, the poor, and uneducated;
- Current campaign looks to provide both those negative emotional ads from the previous campaign and the more supportive ads to talk about quitting smoking being a fight that smokers can win;
- Evaluation is a key component of the campaign. We will be looking at MassHealth utilization, reports from Yahoo on our Internet ads, and calls to the Quit Line, to make sure that the media campaign increases the awareness of resources that are available, and increases the quit attempts amongst smokers;
- TV spots will be shown on broadcast TV, on cable and on the Internet.

Chair Auerbach noted, "…I would like to take this opportunity to note that this is the first public information campaign of this scale on tobacco control in six years, and I want to publicly thank the Governor and the Legislature for their support in restoring the money so that we were able to mount this kind of campaign, and also begin to see some of the impressive changes that were recited. I want to particularly thank the people who were willing to help us, in terms of developing those advertisements, and we are honored today that we have three of them. I would like them each to stand up and accept our appreciation, and I would like to formally award you with the recognition that you are, in fact, Public Health heroes for the Commonwealth of Massachusetts, and it is my belief that your activities will make a significant difference in terms of preventing illness and premature death for thousands of people. Let me introduce, Renaldo Martinez, an activist on the issue of tobacco control and prevention for many years and has participated in a very effective previous Massachusetts campaign that has been used by other states very effectively and your continuing your activity is an inspiration to all of us. I am delighted to honor and recognize the work of Kendall David. Again, your example will make an enormous difference in terms of the health of the people of the Commonwealth; and I am delighted also to recognize Ms. Katrina Bergman. Your courage and your willingness to speak out on this, and be an example to other people, is enormously important. Thank you to the three of you. We are really honored by your presence, and we are really grateful for your work."

Dr. Zuckerman added for the record, "that the data shows a relationship between change in health behaviors and health which were related to Massachusetts Tobacco Control Program cuts and the improvement when the funding was restored. We have a Governor who is supporting this. There will be a time again, when it will be cut. Somebody needs to bring data that shows this money can be effective, and I would encourage others to look at the data."

Chair Auerbach replied, "I completely agree with you Dr. Zuckerman and I think the Department will take that recommendation very seriously, and we will make sure that we are accurately gathering information to document the impact of both increases, as well as decreases [of funding]."

Council Member Albert Sherman added, "The Legislature has done an admirable job, given the fact that the Commonwealth has had fiscal problems, and they should be commended too, for finding the money…." Chair Auerbach agreed.

NO VOTE/INFORMATION ONLY

RECORD OF THE PUBLIC HEALTH COUNCIL MEETING OF SEPTEMBER 12, 2007:

A record of the Public Health Council Meeting of September 12, 2007 was presented to the Council for approval. A copy of the minutes was distributed to the Council Members prior to the meeting for review. Council Member Albert Sherman moved for approval. After consideration, upon motion made and duly seconded it was voted unanimously to approve the **Record of the Public Health Council Meeting of September 12, 2007** as presented.

DETERMINATION OF NEED PROGRAM:

CATEGORY 2 APPLICATION: PROJECT APPLICATION NO. 1-3B36 OF BAYSTATE MEDICAL CENTER:

For the record: Helen Caulton-Harris, Council Member, recused herself from discussion and voting on the Baystate application.

Chair Auerbach announced that first we would hear from the elected officials:

Senator Stephen Buoniconti addressed the Council, "…I am here in support of the request by Baystate Health Systems, specifically, Baystate Medical Center, for their expansion. Specifically for me, I am in support of this program primarily for my daughter. My daughter has spinal muscular atrophy, which is a seriously debilitating condition that renders her in a power wheelchair. She needs medical services regularly, whether it be at Baystate Medical Center or at Children's Hospital, and the expansion that you are considering is going to help children in our area…. This expansion is going to be

beneficial not only for the Emergency Department and the handling of the children, but I believe also there is going to be a focus on establishing specific beds for children, expanding the Children's Hospital at Baystate Medical Center, which I think is long overdue. And so, as a result of that, for Baystate being a good neighbor to so many people, and you see so many faces here that have been supported by Baystate Medical Center, a good neighbor, who has tried to do a lot of the right things for the neighborhood, for the City, for the region, I believe that this Council should support the application as submitted by Baystate Medical Center."

Mayor Charles Ryan, City of Springfield: "I have been the Mayor of Springfield for ten years, six of them back in the sixties, a long, long time ago, and I am just completing my fourth year now…. A week ago, the challenger was successful in defeating me, Mayor-elect Sarno is here today…. My wife had open-heart surgery some several years ago and I just couldn't believe the level of care and devotion, and ability that came from shift to shift. I never saw the same people twice. All I knew is that every single one of them, in my opinion, was very high on the charts of what you could hope to have in a top notch hospital. No longer is it necessary, for most of the complex procedures, for people in Western Massachusetts to go to New York or to Boston because it can be done at Baystate. I think that should be understood. From economic development point of view, this is the biggest thing that has happened to our city in a generation or two. As you are probably aware, Springfield lost its fastball several years ago and kind of bottomed out, and the recovery process is well underway and very successful, and I am sure it is going to continue, but there is no project more essential to our continued recovery than this project of Baystate, in the form that they have put forward in their application, and to have this taken off the table, in whole or in part, would be a devastating blow to our city, as it tries to regain its rightful place among the significant communities of Massachusetts."

Mayor Ryan continued, "….The only opposition is from the Sisters of Providence and I find that very unfortunate…there has to be a better reason than just saying, I am opposed to it because of the fact that it might hurt me commercially, and that is the bottom line on Mercy's opposition and I think that is a tactical error…. I think it is unfortunate and I think they stand alone and it is a very lonely place to be because of the fact that everybody I have met, whether they are in government, out of government, in the business community, or users of the medical and hospital facilities…they are really for this application."

Mayor Ryan further mentioned the community initiative commitment of 9.6 million dollars that Baystate will give to its neighbors (the north end of Springfield, the poorest census track in Massachusetts). He further noted that Baystate was there for Springfield in its time of need a couple of years ago by contributing two and half million dollars, over a five year period for public health needs and another 3.75 million over a five year period for the Springfield school system.

In closing, Mayor Ryan said, "This is an outstanding corporation, headed by the best in this business, who really care desperately about their mission, which is health, which is

taking care of the kinds of people we saw in the video a few moments ago, and a lot of other people, because the range of sickness and disease that we can have in the human body is monumental. This is an outstanding organization, and it certainly deserves the support of the Public Health Council of Massachusetts. I hope that your decision will be in the affirmative."

State Representative Mary Rogeness, "I am a politician of few words, generally and specifically, and the Mayor made a lot of points that all us share. Baystate is a teaching hospital and the expansion includes a lot of high end services. One of the things, as a constituent of the hospital, I have experienced is the shortage of emergency room space." Representative Rogeness explained how her elderly mother has never been admitted to Baystate in a timely fashion due to the lack of space at the hospital, spending hours in the hallway and in inadequate cubicles. "This expansion," she said, "by taking some of the stress off of the movement to beds, will serve, I think, anyone who needs to be admitted through the emergency room entrance to the hospital." Representative Rogeness also noted the economic benefits - the new jobs to put up the new space and the staff to keep it going after it is built; that it is more economic to add the extra space now and it is less destructive to the neighborhood doing it all at once.

State Representative Rosemary Sandlin, "I am in support of the Determination of Need application submitted by Baystate Medical Center…. I know that many of my constituents will benefit from successful completion of this master facility plan. One of the many features of this proposal is to replace an aging emergency room and cut the wait time with a new Level I Trauma facility for the citizens of Western Massachusetts. My district is served by Springfield and Noble Hospital in Westfield and I am thankful that the Department of Public Health staff recommendation would take into consideration the impact this project would have on these hospitals, Mercy, Providence, Noble and Holyoke Hospital. I strongly support Baystate Medical Center's request."

State Representative Benjamin Swan said in part: "…This a great lift for the much needed economic development in the City of Springfield. We have two prongs in this. We have the health initiative which is much needed and we all know we need the second benefit, the economic benefit…I really urge your endorsement of this proposal."

State Representative James Welch: noted the economic boom for the area as a result of the project and said in part, "…Often times when a family member of somebody from Western Massachusetts is going in for a medical procedure, a lot of times the first question is, are you going to Boston for that medical procedure, and I think this project can lead to a statement that says, are you staying in Springfield for that medical procedure? ...I would like to lend my support for the project. I do want to thank you for the seriousness you have given to the project and the overall health and of the health services in Western Massachusetts."

Mayor-Elect Dominic Sarno, "…I wanted to be here to speak on behalf of Baystate Health Systems. Not only is this a critical project health-wise but critical economic development-wise. I rode the bus up with my brothers and sisters in building trades, and

you are talking about a project labor agreement that is going to create three hundred and fifty construction jobs. Baystate has truly been a tremendous community partner for the City of Springfield and its neighborhoods. Behind me sit many of our high school students, with a new leadership, the High School of Commerce, Sci Tech, Central and Putnam. Behind me sits the community centers such as the new North Citizens Council, Dunbar and the Martin Luther King Center… They [Baystate] are one of the top 100 hospitals in the country. We just recently honored them before the City Council for historic surgical procedures that never had been done in the world. They stepped to the plate when no one else would: 2.5 million dollars to the City's conference to help avoid cuts especially in health and human services, 3.75 million dollars to our educational systems to incubate medical services and teachings at the Putnam Vocational High School. They have just been a tremendous asset. They get it and I would urge you, implore you to please support this initiative…. This is a no-brainer."

City Councilor Tim Rooke: "…Basketball is a very competitive sport, and there are a lot of injuries, and I can tell you, as a parent and a coach, the wait time to get the attention you need for those kids is a position you don't want to be in. It's unnerving. It's a helpless situation. You can't do anything, and you can see, when you are in the emergency room, all of the beds and all of the shelves are kind of taken. It is like being on Star Trek, the cylinder thing, all the rooms are occupied. Then you look out in the hallway, and they are lined up along the hallway, by the men's room, by the exits, and the pain on each and every individual's face is one of need of attention. I would say, from a medical standpoint, as a parent and a coach, there is a need that exists in the City of Springfield and it is a desperate need, and now I would like to speak as an elected official. It is critical that this if it is voted favorably by this board, that it be allowed to be built in one step. Selfishly, that is because, we have two projects that are on the board right now in the City of Springfield, aside from Baystate Medical Center. That is Putnam Vocational High School, and we have Forest Park Junior High. In order to make sure that those projects stay on budget and on time, we need the work force available, and by allowing it to be done in one phase rather than spread out, not only are you helping the city of Springfield to stay on budget and on time and hopefully under budget, but you are also helping the neighborhood because it will be done much quicker, much sooner…."

Chair Auerbach noted, "We operate the discussion in a very formal way. We have the legal responsibility to consider, in a fair and objective manner, any application that comes in for a major capital change in a hospital. The application is submitted into the Department of Public Health's Determination of Need Office. Our staff thoroughly reviews that application, is involved in a lot of discussion with the applicant; and then, when all the questions have been answered, comes forward and presents to the Public Health Council you see here in front of you a recommendation. You will hear, first of all, from the staff of the Department of Public Health's Determination of Need Office what that process has been and what the staff recommendation is with regard to the application from Baystate. Following that, we allow those entities with legal standing to have the ability to present their perspective for a limited amount of time, simply to make sure we have time for active discussion and to get a vote. Those entities with legal standing to present are either the applicant itself or organizations that have formed what are known as

Ten Taxpayer Groups. Those Ten Taxpayer Groups can legally present. There are two of those today. Following staff, then we will hear from the applicant – Baystate Medical Center, and the New North Citizens Council Ten Taxpayer Group and from the Sisters of Providence Health Systems Ten Taxpayer Group." The Chair asked that the applicant and TTGs stick to a ten-minute testimony so that the process can move forward. He noted that the staff and applicant will be brought back to the table for a question and answer period.

Chair Auerbach stated, "I want to state, for those of you who came all the way from Springfield that have strong feelings about the application. I want to say a particular thank you to the young people that are here. I know there are a number of young people here, who have an interest in civic involvement in their community, and they took the time to come down here and we particularly applaud that, and want to encourage you to stay active within your community in civic affairs. There are other people here from the labor community, the health and human service community, from other hospitals, from other institutions. We thank you for your interest and your involvement in this, and I think the Commonwealth is a better place for having people who are very interested in what happens in terms of health care and interested in important issues regarding the delivery of high quality, cost effective health care. We appreciate you being here even though we don't have a forum for you to offer testimony and public comment."

Mr. Bernard Plovnick, Consulting Analyst, Determination of Need Program, presented the Baystate Medical Center Application to the Council. He said, "…The scope of the project involves substantial expansion of the existing hospital with construction of a new addition, encompassing 599,108 or 49.4%, is proposed to be shell or unfinished space. The project includes the addition of 30 critical care beds, 18 medical/surgical beds, new heart and vascular procedure rooms, and clinical support space, replacement of 78 adult medical/surgical beds and renovations to 42,115 GSF of existing space. According to the schematic drawings included in the application, the shell space in the future would accommodate a new department, and 158 beds, including 30 ICU beds. In your packet, you have received written comments on Staff's analysis and recommendations submitted by the Applicant and Parties of Record, Staff's response to those comments, and a slightly revised version of the original staff summary."

Mr. Plovnick stated that he would not attempt to summarize the arguments that have already been articulated (in the written material) but would clarify several key points:

- In existing DoN Regulations, an acute care hospital may increase its licensed bed capacity without an approved DoN. "However," he said, "in the case of an application such as Baystate's for substantial capital expenditure involving new acute bed capacity, the DoN Program routinely makes a finding based upon the reasonableness of the Applicant's justification of need for the additional beds. This will explain the reason for the extensive discussion of bed need in our review of the current project."

- "I wish to acknowledge the Applicant's explicit statement during the project review process, that the proposed bed capacity to be constructed initially as shell space represents replacement of existing bed capacity, not additional beds. The original application was not explicit in referring to the shell space as replacement beds, and also made several references to the space as being needed for future expansion and development. Staff welcomes the Applicant's clarification of this point."

- "In response to comments by the Applicant, Staff clarified a projection of Baystate's future market share, which Staff, not the Applicant, had made for the purpose of evaluating the reasonableness of Baystate's plan to increase its medical/surgical bed capacity by 48 beds. Staff assumed, based upon the growth experience in recent years that a reasonable assumption for the annual rate of growth in Baystate's market share would fall between zero percent and one percent per year. This facilitated a calculation of a range of possible bed need that served as a check of the Applicant's bed increase proposal."

Mr. Plovnick said further, "My final point is that during our review, we devoted considerable time and attention to analysis of the proposed shell space. Our serious concern about the significant amount of proposed shell space relates not only to Baystate's project but to future DoN projects, as well. We believe that it is important that shell space continue to be carefully analyzed and permitted only on a case-by-case basis. If the Council does approve the shell space, consistent with Staff's recommendation, it is very important that this action not be used as a vehicle that may enable a future applicant to avoid DoN review of all or a portion of the project scope, or to reduce its contribution of resources to support community health initiatives under Factor 9 by proposing shell space which understates the true total capital cost of the project."

In conclusion, Mr. Plovnick said, "I wish to bring the Council's attention to the existence of DoN Regulations governing significant changes in project scope following DoN approval. These regulations have made it possible and reasonable for staff to recommend approval of the shell space portion of this project. This regulation requires the Applicant to come back to the Department, which will, with opportunity for input by Interested Parties, exercise a strong oversight role in the ongoing development of the substantial shell space portion of the project. Thus, after careful review and consideration of all comments by the Applicant and other Interested Parties, Staff's recommendation of approval with four conditions and a maximum capital expenditure of $239,318,527 (March 2007 dollars) still stands and remains unchanged from the original version of the Staff summary."

Dr. Paul Dreyer, Director, Bureau of Health Care Safety and Quality, noted for the record that the Department received comments from two additional legislators in support of the Baystate project: Senators Michael R. Knapik and Gale D. Candaras. Senator Candaras noted that "it is important for the Council to do all in its power to preserve all of the Springfield hospitals."

Mark Tolosky, President/CEO of Baystate Medical Center, Springfield, testified before the Council, "…Our purpose today is to share with you how our current aging facilities prevent our patients from receiving the timely, respectful and professional care that each and every one of them are entitled to and deserve. Baystate has a long history as an academic, teaching and tertiary facility, as well as a charitable health care provider, with many of our services going back to late 1800s."

Mr. Tolosky continued, "We seek your approval as we focus on the challenges of our outdated facility and the need for a replacement facility and an additional 48 beds to serve primarily heart and vascular patients. I am proud to lead an organization that has served our community continuously for 125 years. I am proud of the commitment of our volunteer Board of Trustees, and the diligence that they have shown in overseeing the development of our master facility plan. I am also proud of our leadership team for their hard work and creativity working with our community, our patients, world class designers and architects to develop this plan, and the discipline and professionalism they have shown throughout, keeping our patients' needs at the core of this application."

Mr. Tolosky said further, "Baystate has received national recognition for the medical care we deliver and the many traditional and non-traditional services that we provide. We are a top 100 hospital, recognized by the Leapfrog Group as a leader in patient quality and safety, included in the U.S. News and World Report as a Top 100 Hospital in America, a Magnet Hospital for Nursing Excellence, and received the Beacon Award for Critical Care Excellence for the third year in a row, the only hospital in the country to do so. Our most humbling and gratifying recognition recently was by the American Hospital Association with four other hospitals across the country, receiving the Foster McGaw Award for Community Service. We don't do what we do to win awards. We do what we do to serve our community. Baystate is the region's only academic medical center, the second largest Medicaid provider in the State, the only tertiary care center and Level I trauma center with pediatric designation in Western Mass., the only Level 3 Neonatal and PICU units in a full service, accredited children's hospital and kidney transplant provider."

Mr. Tolosky continued, "We recognize our role as a provider of adult cardiac surgery and interventional cardiac services, and we have the responsibility to continually evolve as needs arise, and we can keep state-of-the art care in Western Massachusetts. Our Emergency Department, one of the busiest in the United States, with 110,000 visits annually, is constantly backed up with patients admitted, but awaiting critical care beds. In addition, we have 184 adult medical/surgical beds, housed in a building built in 1956 and must be replaced. I am truly concerned about our ability to provide competent, compassionate, timely care for the citizens of our community in these conditions. We are the only tertiary referral center for 800,000 citizens in Western Massachusetts. We want these services available so people don't have to go to Boston, Albany, New York or Hartford. Our community counts on us for this care, and we want to be there for them."

In closing he said, "I want to emphasize, this project has been designed and phased very thoughtfully, as primarily a replacement facility. We cannot afford to do it all today and,

therefore, the shell space is proposed which, we believe will save 80 million dollars and cause the least disruption to our staff and community by getting that done now, and as we can afford it, to build the replacement beds in the future. I want to thank you for your consideration…. We urge your positive response to the Determination of Need recommendation."

Ms. Trish Hannon, Chief Operating Officer, Baystate Medical Center, addressed the Council. She said that she was responsible for development of this replacement facility plan and that she was a nurse, experienced in providing direct patient care to people from all walks of life. She said, "With your permission, I will speak from my heart. When I enter our Emergency Department, I look at my medical and nursing colleagues and recognize a variety of emotions, ranging from frustration to embarrassment and deep concern. These emotions are mirrored in the eyes of our patients and their family members, who wait in our Emergency Department. This same emergency department built over 20 years ago for a range of visits of forty to fifty thousand, today, we see well over 110,000 patients each and every year. These patients are not in private rooms. These patients are in corridors, toe-to-toe, throughout our hallways. There is waiting and there is more waiting, and they are waiting for privacy and dignity that they deserve but, unfortunately, it is non existent in our organization because of the lack of beds available. These waits, often five hours, seem interminable when patients are suffering an illness."

Ms. Hannon continued, "Just last week, 49 treatment bays were full. On one given day, we had an additional 27 patients who needed to be admitted, and waiting for a bed. This week, we had 35 patients in addition to the full occupancy of the Emergency Department awaiting beds. This gridlock creates internal crisis for our clinical support staff. Despite all of this, our physicians and nurses, and clinical staff make unbelievable efforts to bring the highest level of clinical quality and compassionate care into an environment woefully short of that privacy and dignity and family-centered care. Last month alone, we were on diversion for ambulances for almost 44 hours. Our high levels of diversion cause patients to be taken out of our community, to receive the tertiary care that they need. There is currently no other option at Baystate Medical Center to address this issue because there are no beds. As the region's only Tertiary Care Referral Hospital and Cardiovascular Center of Excellence, we are and we need to remain ready to accept patient transfers from all over Western Massachusetts. For the first seven months of this year, 11 community hospitals in our region transferred well over 1100 patients to Baystate. Many of these patients need critical care, cardiovascular care and surgery, and each call that comes triggers yet another wait for a patient in need of a bed."

Ms. Hannon said further, "I am challenged each and every day to respond to our physicians who call me because our operating rooms and our special procedure suites have been placed on hold. They are on hold because our Post-Anesthesia Care Unit is also filled to capacity with patients waiting for critical care beds. The addition of thirty ICU and CCU, and eighteen medical/surgical beds primarily devoted to heart and vascular care will provide the capacity that we need to serve out patients in a timely and appropriate way…. In addition to the hospital, Baystate Medical Center provides community-based care within three health centers, a women's health clinic, and six

school-based health centers. We have a long history of providing preventive primary and specialty care to the under-served members of our community. We continue to work with our community as partners, as we have throughout the years, to address health issues such as asthma, obesity, teenage pregnancy, sexually transmitted diseases and violence prevention. We remain committed to providing resources to enhance access to care, and address the various disparities that we all know affect our most vulnerable citizens. In order to foster our mission and provide for the health needs of people in our region, Baystate Medical Center must ensure that we have the hospital beds, procedure capacity and appropriate space. On behalf of our patients, staff and community, we thank you for your support of our plan to address our critical facility needs."

Mr. Vincent McCorkle, President and CEO, Sisters of Providence Health System and representing the SPHS Ten Taxpayer Group addressed the Council. He said in part, "…The SPHS Ten Taxpayer Group engaged in this crucial dialogue, not only to protect the vital services provided through and enabled by Mercy Medical Center but, more importantly, to assure the health care needs of our community will be met, a community that is one of the poorest in the Commonwealth, that has the highest rate of addiction, and the highest teen pregnancy rate, and projects essentially no population growth for the foreseeable future. We all know that the role of the Determination of Need process is the allocation of health care resources and the improvement of health care delivery systems such that adequate health care services are made reasonably available to everyone in the Commonwealth at a reasonable aggregate cost. Our interests in remaining a truly competitive market are focused on satisfying the unmet healthcare needs of our community and ensuring reasonable cost, affordability access and health care choice. We also support Baystate's plan to replace aging infrastructure. However, the ambiguity in the Baystate DoN application regarding the proposed construction of space for new bed expansion was of major concern. This was validated by the DoN Staff analysis that found the scope of Baystate's proposal not only included the replacement of all existing beds, but created potential to add an additional two hundred and six new beds. By the way of comparison, the Mercy Medical Campus, only a few blocks away, has 168 licensed beds. It is prudent that the DoN process has subsequently redefined the scale of the Baystate Project. As we currently understand the plan, the full scope of the recommended project is the replacement of existing beds with expansion limited to 48 beds. We remain very concerned, however, about the unprecedented three hundred thousand square feet of empty space and the new debt burden that service on sixty million dollars represents to the members of our community who will, for years, be paying for this empty space. The DoN staff themselves concluded that Baystate made no attempt to justify use of the empty space, and therefore included several conditions to ensure that the build-out of the empty space will not adversely impact delivery for cost of health care in Greater Springfield."

In closing, Mr. McCorkle stated in part, "…We fully trust that the Council will reach an informed and rational balance in deciding how scarce community resources will be allocated, between the construction of expensive and, in this case, unprecedented bricks and mortar empty space, and important investments in our community's well established community health needs, such as behavioral health, substance abuse, addiction, and the

growing diabetes and obesity epidemics. We look forward to our continued collaboration with the Department of Public Health and Public Health Council to best address the health care needs of the Greater Springfield area."

Mr. Michael Denney, Executive Director, New North Citizens' Council TTG, an elected neighborhood council for the community testified before the Council. He said in part, "We have an invested interest in what Baystate does because it affects not only our health issues, but also the quality of life issues for the people who live in this community." Mr. José Claudio, Director, Community Relations, New North Citizen's Council TTG said, "…We applaud what Baystate Medical Center is doing. We have 66,000 walk-ins every year, into our council. And one of things that we heard is that the waiting period in the Baystate emergency room takes five or six hours because there is no space and no beds…. We need the beds in our neighborhood and in the city of Springfield because of the shortage…." Ms. Karen McHugh, President, Atwater Park Civic Association introduced herself and stated that she works in conjunction with the New North Citizens' Council. Mr. Denney said further that Baystate is a good neighbor and that they came to them and all the organizations and committees in their North End neighborhood and asked their input on the project. He also said, "Baystate has already made a commitment to our community. They have a health clinic in the North End, of which they serve everybody, I mean people with no insurance and no money, with no means to ever pay them. Doors are open and they are ready to serve." Mr. Denney noted further that Mercy Hospital has never come to them for input before implementing any new projects at their hospital. Mr. Denny told a story about his sister dying at Baystate and that there was no privacy for her or the family during that time.

Ms. Karen McHugh, Atwater Park Civic Association explained her elderly mother's experience at Baystate – long waits in the ER. She said, "It's a very disheartening environment for elderly people. It is very frightening for them. They see all sorts of things happening around them. They don't understand why they are not being cared for, and there are bodies-to-bodies, as the picture showed you earlier."

Ms. McHugh said further, "I am here to represent a neighborhood which abuts the Baystate Hospital. My neighborhood is made up of about 300 historic homes. It is a lovely place. It is a community of families, many of whom grew up in the neighborhood, and live there again, raising their own children, and we frequent the emergency room also. Our concern is – they have spoken to us on a number of occasions and gotten our feedback, and we are firmly in favor of them building this building at once. For three years, my life and all those of my neighbors will be disrupted. We will be dealing with noise, dirt and traffic. We will be dealing with many problems that will negatively impact our life for the better of the community. If you change the proposal in front of you, my daughter, who is in sixth grade now, will be living with construction until she is long out of college, and I don't think that's appropriate for any neighborhood. That is why we are asking that you please approve the proposal in front of you.

Ms. Cherylynn Hatchett, Executive Director, Dunbar Community Center in Springfield. "It is an institution in its 95th year of service. It serves predominantly low income

African American and Latinos in the Mason Square area… I think what I want to do is give you a perspective as Baystate as a community partner. Baystate is an organization, a critical partner in investing and improving lives in our community. They walk the walk rather than talk the talk, and let me give you some examples of how they do that:

- They could limit their resources to the neighborhoods around them but they don't, they come over to Mason Square;
- They make available their marketing expertise, their technology expertise, their human resources, all those things community-based organizations need to build capacity but can't afford themselves; and
- Baystate serves on many boards in the community."

In closing, she said, "Baystate is determined to work with us, not for us, but with us, to serve the community, the low income people. It is far more than brick and mortar."

Ms. Dora Robinson, Executive Director, Martin Luther King, Jr. Community Center said, "Baystate has been a major partner, financially supporting a number of youth initiatives, also supporting a number of prevention initiatives in the Mason Square community for youth, adults and families. It is interesting that this DoN application outlines some of the community benefits that will come from the funding, but Baystate has been doing community benefits for many years; and so, it is not really just about this application. Their commitment has been unwavering. It has just been consistent and very supportive and so I am here to fully endorse this application on behalf of those that I serve and represent. I am one of those folks who ended up in the hallways in the ER and so the need for additional beds and services is just so critical. Every time I have gone to the ER I have found myself partially robed in the hall, waiting for services. It is not just an issue of treatment but safety. It is just not safe at this point. I endorse the construction of this."

Ms. Frances Hubbard, Historian, CHNA #4, noted that Baystate Medical was there in 1992, at the inception of the CHNA program helping to begin a pilot program to reduce sexually transmitted diseases among adolescents. She noted the adolescents in the room, who are 13 to 20 years of age, community health workers who support this effort. In closing, Ms. Hubbard talked about how she had to be transported to Beth Israel Hospital in Boston for a life-saving cardiovascular treatment because there were no beds in Mercy or Baystate Medical Center Hospitals. She said further in closing, "I would suggest that, rather than looking at this proposal as a proposal that supplants other institutions' capacity for growth, that it be looked at as the growth of a medical center, top notch medical center, whose presence enhances all of the health care, both prevention and tertiary, and secondary services within the area, and that, with the growth of this particular proposal, that all of the services related to health in Western Massachusetts, where the Baystate Medical Center serves the entire area, will be increased, not only in terms of workforce development, in terms of medical education, in terms of prevention, and in terms of meeting the needs of ordinary citizens who seek care. I would urge your consideration in the affirmative."

Council Member Sherman asked about the shell space planned, "How many floors would be empty shell space?" Mr. Mark Tolosky, President and CEO, Baystate Health and Baystate Medical Center of Springfield replied, "A one-story building that is going to have two underground and three above and the other main building is two underground and five above."

Dr. Alan Woodward, Council Member stated, "…Your comments from your community are extraordinary, as a hospital. It is clear you have made outreach and investment in your community and the accolades are numerous, and you clearly are deserving of all the awards that you have won, which is a notable group. You have also heard again from the community what we are experiencing across this commonwealth, and if people aren't aware, the Commissioner is now chairing a statewide boarding and overcrowding and diversion task force. This is a critical problem as we see a growing mismatch between the demand for health care and the resources to provide same, but Baystate obviously has been, shall we say, on the upper end of the bell curve as far as its boarding and overcrowding issues, and it clearly is at a crisis state for your community, in the ability of your providers to provide high quality care…. You tell us your ER department was designed for a capacity of 40,000 and you are now at a 110,000 and yet you don't tell us when you are building a new emergency department; but, in the meantime, I think what I need to, or we would hope to hear, is a true commitment to eliminate boarding, to address the outflow side of this equation, and you talked about 48 additional beds but primarily for heart and vascular care. Is that going to off-load enough to achieve an elimination of boarding in your emergency department, and what is the timeframe, and can you assure the Department of Public Health and this Council that we are going to see a curve similar to what we hope to see for tobacco use, relative to boarding in your emergency department?"

Mr. Tolosky responded, "…The reason the emergency department backs up is because of the lack of adequate inpatient capacity. We have done every single thing possible to create capacity. We have created a new ED holding room of eight spaces. With licensure guidelines, we have added incremental beds over time with the automatic licensure and occupancy requirements. The initial additional new beds, the 48, the 30 critical care and the 18 medical/surgical beds are really the avenue to get the emergency department decompressed. The ED originally, built in the eighties for 40,000 visits has been reconfigured two or three times, probably in its current configuration is adequate for 70,000 to 75,000 visits. We are seeing 110,000 visits. The primary reason for backlog is, we don't have a place to push patients on the inpatient side, and it really is the reason why we are very anxious to get out of this 1956 building, but we needed these incremental new beds on the front end because that is the mechanism to decompress the emergency department. I would commit to you that that is the strategy. At least with the volume we are currently seeing and the demands from our community, we believe, when these beds come on-line, that very problematic situation in the emergency room will be, for the most part, remedied as we look at it today. What we would face in three to five years from now is uncertain."

Dr. Woodward asked further, "How soon will you have those new beds online, if this were approved?"

Ms. Trish Hannon, Chief Operating Officer, Baystate Medical Center, replied, "With your approval, we intend to begin construction in 2009 and be occupied by 2012; and as you can imagine, in the interim, we have a number of issues that we are attempting to deal with; and, with the gracious support of the Department of Public Health, we have opened beds. We have one final area, which is where both Mark Tolosky and my offices are, which may end up having to be converted to support the very issue that you are addressing, Doctor, which is to eliminate boarding, and we intend to enact every single element available to us to be able to do that."

Dr. Woodward said, "A five-year wait considering what you are hearing from your community now is going to be too long." Mr. Tolosky replied, "…We can't go five years. We are looking at every strategy to give us some interim decompression before we get this solution in place." Dr. John Cunningham, Council Member asked for clarification on the shell space being for replacement beds. Mr. Tolosky responded in part, "…Believe it or not the primary purpose, when we first got into this project, was to not only decompress the emergency department, was to get out of this building built in 1956. This building is an embarrassment to us. That room that you are looking at right there (Powerpoint slides) is 120 feet smaller than a private room would be designed today, and we have two people toe-to-toe in it, built in 1956. The shell space, which is for construction and disruption efficiency, is intended to be the avenue to get us out of the future – I wish we could afford the whole half billion dollar project today. We absolutely can't. We are trying to get some done early, to get the decompression out of the emergency department, and the shell space is the avenue to get out of this 1956 facility."

Dr. Muriel Gillick, Council Member asked for clarification of the shell space too, "Is the shell space committed to be used for replacement beds only, or could it be for unspecified expansion of services?"

Mr. Bernard Plovnick, analyst for the project, responded and stated that in the application it was referred to in the context of an expansion but in more recent material to staff it has been referred to as replacement beds. Ms. Hannon responded, "If we could afford to build out and fit out everything today in order to decommission the old building that you see behind me, we would do so. Our intent is to replace 158 beds within this building, with the shell. It is also the future home of our operating rooms. Our operating rooms were built in 1980; and, by 2015, we believe that we are going to need to replace those operating rooms. We also believe that we are going to need to replace our emergency department. We don't know today what we will know in 2015, but we believe that this is a very prudent effort, not only to plan effectively for the replacement requirements, but also to plan effectively in terms of construction inflation, given the fact that today, as we know it, construction inflation over a period of four or five years can be anywhere from eighty to ninety million dollars."

Dr. Muriel Gillick asked, "But then, you are specifically not anticipating using that shell space for some unspecified expansion that you haven't' referred to in your comments right now?" Mr. Tolosky replied, "That's correct."

Council Member Paul Lanzikos stated, "I would like to comment on the impressive breadth of positive support that you have had from your community. We only wish that all hospitals' tertiary community would be able to share that." He further asked staff about the Brigham and Women's Hospital and Cape Cod Hospital projects that contained shell space that have been approved in the past. Ms. Joan Gorga, Director, Determination of Need Program noted the following:

- She couldn't comment on the Brigham and Women's project because she was not in the DoN program at that time.
- Cape Cod Hospital's shell space was presented as a significant change to the Council over the past summer and the Council approved it with a contribution of community initiatives for the amount of the build out.
- DoN staff is not aware of any instance where a request for shell space has been denied.

Dr. Paul Dreyer, Assistant Commissioner, Bureau of Health Care Safety and Quality noted that this project forced them to look more critically at the issue of how they should deal with shell space. "In taking that critical look, we realized that the amendments governing the post-DoN actions, which define minor changes and significant changes, were perfectly relevant to the situation. What the regulation says is that, if any foreseeable change in the scope of a project is a significant change. And so, in this case, the build out of shell space is totally foreseeable, that build out constitutes a significant change and is a vehicle for bringing the applicant back to the Council for approval of that build out."

Dr. Meredith Rosenthal asked two questions. In brief, (1) Does the applicant have data or an analysis on patient outflows from their market area for urgent or cardiovascular services in particular and elective cardiovascular services as well to Boston or Albany? (2) What are they doing specifically on the prevention side for cardiovascular health?

Dr. David Longworth, Chairman, Department of Medicine, Baystate Health Care responded: "We care deeply about prevention. We serve a disadvantaged population with a high prevalence of diabetes and obesity. In fact, we do have a preventative program in Cardiology. We are in the process of building a Diabetes and Obesity Program to try to address optimal treatment of those epidemics in our community."

Dr. Longworth said further, "Our Physician Health Organization, in fact, has targeted standardization and optimization of treatment of diabetes and obesity as a goal for the next couple of years, and we are enlisting the participation of primary care providers in our communities to help drive that because we do not believe that sub-specialists

alone can, in fact, address those concerns primarily. In our Residency Education Program, there is certainly a focus on diabetes and obesity, and for the past several years, in our Health Centers where our residents do educate in longitudinal care clinics. In fact, we have provided individual scorecards to the residents around diabetic control of the patients they follow, in the hope that we can drive systems-based practice, one of the core competencies, to better improve performance in the people that we are training moving forward."

Dr. Longworth said with regard to the migration data: In our total cardiovascular service line, 8.1 percent of patients are treated outside western Massachusetts; cardiac surgery is 20 percent; interventional cardiology is 13 percent; and vascular surgery is 11 percent.

Council Member Albert Sherman asked about fire safety concerns in the empty shell space. Curt Rocstro of Stephanie and Bradley Architects assured him that the shell space will have a full fire protection system, along with smoke detection and appropriate egress signing. "The fire protection systems and sprinklers will be in from day one, along with proper egress signing and smoke detection systems," he said. "What is also included in the budget is a security system with cameras for the shell space," said Mr. Rocstro. Council Member Sherman asked, "And that you will pledge that the camera system will be monitored." Mr. Rocstro said, "And we will. We will follow all Life Safety Code requirements for that space. The cameras will be monitored."

Chair John Auerbach noted, "…Just in summary, I think I will echo the Council, that you have demonstrated a particularly strong ability to establish ties with the community in a way that is admirable and it really speaks highly of your commitment to the larger community…. We hear very clearly your commitment, I believe, and the staff recommendation or understanding that the DoN application would require a return to the Council with an amendment request if there was a desire to add additional beds in the future (beyond the 48 beds above the current licensed number of beds) or develop a significantly different service." Mr. Tolosky replied, "We would comply with those regulations in the full spirit as they exist from time to time."

Council Member Sherman moved approval of staff recommendation. After consideration, upon motion made and duly seconded, it was voted (unanimously) [except for Ms. Helen Caulton-Harris who recused herself] to approve **Project Application No. 1-3B36 of Baystate Medical Center**, based on staff recommendation. A staff summary is attached and made a part of this record as **Exhibit No. 14, 892.** As approved, this application provides for construction of a seven-story building on the Hospital's main campus for expansion of the existing hospital including addition of 30 critical care beds and 18 medical/surgical beds, replacement of 78 existing beds, replacement and expansion of heart and vascular procedures areas, renovation of existing space, and construction of 295,800 GSF of shell space for future growth. This approval includes 599,100 GSF and 42,150 GSF of renovation. This Determination of Need is subject to the following conditions:

1. Baystate shall accept the maximum capital expenditure of $239,318,527 (March 2007 dollars) as the final cost figure except for those increases allowed pursuant to 105 CMR 100.751 and 100.752.

2. Baystate shall contribute $39,318,527 (March 2007 dollars), or 16.4% in equity of the final approved maximum capital expenditure.

3. Baystate shall enhance its capacity to ensure the availability of timely and competent interpreter services and have in place the following elements of a professional medical interpreter services:

    a. Policies and procedures that are consistent across all affiliated hospitals and clinical sites operating under the license of Bay State Medical Center;

    b. Policies and procedures that discourage the use of family members/friends as interpreters;

    c. Translation procedures and guidance for developing timely, accurate, competent, and culturally appropriate patient educational materials and forms;

    d. Signage posted at all points of contact and public points of entry informing patients of the availability of interpreter services at no charge;

    e. Ongoing training for all hospital staff on the appropriate use of interpreter services, inclusive of telephonic services;

    f. Inclusion of the Interpreter Services Manager in all decisions that impact people with LEP; and

    g. Adherence to recommended National Standards for Culturally and Linguistically Appropriate Services ("CLAS") in Health Care (materials available online at http://www.omhrc.gov/templates/browse.aspx?lvl=2&lvlID=15).

In addition, Baystate shall submit the following items to OMH:

    h. Annual language needs assessment of external and internal sources of data;

    i. Plan for the inclusion of LEP patients in all satisfactory surveys;

j. Plan for how it will use the data collection on race and ethnicity to address racial and ethnic health disparities;

k. Plan for outreach to LEP community members and agencies identified in its service area informing them of the availability and provision of interpreter services at no cost;

l. Plan for improvement addressing the above within 60 days of DoN's approval to the Office of Multicultural Health;

m. Annual Progress Reports to the Office of Multicultural Health 45 days after the end of the federal fiscal year; and

n. Notification to OMH of any substantial changes to its Interpreter Services Program.

4. Baystate shall provide a total of $9,600,000 over a seven year period or $1,371,428 per year, with payment beginning within 30 days following DoN approval to fund the following community health service initiatives:

   a. Frances Hubbard Social Change Grant Program ($350,000): The Applicant will provide to a fiscal agent a total of, awarded over a seven year period of $50,000 per year to the Community Health Network Agency- 4 (CHNA #4) for the purpose of creating and funding the "Frances Hubbard Social Change Grant Program" to address key public health priorities of CHNA #4 and to provide funding for paid staffing of the CHNA; or any other activities in which the CHNA may wish to engage. The CHNA will establish in collaboration with the OHC, the criteria and process for determining key health priorities which require funding, including selection of a review committee. Each program that receives funding to achieve the identified priorities will be required to conduct and report an annual evaluation. The CHNA will annually submit to the OCH a summary report of programs funded, outcome and budgets. The CHNA and the OHC may re-assess need and funding priorities periodically; and

   b. North End Community Housing Initiative ($700,000): The New North Citizens Council has over thirty years experience in the Springfield community as a community-based family service agency that provides specialty services to low income families who are predominantly Latino. Its mission is to provide human services, educational supports and broad based advocacy coupled with civic engagement that enhances residents' quality of life. To assist in its mission of providing assistance to low income families and improving the health of the community, the Applicant shall contribute a total of $700,000 to the Council over a seven year basis at $100,000 per year for the purpose of funding the start

up and ongoing operating costs of the newly incorporated "North End Community Housing Initiative." The goal of the initiative is to increase the quantity, quality and healthfulness of affordable single and duplex family housing in North End neighborhoods. In addition, a portion of the funding may be used to leverage additional funds to write grants for projects that will assist the North End Community Housing Initiative in achieving its mission. With the collaboration of the Applicant, the Council will create a specific board and process to evaluate a final plan for making funding decisions. A final plan for making funding decisions will be shared with the Office of Healthy Communities and any other review, re-assessment or adjustment. A periodic review will also be conducted and information obtained will be used for re-assessment and periodic adjustments to ensure that the funding is best used to facilitate the goals of the initiative; and

c. The Baystate Health North End Community Center Project ($3,950,000): Springfield's North End neighborhood includes the poorest census track in Massachusetts. To address the health and education needs of the children, youth and seniors who reside in this area, $564,286 a year, over a seven year period for a total of $3,950,000 shall be awarded to the New North Citizens Council, Inc. in support of "The North End Community Center Project." The Center's services and programs are to be located primarily in the community spaces contiguous to the public right-of-way that bi-sects the interior of the German Gerena Community School. The funds should be targeted to address health education and prevention, priorities to be established with input from the community and the DoN applicant and will include a number of the following: STD prevention, teenage pregnancy prevention, nutrition and weight loss, recreational sports, dance and other activities that promote physical fitness, asthma education and prevention services, violence prevention and academic supports and mentoring; however, not less than $171,428 shall be awarded annually to the North End Outreach Network for the provision of population-based outreach and support to residents of the North End. All services and programs will contain a youth leadership development component focused on the creation and empowerment of the next generation of young Springfield leaders; it is expected that a portion of services will be sub-contracted out to other community-based organizations through a request for proposals to implement programs to address the target areas. Criteria and processes for independent proposal review will be established in consultation with the OHC. Selection of proposals for implementation will be made in collaboration with the DoN applicant, key community stakeholders that comprise the Campus Center Committee and it is anticipated that the Brightwood Community Health Center's medical director and City of Springfield's Director of Public Health will be primary consultants on the development of all health-

related services and programs. Once selected, each program will be required to conduct an annual evaluation and provide a report to the Council. The information from these annual reports may be used by the Council to re-assess need and funding priorities periodically and reissue RFP's accordingly and this information will be shared with the OHC; and

d. The Baystate Health-Greater Mason Square Community Centers Project ($3,150,000): The Applicant will contribute $450,000 a year over a seven year period for a total of $3,150,000 to the Dunbar Community Center to assist the greater Mason Square neighborhoods in addressing the health education needs of the children, youth and seniors who reside in this area. The funds shall be targeted to address health education and prevention, priorities to be established with input from the greater Mason Square community and the DoN applicant and will include a number of the following: STD prevention, teenage pregnancy prevention, nutrition and weight loss, recreational sports, dance and other activities that promote physical fitness, asthma education and prevention, violence prevention and academic supports and mentoring; however, not less than $50,000 shall be awarded annually to the lead community-based nonprofit agency partnering with the City of Springfield's homelessness initiative. Criteria and processes for independent proposal review will be established. Selection of proposals for implementation will be made in collaboration with the DoN applicant, the OHC and key community stakeholders from the greater Mason square community. The Baystate Health Mason Square Community Health Center's Medical Director and City of Springfield's Director of Public Health will be primary consultants on the development of all health-related services and programs. All services and programs will contain a youth leadership development component focused on the creation and empowerment of the next generation of young Springfield leaders; it is expected that a portion of the services will be sub-contracted out to the Martin Luther King Jr. Community Center and that the Mason Square Community Health Center's medical director will be a primary consultant on the development of all health-related services and programs; and

e. The Baystate Health Care Careers Forgiveable Loan Program ($700,000): To address the racial and ethnic disparities in the composition of Springfield's health care workforce to help retain residents in the community, and to provide low income graduating Springfield public school students the opportunity to attend college and become employed in under-represented clinical health care professions the applicant will provide a total of $700,000 awarded over a seven year period, $100,000 per year, for the purpose of awarding, not less than 20 or more than 40, forgivable loans per year to students who graduate from

the Baystate Health-Springfield Public School Education Partnership (BSEP); and who are accepted into and enrolled in a health care major at one of the following accredited higher education institutions: Springfield Technical Community College, Holyoke Community College, Greenfield Community College, Westfield State College, American International College, Springfield College, the Elms College, Western New England College and the University of Massachusetts Amherst; and who agree to seek employment, upon graduation and successful professional licensure or certification, if required, at Baystate Medical Center or one of its Springfield affiliates. Furthermore, the Applicant will take the appropriate steps necessary to ensure that effective outreach is performed to reach target populations. The Applicant will establish a review process to select candidates to be recipients of the grants; and

f. Reserve for Special Initiatives and Sponsorships ($700,000): The Applicant will designate an individual from the hospital to administer a total of $700,000, awarded over a seven year period at $100,000 per year, to support emerging community requests that seek to improve the health of the community and its residents.

g. Evaluation ($50,000) Because most of the funded programs discussed will be required to conduct periodic evaluations, the Applicant will provide a total of $50,000 awarded over a seven year period to adequately fund such evaluations.

Baystate shall submit an annual report to the OHC and shall hold a yearly community-wide summit in which all recipients of funds will highlight their programs and report all outcomes.

Staff's recommendation of approval was based on the following findings:

1. Baystate has filed a Determination of Need (DoN) application to undertake a substantial facilities expansion at its main campus located at 759 Chestnut Street, Springfield, MA 01199. The project, as proposed, involves construction of a seven story addition to the existing hospital encompassing 599,100 gross square feet (GSF) of new construction and 42,150 GSF of renovations. The project scope includes the addition of 48 beds – 18 adult medical/surgical and 30 adult critical care beds to its licensed bed capacity, replacement of 78 existing adult medical/surgical beds, replacement and expansion of heart and vascular procedure areas, renovation of vacated space, vacated and reuse for administrative and other on-clinical support functions, and construction of 295,800 GSF of shell space capable of accommodating up to 158 additional beds, a surgical suite, emergency department, and other clinical and support services.

2. Baystate has engaged in a very satisfactory health planning process.

3. An increase of 48 beds to Baystate's licensed adult medical/surgical bed capacity is reasonable.

4. The project meets the health care requirements of the DoN Regulations.

5. The project, with adherence to a certain condition, meets the operational objectives requirements of the DoN Regulations.

6. The project, with adherence to a certain condition, meets the compliance standards of the DoN Regulations.

7. The proposed maximum capital expenditure of $239,318,527 (March 2007 dollars) is reasonable compared to similar, previously approved projects.

8. The proposed incremental operating costs of $72,502,095 (March 2007 dollars) are reasonable compared to similar, previously approved projects.

9. The project is financially feasible and within the financial capability of the applicant.

10. The project is superior to other potential alternatives for achieving the Applicant's objectives.

11. The proposed community health initiatives, with adherence to a certain condition, are in conformance with Factor 9 of the DoN Regulations.

12. The New North Citizens Council Ten Taxpayer Group submitted written comments in support of the proposed project.

13. The Sisters of Providence Health System Ten Taxpayer Group submitted written comments in opposition to the proposed project.

For the record, the following Members of the Massachusetts General Court could not attend the meeting but submitted letters of support for the Baystate Medical Center Project: Representative Cheryl Coakley-Rivera, Representative Angelo Puppolo, Jr., Senator Michael Knapik, and Senator Gale D. Candaras. David B. Panagore, Chief Development Officer, City of Springfield, MA also submitted a letter of support for the Baystate Medical Center Project.

REQUEST FOR FINAL PROMULGATION OF AMENDMENTS TO 16 REGULATIONS REGARDING FINAL AGENCY DECISIONS IN ADJUDICATORY CASES:

Mr. James Ballin, Deputy General Counsel, Office of the General Counsel, Department of Public Health addressed the Council. He said in part, "…At the September Public Health Council Meeting, I presented proposed amendments to sixteen different DPH regulations relating to licensure and registration of various individuals and businesses. The proposed change in each of the sixteen regulations is to delete the requirement that review and approval of tentative decisions reached by a Hearing Officer in an adjudicatory hearing be conducted by the Public Health Council, but continue to have such tentative decisions reviewed and approved by the Commissioner, who would then render a final decision. In addition, I indicated at the prior Council meeting that when this matter returned to the Council for a vote on promulgation, I would also be requesting that the Public Health Council vote on formally delegating, to the Commissioner, its authority to review and approve tentative agency decisions."

Atty. Ballin continued, "The Department conducted a public hearing on the proposed amendments on October 23rd. There were no comments received either written or oral, during the public hearing or subsequent to the public hearing. However, there was one piece of testimony that came in from the Mass. Medical Society and that was related to Licensure of Clinic Regulations, and since the comment was essentially the same change as these regulations, I wanted to briefly mention it and, actually since it was the only comment and it is short, I will just read exactly what the Mass. Medical Society had to say regarding these proposed amendments. They said, 'they may reflect current practice, that the PHC has delegated such review for years, but the current PHC is much different from its predecessor, and its role in determining the types and quality of licensed health care facilities in Massachusetts should not be limited during the infancy of this new Council by these regulations.' The Department believes that the proposed amendments to these sixteen regulations and the delegation that we are requesting will not affect the Public Health Council's role in determining the types and quality of licensed health care facilities in Massachusetts. I wanted to address another issue that was brought up at the September meeting. Some Members expressed that in order to approve the delegation that there should be a mechanism established for the Commissioner to report to the Council on the cases for which he has rendered a final agency decision, and that the Council be given a periodic opportunity to revisit the delegation decision. In light of these comments, I want to make the following suggestion about the process that the Council may follow. If the regulations and the delegation are approved by the Council today, the Commissioner would provide a summary report twice a year, that would be in January and July, on any cases for which he has made a final agency decision in an adjudicatory proceeding; and, at the that time, the Council Members would have an opportunity to revisit the delegation issue, if you wish; and what we suggest is that the vote on the delegation authority not include any kind of a sunset provision but, rather be a permanent decision that the Council would have an opportunity to revisit or change on a semi-annual basis."

In conclusion, Atty. Ballin, stated, "I am requesting two votes from the Council today. The first is on the delegation of authority to the Commissioner on approving final agency decisions in adjudicatory cases, subject to the semi-annual reporting requirement that I

mentioned; and, second, a vote on the final promulgation of the amendments to the sixteen regulations."

A brief discussion followed. Council Member Cox asked why staff's memo said no changes are necessary when the Council made the suggestion on the semi-annual reporting requirement. Mr. Ballin replied, "What that was intended to address is the Mass. Medical Society's comment in which we didn't feel any changes were necessary, but we are still suggesting that the delegation and the promulgation be subject to the periodic review by the Commissioner, and for the Council Members to get the periodic opportunity to revisit this issue." Council Member Lanzikos requested that the Council receive a semi-annual report, even if there is no action. He explained, "…It has been my experience that, as a couple of periods go by, before you know it, the practice disappears." Council Member David asked whether this proposal is a clinic licensure issue. Dr. Paul Dreyer, Director, Bureau of Health Care Safety and Quality clarified, "I am not sure the Mass. Medical Society understood what was being proposed. This proposal is about the Council's review of revocation actions. So, were the Council to approve the licensure of Limited Service Clinics, and were the Department to revoke a license, then what this regulation would say is that the Council didn't have to review that revocation." Council Member Woodward noted, "Just for posterity, I think it would be useful to the semi-annual report to cite, in one sentence, the rationale for that report, which is that this responsibility was delegated, and the intent of this semi-annual review is to determine whether the Public Health Council feels it needs again to be involved in this process…I commend the rationale and your efforts and I think this is a reasonable solution. I would move approval."

Mr. Woodward moved approval. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the **Request for Delegation of Authority to the Commissioner on approving Final Agency Decisions in Adjudicatory cases**; and that a copy of staff's memorandum dated November 14, 2007 to the Council be made part of this record (which will be attached to the Exhibit below).

Mr. Woodward moved for the second motion also. After consideration, upon motion made and duly seconded, it was voted unanimously to approve **Final Promulgation of Sixteen Amendments to the Massachusetts Department of Public Health Regulations** which are listed below; that a copy of the approved amendments be forwarded to the Secretary of the Commonwealth; and that a copy be attached and made a part of this record as **Exhibit No. 14, 893:**

1. 105 CMR 120.000: Massachusetts Regulations for the Control of Radiation
2. 105 CMR 121.000: To Control the Radiation Hazards of LASERS, LASER Systems and Optical Fiber Communication Systems Utilizing LASER Diode or Light Emitting Diode Sources
3. 105 CMR 125.000: Licensing of Radiologic Technologists
4. 105 CMR 127.000: Licensing of Mammography Facilities
5. 105 CMR 130.000: Hospital Licensure
6. 105 CMR 140.000: Licensure of Clinics

7. 105 CMR 141.000: Licensure of Hospice Programs
8. 105 CMR 144.000: Licensure of Pine Street Inn Nurses Clinics
9. 105 CMR 160.000: Acute Care Inpatient Substance Abuse Detoxification Treatment Services
10. 105 CMR 162.000: Licensure of Substance Abuse Outpatient Services
11. 105 CMR 168.000: Licensure of Alcohol and Drug Counselors
12. 105 CMR 460.000: Lead Poisoning Prevention and Control
13. 105 CMR 500.000: Good Manufacturing Practices for Food
14. 105 CMR 533.000: Fish and Fishery Products
15. 105 CMR 561.000: Frozen Desserts, Frozen Dessert Mixes and or Ice Cream Mix
16. 105 CMR 570.000: The Manufacture, Collection, and Bottling of Water and Carbonated Nonalcoholic Beverages

PROPOSED REGULATION: INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 130.000 (HOSPITAL LICENSURE) TO REQUIRE REPORTING OF HEALTHCARE-ASSOCIATED INFECTIONS:

Chair Auerbach spoke about losing Council Members and said, "We don't need a vote but I think this is an important issue. I would anticipate we need ten more minutes of time, unless there are objections, or a desire at that point to postpone the release, which we can entertain if we wanted to. But this follows up on earlier discussions that the Council has had a couple of times about the need for public reporting of hospital-acquired infections. So, this has been long awaited and for that reason, I think we probably don't want to postpone it if we can avoid that."

Dr. Grant Carrow, Deputy Bureau Director, Bureau of Health Care Safety and Quality, gave a briefing to the Council on the proposed Healthcare-Associated Infections. He was accompanied by Dr. Paul Dreyer, Director of the Bureau and Ms. Nancy Ridley, Director of the Betsy Lehman Center for Patient Safety and Medical Error Reduction. Dr. Carrow said, "…We are here to propose amendments to regulations for hospital licensure that would require acute care hospitals to report certain data to the Department and to the Betsy Lehman Center, regarding healthcare-acquired infections. This initiative is one of the four goals that the Commissioner laid out in September when we came before the Council and presented the findings of the final report of the expert panel that was convened by the Betsy Lehman Center (BLC) and JSI Research and Training Institute, to make recommendations to the Department on an Infection Prevention and Control Program. What the regulations before you would do would be to require hospitals to report to a centralized web-based system, managed by the Centers for Disease Control and Prevention, called the National Healthcare Safety Network, or NHSN, and the data that would have to be reported would be determined by some regulatory documents, an advisory that the Department would put out from time to time, to specify which data would be required for which infections, and the way that the regulation is written, in other words, that the specifics would be in some regulatory document, affords the Department the flexibility to adapt the changes in the field. The regulation would specifically require the acute care hospitals to register with the National Healthcare

Safety Network (NHSN) of the Centers for Disease Control and Prevention (CDC) by March 1 of 2008, and to begin reporting on July 1, 2008."

Staff's memorandum to the Council explains, "The amendments would also allow the Department and the BLC access to portions of the collected data and related reports generated by NHSN. The Department will issue guidelines that specify which data elements must be submitted to NHSN. The data elements will be based on CDC recommendations issued in April 2006. These will include, but are not limited to, patient information, patient's location in the hospital, event details, laboratory test results and diagnosis. Facilities will need to register and be trained on the NHSN system…. Consistent with the Expert Panel recommendations; the data that is collected through the NHSN system will be reportable on three levels:

1. to the Department for analysis and reporting to the public;
2. to an oversight agency (such as the BLC) for monitoring and quality improvement purposes, but not for public dissemination; and
3. within the institution only, for tracking performance and results of quality improvement activities.

Staff's memorandum said further, "Attachment 2 from the Expert Panel's report lists the current recommended outcome and process measures to be monitored and indicates the levels of reporting. The initial reportable HAIs cover eight outcome measures and three process measures. The outcome measures include three central venous catheter-associated blood stream infections (CVC-BSI), four infections resulting from different surgeries (surgical site infections or SSI) and ventilator-associated pneumonia (VAP). The three process measures address the prevention of VAP and influenza vaccination of healthcare workers. The guidelines will specify the timelines and frequency for reporting. The Department expects to have an experienced epidemiologist available to analyze the data. Following analysis of the data, statewide and hospital-specific reports will be created for the public. Through these risk-adjusted reports, consumers will be able to compare individual hospitals to the statewide data. The Department and BLC will also prepare reports that compare the Commonwealth's experience to national data."

During discussion Chair Auerbach asked Dr. Carrow to clarify for the Council that they are voting on Attachment 1 only, not Attachment 2 – the sub-regulatory document. Dr. Carrow stated, "The amendment is Attachment 1 and Attachment 2 is from the report of the Expert Panel, and is what we expect would be in the recommendation and in the sub-regulatory documents, the advisory that we would issue around March or April, which would be the basis of the reporting. And as you said, Commissioner, that could be subject to change in the future. I think that pretty much summarizes it."

Council Member José Rafael Rivera asked what the timeline is for the hospitals to do the reporting – Is it at will or once a year or as it occurs?" Dr. Carrow answered, "That's a good question. We will establish the frequency of reporting in the sub-regulatory documents, but at this point, we understand CDC's requirements for NHSN reporting are on a thirty-day basis. So, that is probably what we will follow."

Council Member Dr. Alan Woodward asked questions in regard to the onerousness of the reporting requirement on hospitals and asked how the Massachusetts Hospital Association (MHA) felt about it. Staff replied as follows:

Dr. Paul Dreyer said in part, "MHA is a member of the Expert Panel that made the recommendations. We didn't hear anything from the MHA representative to suggest that they had any problems with this recommendation…."

Dr. Grant Carrow replied, "We will certainly try to balance the onerousness of it with the need to report, and certainly only collect that data that is most useful to be collected, and that was one of the things that was stressed by the hospital executives when they were surveyed in focus groups, was that point."

Ms. Nancy Ridley stated, "One of the points that I will add is, there was a strong recommendation and call for using a standardized set of definitions and standardized methodology for reporting. It is my understanding that there are either seven or eight states, at this point, that are also in the process of going to NHSN and as the vehicle, as that reporting modality – these are seven or eight states that already have mandatory reporting so that this appears to be the direction that the other states are going to, in terms of coming up with the standardized bucket."

Dr. Woodward asked that staff bring back with them next time they come (after the public hearing process) that they have current information on what is happening nationally with this. And Chair Auerbach asked that staff also comment next time on "how changes will occur in the sub-regulatory listing in the future." Dr. Dreyer noted that there will be an ongoing advisory committee, consisting of some members of the Expert Panel to advise staff on changes. Dr. Woodward stated, "An advisory Committee is always an adequate input if they consider it to be too burdensome."

Council Member Lucilia Prates Ramos commented, "In reading this, it is not obvious to me how I, as a member of the general public, would have access to this information, or could readily access the information…." Dr. Carrow replied, "The information that will be transmitted or available to the DPH for analysis will be analyzed by epidemiologists here in DPH, and we will prepare reports, and specifically reports that would be understandable and could be approached by the public. There is an arm of our Infection Prevention and Control Program that is looking into the best ways to communicate to the public about this information. We have had focus groups, interviews, and other efforts to determine how to communicate this type of information best to the public. We will utilize those results as we formulate our reports."

Ms. Lucilia Prates Ramos said further, "This is of particular interest to me because I have been in a position where I was not able to access such information, and I am concerned for the Limited English Proficient populations and how do they access this information, and how do we educate them. I just want to keep that on the front burner. It is a real concern." Chair Auerbach added, "May I suggest, as we have done with other

regulations that are being released for public input, that we highlight that as a particular question that we solicit input on during the public hearing process, and if I can restate what you were saying, that we want suggestions – we want input with regard to how best to share the information collected with the public, and with special populations within the state, including non-English Speaking populations, low literacy (as suggested by Council Member José Rafael Rivera), and the Council also would like to know what items are to be included in the data collection list, and the process for making that determination in the future (as suggested by Dr. Alan Woodward)…."

Dr. Carrow noted that the public hearing is scheduled for December 11, 2007 and that staff expects to bring this back to the Council in January.

No Vote/Information Only

The meeting adjourned at 12:50 p.m.

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John Auerbach, Chair

LMH