STAFF REPORT TO THE PUBLIC HEALTH COUNCIL
FOR THE DETERMINATION OF NEED

DoN Project Number	PHS-17071716-TO
Applicant Name	Partners Healthcare System, Inc.
Applicant Address	800 Boylston Street, Suite 1150 Boston, MA 02108
Date Received	July 8, 2017
Type of DoN Application	Transfer of Ownership
Total Value	$185,328,882
Ten Taxpayer Group (TTG)	None
Community Health Initiative (CHI)	Not applicable
Staff Recommendation	Approval with conditions
Public Health Council (PHC) Meeting Date	February 14, 2018

PROJECT SUMMARY AND REGULATORY REVIEW

The Applicant, Partners Healthcare System, Inc. (Partners) proposes to become the sole corporate member of the Foundation of MEEI, Inc. which is, in turn, the parent of the Massachusetts Eye and Ear Infirmary (MEEI). MEEI will maintain its own board and provider license. The Applicant requests a Determination of Need (DoN) for its proposed Transfer of Ownership pursuant to 105 CMR 100.000. Transfers of Ownership are reviewed subject to M.G.L. c.111 §§ 51 and 53 and the DoN regulation, specifically, 105 CMR 100.735 which provides, in relevant part that "no Person shall be issued an Original License for a Hospital unless the Department has first issued a Notice of Determination of Need for such Proposed Project at the designated Location." Transfers of Ownership are subject to Factors 1, 3, and 4 of the DoN regulation and certain standard conditions which are set out in Attachment 1.

The proposed merger is also under review by the Health Policy Commission, which is conducting a Cost and Market Impact Review (CMIR). Pursuant to 105 CMR 100.735, "as part of a completed Cost and Market Impact Review, the HPC may provide a written recommendation to the Commissioner that the Notice of Determination of Need should not go into effect on the basis of findings contained within the completed and publicly released Cost and Market Impact Review." The HPC released its preliminary CMIR on November 1, 2017, to which the Applicant responded. The final CMIR was approved by the HPC on January 3, 2018. Findings from the CMIR[1] have been taken into account in this Staff Report as they relate to each DoN factor.

The Department received written comment and held a public hearing on September 27, 2017. A list of speakers can be found at Attachment 2.

[1] The Preliminary CMIR can be found at https://www.mass.gov/files/documents/2018/01/03/PHS-MEE%20Final%20CMIR%20Report_0.pdf

Background

Partners Healthcare System, Inc. (Partners) is a nonprofit integrated health care system that was formed in 1994 by an affiliation between The Brigham Medical Center, Inc. and Massachusetts General Hospital (MGH). Partners now operates two tertiary care hospitals, seven community acute care hospitals in MA, one community acute care hospital in Southern New Hampshire, one facility providing inpatient and outpatient mental health services, and three facilities providing in- and outpatient services in rehabilitation medicine and long-term care. It also operates physician organizations and practices, a home health agency, nursing homes, a program for training graduate level health professionals, as well as a licensed, nonprofit managed care organization that offers health insurance products to MassHealth, Commonwealth Care, and commercial insurance populations.

MEEI is a nonprofit specialty hospital that serves patients with disorders affecting the eyes, ears, nose and throat and adjacent regions of the head and neck. It is licensed to operate 41 beds and provides New England's only 24-hour, 7 days-a-week dedicated eye emergency room. MEEI is the otorhinolaryngology (ORL) and ophthalmology (OPH) service for MGH, the OPH service for Brigham and Women's Hospital (BWH), and the referral site for ORL and OPH services for other Partners hospitals. The Applicant notes that MEEI is the only stand-alone eye and ear hospital in the United States. MEEI is the principal provider of a number of specialty OPH and ORL services; and the sole provider for approximately 30 services.[2] In addition to its main campus, MEEI currently provides outpatient services at 8 hospital satellite locations, and operates 10 physician practice sites.

Partners and MEEI are geographically proximate and MEEI physician groups already join Partners in contracting with the three largest commercial payers. The Applicant states that both entities have the common combined missions of providing clinical care, conducting research and educating the next generation of providers and researchers, and believe this transaction will be mutually beneficial for accomplishing their missions. The transaction is presented by the Applicant as an opportunity to provide MEEI researchers access to Partners' extensive research infrastructure, which will save money, facilitate data sharing, and enhance collaboration among researchers, potentially bringing new treatments that improve outcomes to patients sooner.

The Applicant also points to provider consolidation and the movement toward risk-bearing contracts, such as Accountable Care Organizations (ACOs) for both Medicare and Medicaid, that require integrated population health management resources to effectively manage the continuum of patient care. These are resources that MEEI asserts it does not have in the absence of this affiliation. The Applicant asserts that independent hospitals, including MEEI, are dealing with decreases in federal payments for hospital services and for medical education; decreases in federal funding for research; and increases in costs for pharmacy and nursing. As a result, the long-term sustainability of independent hospitals, particularly a specialty hospital like MEEI, may be at risk in the current health care market. The Applicant asserts that this transaction will alleviate financial pressures on MEEI through savings from economies of scale; access to larger group purchasing and vendor contracts; and process improvements. Finally, the Applicant states that the lack of full financial, operational and clinical integration of MEEI with Partners HealthCare creates barriers to optimizing integrated care delivery in an ACO model. That is, even if MEEI participated contractually with an ACO, it would not be able to share directly in any savings generated by the ACO without its own primary care base.

[2] See, Preliminary CMIR p.31 http://www.mass.gov/anf/docs/hpc/material-change-notices/20171101-preliminary-phs-mee-report-final.pdf

Analysis

This analysis and recommendation reflect the purpose and objective of DoN, which is "to encourage competition and the development of innovative health delivery methods and population health strategies within the health care delivery system to ensure that resources will be made reasonably and equitably available to every person within the Commonwealth at the lowest reasonable aggregate cost advancing the Commonwealth's goals for cost containment, improved public health outcomes, and delivery system transformation" (105 CMR 100.001).

Transfers of Ownership are subject only to factors 1, 3, and 4 of the DoN regulation, which address population need, public health value, compliance with regulatory requirements, and sufficient financial capacity for the project. Applications for Transfer of Ownership are exempt from factors 2, 5, and 6, which specifically address health care cost containment, assessment of other options, and payment to the Community Health Initiative. This Staff Report addresses each of the applicable factors in turn.

Factor 1

Factor 1 requires that the Applicant establish that the project will:

- Meet a demonstrated need by the existing patient panel;
- Add measurable public health value in terms of improved health outcomes and quality of life;
- Provide reasonable assurances of health equity;
- Improve continuity and coordination of care, including appropriate linkages to patients' primary care services;
- Demonstrate sound community engagement throughout the development of the proposed transaction; and
- Be competitive on the basis of price, total medical expense (TME), provider costs, or other recognized measures of health care spending (105 CMR 100.210(A)(1)).[3]

Since some Factor 1 elements are interrelated, for example, improved coordination and continuity of care can impact health outcomes and quality of life, and access to care is central to assuring health equity, the analysis to follow is organized by examining the impact of the transaction on Patient Panel and Need, Public Health Value, and Access to Care.

Patient Panel and Need

The Partners' patient panel consists of approximately 1.3 million patients in 2016, which represented 19% of all discharges in Massachusetts that year. Approximately, 373,000 (29%) have an OPH or ORL-related condition. Most of Partners patients (77%) reside in the eastern part of the state. In 2016, the MEEI patient panel was comprised of 174,565 unique patients. MEEI draws 87% of its patients from eastern Massachusetts, while 10% are from out of state, including international patients.

[3] In addition, Factor 1 requires that the Applicant provide evidence of consultation with the relevant regulatory agencies which, in this case has been done and, as a result will not be addressed further in the Staff Report. 105 CMR 100.210(A)(1)(d)

Geographic Distribution of Partners & MEEI Patients

	All Partners	Partners OPH and ORL	MEEI
Eastern MA	77%	81.3%	87%
Central &Western MA	9%	7.4%	3%
Out of State and International	12%	10.3%	10%
Total	98%*	98.9%*	100%

*unknown 2%, and 1.1% respectively

The Applicant indicates that by 2035, one in four Massachusetts residents will be over age 65, which will result in higher incidence of ORL-related conditions, such as head and neck cancers and vestibular disorders, that require access to specialists; and higher incidence of OPH and ORL related complications due to underlying diseases, such as diabetic retinopathy. The Applicants asserts that this transaction will allow patients affiliated with both MEEI and Partners to benefit from the Applicant's population health efforts and, in terms of outcomes, they hope that these will improve survival from head and neck cancers and more effectively screen for blindness due to diabetes.

Public Health Value (Outcomes, quality of life, and equity)

Public Health Value, for the purposes of DoN, requires that the project have an evidence base, be outcome oriented and address health inequities (105 CMR 100.210(A)(1)(b)). Staff examined the impact of the transaction on improved coordination of care and patient access to care as well as the impact upon outcomes and quality of life as a result of the transaction.

Improved Coordination of Care

The transaction is presented as the logical progression of an already established strong relationship between MEEI and Partners facilities, in particular, MGH, to which it is physically proximate and presently shares MEEI's specialty physician services. The proposed transaction will fully integrate MEEI into the Partners system, with full data sharing and analytics to implement population health management tools.

The Applicant asserts that integration of the MEEI OPH and ORL into the Partners system will improve early detection for diabetic retinopathy and early detection and treatment of head and neck cancers. More specifically, that integrating Partners' and MEEI quality improvement, scheduling, and medical records systems will help assure that patients receive appropriate screenings and referrals. Additionally, the Applicant asserts that full integration of MEEI into the Partners system will create new models of care that reflect the state and federal shift to accountable care for populations. The Applicant posits that with effective management and early intervention strategies, the system can prevent readmissions, improve quality of care, improve outcomes and thereby save costs.

The Applicant asserts that both Partners and MEEI will benefit from improved facilities planning, which will maximize the use of space at the two contiguous facilities, MGH and MEEI, and at each organization's community-based outpatient facilities. This ability to more effectively use existing

Partners and MEEI facilities may result in more complete access to care near patients' home communities.

The Applicant offers a series of assessment measures (Attachment 3) to track the project's impact on access and quality for Partners' patients, such as assessing access by calculating the number of patients seen by appropriate specialists and the length of time between primary care visits and referral.

Staff notes that the transaction will likely yield direct positive implications for patients who are affiliated with both Partners and MEEI because they will benefit directly from population health measures. However, implications for patients who are only affiliated with MEEI are less clearly defined. The Applicant asserts that the benefits flowing from the integration of care and services will be more broadly applicable to all patients, and points out that "the Transaction documents include a specific commitment by both parties that MEEI will continue to provide access to its specialty care services by patients in other networks."

Access to Care - Long-term Sustainability of MEEI

The DoN program is designed to "ensure that resources will be made reasonably and equitably available to every person within the Commonwealth at the lowest reasonable aggregate cost" (105 CMR 100.001). As required by factor 1, any DoN applicant must show that the project will add measurable public health value in terms of outcomes, quality of life, and health equity (105 CMR 100.210(A)(1)(b)). An important aspect of health equity is the continuing ability of patients to access the specialized care that MEEI provides.

As noted above, MEEI is the principal and sometimes sole provider in the Commonwealth for certain specialized OPH and ORL services. Hence, MEEI's long-term sustainability is a key consideration for continued access to these services. MEEI's declining operating margins over time and its inability to participate fully in accountable care models may be a threat to access that this transaction could ameliorate.

The Applicant states that MEEI "will soon find it difficult to maintain all aspects of its clinical, research and teaching missions." It attributes this to a variety of financial pressures, including rising labor and pharmaceutical costs and reductions in federal funding for research and medical education. The Applicant asserts that declining margins and declining research dollars work against MEEI's ability to remain independent and continue its research, educational and clinical missions. Staff reviewed the 2016 CHIA *Hospital Profiles* and the *Acute Hospital Financial Performance Trends*. The table below shows increasing revenue over time, but continued operating losses since 2012.[4] [5] MEEI has been dependent on grants and philanthropy to generate surpluses, but these sources of revenue can fluctuate dramatically from year to year, and do not provide a firm foundation for long-term sustainability.

[4] Non-operating revenue has fluctuated widely over that same time period with a high in 2012 of $234M to a low of $4M in 2013.

[5] In its CMIR, HPC notes that "overall, MEE is a financially stable organization." CMIR p.13.

MEEI Financial Performance Trends- CHIA*

	2012	2013	2014	2015	2016
Operating Surplus (loss)	($802,694)	($4,014,197)	($5,853,856)	($26,573,020)	($12,313,602)
Total Surplus (loss)	$31,842,513	$51,803	($527,759)	$2,932,698	($3,103,392)
Operating Margin	(0.30%)	(1.80%)	(2.60%)	(10.30%)	(4.80%)
Total Margin	13.60%	0.00%	(0.20%)	1.10%	(1.20%)

*Center for Health Information and Analysis, *Acute Hospital Financial Performance Trends*, Massachusetts Eye and Ear Infirmary, August 2017 http://archives.lib.state.ma.us/bitstream/handle/2452/735337/ocn690721530-FY16-mass-eye.pdf?sequence=1&isAllowed=y

On the assumption that an affiliation between MEEI and some larger system is important for its continued sustainability, the proposed transaction appears to make sense from the perspective that: MGH and MEEI are geographically proximate; MEEI is the ORL and OPH service for MGH, the OPH service for BWH, and the referral site for ORL and OPH services for other Partners hospitals; MEEI physicians contract with Partners physicians for the three largest payers; and the hospitals are already functionally affiliated in many ways. One concern raised with respect to this proposed transaction is the potential for rate increases because the Partners system rates are significantly higher, on average than MEEI rates.

Access to Care - Impact of Rate Increases

MEEI physicians currently already contract through Partners, so we focused our analysis on potential price increases for the facility portion. The parties expect that MEEI will be included in Partners HealthCare's commercial payer negotiations following the proposed transaction, and following the end of each of MEEI's and Partners' existing commercial payer contracts periods. MEEI's rates in the commercial market are lower than the statewide average.[6] The parties expect that a part of the overall Partners' negotiated rate increases will be allocated to MEEI services.

The Applicant asserts that the impact of the rate increases on total health care expenses (THCE) will be negligible because only a small portion of their patient revenues are negotiable. That is, 49.3% of MEEI's payer mix is from commercial payers and thus subject to rate adjustments through contract negotiations.[7] Further, the MEEI physician groups already join Partners in contracting with the three largest commercial payers, and thus will not be affected by the transaction. The portion of the MEEI rates that can be expected to rise as a result of the transaction includes facility rates from the largest commercial carriers and both the facility and physician contract rates for commercial carriers outside of the top three in the market.

[6] CHIA places MEEI in the specialty hospital category since it does not provide the full range of services however it is a research and teaching facility.
[7] The MassHealth and Medicare rates are relatively fixed and this transaction will not directly affect that portion of the patient revenues.

The Applicant estimates that the relevant negotiable portion of MEEI's contracts with payers is in the range of $70 - $90 million. Partners' negotiations with commercial payers have historically yielded annual gains equal to 3-3.5%,[8] which they estimate would result in an increase between $2.1 - $3.2 million in the first integrated contract year if the rate increase were equally allocated to all service lines. On the other hand, the HPC, in its Preliminary CMIR asserts that "Partners would likely seek significant hospital rate increases for MEEI's main campus and hospital-licensed outpatient sites after an acquisition. Over time, we estimate that health care spending would increase by $14.9 million to $55.3 million annually if Partners achieves parity between MEEI's rates and those of Partners' other hospitals, consistent with Partners' past practice."[9] The HPC estimates of the potential increases in the cost of care are set out in Chart A, below and dramatically exceed the cost growth benchmark. Partners' historical rate increases have been between 3%-3.5%, generally at or near the cost growth benchmark.

HPC Chart A - Impact of Estimated MEEI Hospital and Physician Price Increases

	Lower estimate	Higher estimate
Hospital inpatient rates	$865K	$3.3M
Hospital outpatient rates	$14.0M	$51.9M
MEEA physician rates	$5.9M	$5.9M
Total spending impact of potential rate increases	**$20.8M**	**$61.2M**

see, Preliminary CMIR p. 47 http://www.mass.gov/anf/docs/hpc/material-change-notices/20171101-preliminary-phs-mee-report-final.pdf

The Applicant argues that rate increases are unlikely to impact access to care because only a portion of the MEEI rates will be affected by the transaction. However, staff notes that MEEI participates in the preferred tier of several commercial network plans and rate changes could affect that tiering. Thus, it is possible that some consumers may lose access or pay higher out-of-pocket costs. In its preliminary CMIR, HPC includes a chart (HPC Chart B, below) illustrating network participation in the three largest commercial payers.

[8] The Applicant asserts that because MEEI's TME represents 0.3% of the Commonwealth's THCE (approximately $59B/year) having MEEI as a member entity contracting with Partners will not materially influence Partners' ability to negotiate rate increases beyond that 3-3.5% range.

[9] In a footnote, HPC states that "Internal documents related to the proposed transaction developed by the parties and provided to the HPC contemplate revenue increases due to rate lifts for MEE generally consistent with our lower estimate."

HPC Chart B
Tiered and Limited Networks for the Three Largest Commercial Payers

Hospital	BCBS		HPHC		THP	
	Limited Network	Tiered Networks	Limited Network	Tiered Networks	Limited Network	Tiered Networks*
MEEI	In Network	Most Efficient	In Network	Most Efficient	Out of Network	Most Efficient
BWH	Out of Network	Least Efficient	Out of Network	Least Efficient	Out of Network	Least Efficient
MGH	Out of Network	Least Efficient	Out of Network	Least Efficient	Out of Network	Least Efficient
Faulkner	Out of Network	Most Efficient	Out of Network	Middle	Out of Network	Least Efficient
NWH	Out of Network	Most Efficient	Out of Network	Middle	Out of Network	Least Efficient
NSMC	Out of Network	Most Efficient	Out of Network	Middle	Out of Network	Least Efficient

Sources: HPC analysis of tiered and limited plans for Massachusetts hospitals, excluding provider-specific networks; each of the three largest payers offered one applicable limited network product and four applicable tiered network products; *See Find a Doctor and Estimate Costs*, BLUE CROSS AND BLUE SHIELD OF MASS., https://myfindadoctor.bluecrossma.com/ (last visited Oct. 29, 2017); *Find a Doctor or Care Provider*, HARVARD PILGRIM HEALTH CARE, https://www.providerlookuponline.com/harvardpilgrim/po7/Search.aspx (last visited Oct. 29, 2017); *Find a Doctor*, TUFTS HEALTH PLAN, http://tuftshealthplan.prismisp.com/ (last visited Oct. 29, 2017).
Note: In one of THP's tiered network products, Navigator PPO, MEEI is in the middle tier rather than the most efficient tier, and Faulkner, NWH, and NSMC are in the middle tier rather than the least efficient tier.
see, Preliminary CMIR p 33 http://www.mass.gov/anf/docs/hpc/material-change-notices/20171101-preliminary-phs-mee-report-final.pdf

Staff also notes that MEEI participation in Medicaid Managed Care Plans may shrink given that the Partners hospitals, with the exception of Northshore Medical Center, participate only in Neighborhood Health Plan and not in other Medicaid Managed Care Plans in the market. See Chart C, below.

HPC Chart C
MMCO Network Participation for MEEI and Partners Hospitals

Hospital	Medicaid Managed Care Organization Payer			
	BMC HealthNet Plan	CeltiCare Health Plan	Neighborhood Health Plan	Tufts Health Public Plans
MEEI	In Network	Out of Network	In Network	In Network
BWH	Out of Network	Out of Network	In Network	Out of Network
MGH	Out of Network	Out of Network	In Network	Out of Network
Faulkner	Out of Network	Out of Network	In Network	Out of Network
NWH	Out of Network	Out of Network	In Network	Out of Network
NSMC	In Network	Out of Network	In Network	Out of Network

Sources: HPC analysis of MMCO plans for Massachusetts hospitals; *See Find a Doctor, Hospital, or Pharmacy*, BOSTON MEDICAL CENTER HEALTHNET PLAN, https://www.bmchp.org/utility-nav/find-a-provider/masshealth, (last visited Oct. 29, 2017); *Find a HealthCare Provider*, CELTICARE HEALTH PLAN, https://providersearch.celticarehealthplan.com/, (last visited Oct. 29, 2017); *DoctorSmart online tools*, NEIGHBORHOOD HEALTH PLAN, https://nhp.vitalschoice.com/?ci=DFT&geo_location=02150,chelsea,ma,city&network_id=5, (last visited Oct. 29, 2017); *Find a Doctor, Hospital, or Pharmacy*, TUFTS HEALTH PLAN, *http://networkhealth.prismisp.com/?plan=together&str=together-en*, (last visited Oct. 29, 2017)
see, Preliminary CMIR p.34 http://www.mass.gov/anf/docs/hpc/material-change-notices/20171101-preliminary-phs-mee-report-final.pdf

Staff understands that network participation – in particular the inclusion of a provider in a network – is subject to negotiation. That said, participants in Medicaid Managed Care Plans may lose access as a result of this transaction. MEEI has offered the Department assurances that it intends to stay in all its current networks; however, rate increases may result in higher out-of-pocket costs for current MEEI patients.

Improving Access by Addressing Disparities and Health Equity

The Applicant asserts that this transaction will increase access to services for the patient panel through ongoing efforts to address health inequities. These include Partners' participation in the American Hospital Association's (AHA) 123 Equity Pledge Campaign through which it is developing initiatives around health equity and inclusion that includes developing data analytic tools to measure equity; restructuring its information technology tools to capture needs associated with social determinants of health; implementing system-wide educational tools on the collection of race/ethnicity data; and training for cultural competency. These tools will be available to MEEI following approval of this transaction and after interoperability has been achieved.

Both entities have adopted the Culturally and Linguistically Appropriate Services (CLAS) standards set forth by the U.S. Department of Health and Human Services Office of Minority Health for all practice sites and offer language assistance services by certified translators at no cost.

Each of Partners and MEEI point to a history of engaging the community in activities and developing initiatives aimed to help at risk populations. The MEEI Community Health Needs Assessment (CHNA) describes in excess of 30 initiatives targeting underserved and/or vulnerable populations, such as health screenings at fairs and schools, medical exams, transportation assistance, support groups, and surgery for victims of domestic abuse. In 2012 MEEI opened a clinic that included ambulatory surgery in Mission Hill and has developed targeted initiatives for screening, prevention and treatment services.

Sound Community Engagement

DoN Applicants must provide evidence of sound community engagement and consultation throughout the development of the Proposed Project. 105 CMR 100.210(A)(1)(e). The Applicant described a community engagement process that was geared towards the MEEI community broadly and engaged local resident groups that may be impacted by the transaction. The Applicant presented the plans for the proposed transaction to MEEI's Patient and Family Advisory Council (PFAC).[10] Following the presentation and discussion, MEEI received support for the transaction from the PFAC.

Following the PFAC meeting, the Applicant described hosting a community meeting to engage additional patients and local residents at which no community members attended. Subsequently MEEI expanded upon its engagement with patients in small group settings through its "President's Lectures" series where the President of MEEI presented to a group of 40 patients and guests information of goings-on about the hospital including information about current research, and the proposed transaction, and then conducted a question and answer session; this received positive feedback from forum attendees. MEEI is providing additional information about the proposed transaction, along with an opportunity to provide feedback through its website. As the transaction progresses, additional lectures will be held to continue to gain input from the community as the project progresses.

Finding – Factor 1

Analysis of the proposed project reflects a transaction which is likely to offer improved continuity and coordination of care for Partners' and MEEI patients, especially for patients with OPH and ORL needs. As a specialty services provider without a primary care base, MEEI is unable to enjoy full participation in accountable care contracts, which incorporate both financial and quality metrics. The transaction is expected to provide MEEI access to an extensive research infrastructure and data management tools for population health management and care delivery innovation. The integration of MEEI services with Partners' primary care could improve financial and quality metrics for patients in the Partners' network. However, such improvements for patients with non-Partners' primary care providers is unclear. Staff believes that MEEI rate increases resulting from contracting as a Partners organization could threaten access if the diversity of Medicaid Managed Care Plans were to become limited. In addition, rate increases may change the tier ranking for MEEI services, resulting in higher out-of-pocket costs for patients.

On the other hand, the absence of the transaction threatens patient access in different ways. The long-term sustainability of MEEI is at risk, and MEEI will likely seek a merger with a different partner without this transaction. A different merger partner will offer benefits and risks different from those presented

[10] MEEI's Patient and Family Advisory Council (PFAC) plays an important role in the delivery of patient centered care to ensure that patient's interests, concerns, and needs are addressed by MEEI providers and leadership; and that the priorities and plans for the future of MEEI are aligned with best patient care practices.

in this analysis, such as the need to separate providers from its current contracting structure with Partners HealthCare. Furthermore, sustained operating losses may lead MEEI to close community locations, which could have a negative impact on patient access, particularly to its highly specialized services.

The parties have both offered assurances that the transaction is not intended to negatively impact the MEEI patient panel in terms of care or access. To ensure adherence to that commitment, regular tracking of continuing network participation by MEEI will help reveal any potential negative impact on access.

The Applicant asserts that the impact on THCE or on the Commonwealth's cost containment goals will be negligible. Instead, the transaction should be viewed through the lens of the financial, operational and clinical benefits of the project gained through full integration of MEEI's patient panel into the Partners' system. Staff agrees that the benefits of this transaction in terms of MEEI sustainability and improved coordination of care should be balanced against the potential for rate increases.

The Applicant has addressed outcomes improvements which will be measured in ongoing reporting as a condition of any DoN. The Applicant described initiatives around health equity and inclusion that include developing data analytic tools to measure equity; restructuring its information technology tools to capture needs associated with social determinants of health; implementing system-wide educational tools on the collection of race/ethnicity data; and training for cultural competency.

Staff concludes that this Application meets the requirements in Factor 1, but with conditions which are attached to this report. These conditions include measureable benchmarks to track the impact of care coordination on patient outcomes, and demonstration that its proportion of MassHealth and Medicaid Managed Care payer mix will not appreciably decrease, and a commitment that the rate of participation by MEEI in limited network and tiered products does not decrease from the rate on the Baseline Date.

Factor 2 does not apply

Factor 3

Factor 3 requires compliance with relevant licensure, certification, or other regulatory oversight for which Applicant provided sufficient information to determine compliance.

Factor 4

The DoN regulation at 105 CMR 100.210(A)(4) requires that an Applicant for a DoN provide "sufficient documentation of the availability of sufficient funds for capital and ongoing operating costs necessary to support the Proposed Project without negative impacts or consequences to the Applicant's existing Patient Panel and that the Proposed Project is financially feasible and within the financial capability of the Applicant." Factor 4 requires that the documentation provided in support of the Department's finding shall include an analysis of the Applicant's finances, completed by an independent Certified Public Accountant (CPA Report).

The CPA report was submitted after a review of both parties' financial statements, consolidated pro forma balance sheets, statements of operations and cash flows from the current and past two years for conformance with industry standards and mathematical accuracy. The report also included a review of

assumptions in the projected five years of financial reports for both parties, and concludes that assumptions were all reasonable. After incorporating MEEI into its financials, the CPA report estimates that MEEI will comprise 3% of Partners' revenues and expenses from operations.

The CPA Report found that the consolidation of MEEI into Partners was "financially feasible and within the financial capability of the Applicant." The CPA Report determined that "because the impact of consolidating MEEI with Partners represents a relatively insignificant portion of the operations and financial position of Partners, we determined that the Projections were not likely to result in insufficient funds available for capital and ongoing operating costs necessary to support the proposed project" and that the "continued operating surpluses are reasonable and based upon feasible financial assumptions."

The CPA report included multiple financial ratios for liquidity, profitability and solvency which were calculated over a five year timeframe, from 2016 (actual) to 2021 (projected) with slight variations year over year. Additional analysis of projected versus actual revenues and expenses for 2017 showed immaterial variations that, based on historical performance, were deemed reasonable. The impact of consolidation on non-operating revenues, according to the analysis, revealed 1-3% variation over the five years, which were also deemed reasonable. Additional analysis of Partners' portfolio investments considered a scenario where there was a 0% net gain. The analysis states that since Partners uses gains for capital investments, it would hold off on such investments until capital became available.

Finding - Factor 4

With these findings there is sufficient evidence that the project is within the financial capabilities of the Applicant and in that context, will not have a negative impact on the patient panel.

Factor 5 –does not apply

Factor 6 –does not apply

Public Hearing

The Department of Public Health conducted a public hearing on September 27, 2017.[11] Several members of the PFAC spoke at the public hearing in support of the transaction and its proposed benefits to ensure the sustainability of MEEI and access to its high quality care. Representatives from Partners and MEEI as well as patients, family members, and clinicians all spoke in favor of the transaction referencing anticipated benefits including institutional and research stability; improved operational efficiencies gained through shared facilities and resources; and access to capital for infrastructure improvements. Families and patients spoke to ongoing support and the high quality and coordination of care that they receive.

Findings and Recommendation

Pursuant to 105 CMR 100.735, the staff recommends approval of the proposed project. Any approval is subject to 105 CMR 100.735(D)(1)(a) which provides that any DoN shall not go into effect until 30 days following HPC's completed Cost and Market Impact Review. Approval is further subject to 105 CMR 100.735(D)(3)

[11] A list of speakers is attached as Attachment 2

Approval shall be subject to the Standard Conditions relevant to Transfers of Ownership (see Attachment 1) and the following additional requirements which shall become conditions of the DoN Ongoing compliance with the conditions and all terms of the DoN is, pursuant to the Regulation, a precondition to the filing of any future DoN by the Applicant:

Other Conditions

1. The date of the DoN shall constitute the Baseline Date for the purpose of MEEI's Network Participation. Network Participation shall mean, for the purposes of these conditions, MEEI's participation in MassHealth fee for service and managed care, Medicare fee for service and managed care, and in commercial payer contracts, including its rate of participation in limited network and tiered products and the tier in which MEEI is placed.

2. In its first report mandated by 105 CMR 100.310(L), the Holder will provide baseline measures for MEEI services followed by subsequent annual submission of data for the Partners HealthCare OPH and ORL services.

    a. A report on the percentage change in reimbursement rates (facility and physician) to MEEI (or for OPH and ORL services), as measured against the statewide cost control benchmark.

    b. A description of the then-current Network Participation of MEEI, including but not limited to the number of:
        i. Limited network products;
        ii. Tiered products, including MEEI's tier level for each of these products;
        iii. Other commercial products;
        iv. MassHealth Fee for Service;
        v. MassHealth Managed Care
        vi. Medicare Fee for Service; and
        vii. Medicare Managed Care

    c. A description of the current payer mix of MEEI, reported by each of the insurance product categories listed in 2.b, above with the addition of self-pay;

    d. The percentage of Partners and non-Partners patients seen at MEEI;

    e. An affirmation that there has been no decrease in access to care at MEEI, for non-Partners patients or for MMCO patients;

    f. A description of the operating efficiencies and savings associated with those operational efficiencies achieved in the past year and cumulatively; and

3. Partners and MEEI will ensure that MEEI (or OPH and ORL services) will retain an equivalent or higher share of its patient panel in MMCOs and accepts an equivalent or higher percentage of patients served by MassHealth fee for service as was in effect upon the Baseline Date.

4. At such time as MEEI joins Partners in contract negotiations with commercial payers, Partners and MEEI will ensure that the rate of participation by MEEI (or its OPH and ORL services) in limited network and tiered products does not decrease from the rate on the Baseline Date.

5. With respect to each of the Assessment Tools that the Applicant has defined (see Attachment 3) the Holder shall, in its first report mandated by 105 CMR 100.310(L), submit to the Department: a report that details, for each: the baseline measures; expected benchmarks; measure specifications; and the anticipated time to meet goals. This information shall be updated annually in accordance with 105 CMR 100.310(L)

6. With respect to its commitment to improve detection, screening, or treatment, a report that:
    a. describes the core set of OPH and ORL measures;
    b. sets forth established benchmarks; and
    c. defines quality outcomes over time

    Any and all measures shall include baseline measures, measure specifications, and expected benchmarks for these proposed improvements. These reports shall be updated annually in accordance with 105 CMR 100.310(L).

7. At such time as MEEI joins Partners in contract negotiations with commercial payers, Partners and MEEI will ensure that the contracted rates for MEEI (or OPH and ORL services) do not increase in excess of the Commonwealth's cost growth benchmark in any 12-month period. The parties shall annually certify compliance with this section to the Department and provide any requested documentation necessary to assess compliance.

Attachment 1

LIST OF FACTORS and STANDARD CONDITIONS RELEVANT TO TRANSFERS OF OWNERSHIP

Only Factors 1, 3, and 4 apply to transfers of ownership.

105 CMR 100.210(A) The Department shall determine that need exists for a Proposed Project, on the basis of material in the record, where the Applicant makes a clear and convincing demonstration that the Proposed Project meets each Determination of Need Factor set forth within 105 CMR 100.210, unless otherwise expressly specified within 105 CMR 100.000.

[Factor] 1 Applicant Patient Panel Need, Public Health Value, and Operational Objectives.

a. The Applicant has demonstrated sufficient need for the Proposed Project by the Applicant's existing Patient Panel;

b. The Applicant has demonstrated that the Proposed Project will add measurable public health value in terms of improved health outcomes and quality of life of the Applicant's existing Patient Panel, while providing reasonable assurances of health equity;

c. The Department has determined that the Applicant has provided sufficient evidence that the Proposed Project will operate efficiently and effectively by furthering and improving continuity and coordination of care for the Applicant's Patient Panel, including, sufficient evidence that the Proposed Project will create or ensure appropriate linkages to patients' primary care services;

d. The Applicant has provided evidence of consultation, both prior to and after the Filing Date, with all Government Agencies with relevant licensure, certification, or other regulatory oversight of the Applicant or the Proposed Project;

e. The Applicant has provided evidence of sound community engagement and consultation throughout the development of the Proposed Project, including documentation of the Applicant's efforts to ensure engagement of community coalitions statistically representative of the Applicant's existing Patient Panel. Representation should consider age, gender and sexual identity, race, ethnicity, disability status, as well as socioeconomic and health status; and

f. The Applicant has demonstrated that the Proposed Project will compete on the basis of price, total medical expenses, provider costs, and other recognized measures of health care spending.

[Factor] 2 Intentionally Omitted

[Factor] 3 Compliance.

The Department has determined, in consultation with all Government Agencies with relevant licensure, certification, or other regulatory oversight of the Applicant or the Proposed Project, that the Applicant has provided sufficient evidence of compliance and good standing with federal, state, and local laws and regulations, including, but not

limited to compliance with all previously issued Notices of Determination of Need and the terms and Conditions attached therein.

[Factor]4 Financial Feasibility and Reasonableness of Expenditures and Costs.

The Department, in consultation with CHIA, has determined that the Applicant has provided sufficient documentation of the availability of sufficient funds for capital and ongoing operating costs necessary to support the Proposed Project without negative impacts or consequences to the Applicant's existing Patient Panel. Said documentation shall be completed and certified under the pains and penalties of perjury by an independent certified public accountant (CPA). Said independent CPA's analysis shall include, but not be limited to: a review of the Applicant's past and present operating and capital budgets; balance sheets; projected cash flow statements; proposed levels of financing for the Proposed Project, including a five-year financial sustainability analysis; and any other relevant information required for the independent CPA to provide reasonable assurances to the Department that the Proposed Project is financially feasible and within the financial capability of the Applicant, and where appropriate, as a matter of standard accounting practice, its Affiliates; and

If the Department has determined that an independent cost-analysis is required pursuant to M.G.L. c. 111, § 25C(h), the analysis has demonstrated that the Proposed Project is consistent with the Commonwealth's efforts to meet the health care cost-containment goals.

[Factor 5 and 6] Intentionally Omitted

Standard Conditions that Apply to Transfers of Ownership

Only a subset of all the standard conditions set out in 105CME 100.310 apply to transfers of ownership.

105 CMR 100.310: Standard Conditions

Unless otherwise expressly specified within 105 CMR 100.000, each Notice of Determination of Need issued by the Department shall be subject to the following Conditions. The Commissioner may specify additional Standard Conditions within Guideline which shall be attached to all Notices of Determination of Need, unless otherwise specified, and which shall be determined by the Commissioner as advancing the objectives of 105 CMR 100.000. Prior to issuance, such Guideline shall be developed through a public process consistent with 105 CMR 100.440 and in consultation with applicable Government Agencies, community-based organizations, relevant stakeholders, and the Public Health Council.

(A) The Notice of Determination of Need shall be subject to administrative review by the Health Facilities Appeals Board and may be stayed by the Health Facilities Appeals Board. If the Health Facilities Appeals Board is not constituted on the date of issuance of the Notice of Determination of Need, the Notice shall be considered a Final Action subject to review under M.G.L. c. 30A.

(B) Intentionally Omitted

(C) Unless extended for Good Cause Related to Project Implementation, or as a result of an approved amendment to a previously issued Notice of Determination of Need, the Notice of

Determination of Need shall constitute a valid authorization only for the Proposed Project for which the Notice of Determination of Need is made, and for only the total Capital Expenditure approved.
(D) The Notice of Determination of Need shall constitute a valid authorization only for the Person to whom it is issued and may be transferred only upon the expressed written permission of the Department pursuant to 105 CMR 100.635(A)(3), except that a Notice of Determination of Need issued for an Original License pursuant to 105 CMR 100.730 and a Notice of Determination of Need for a Transfer of Ownership pursuant to 105 CMR 100.735 shall not be transferable.
(E)-(G) Intentionally Omitted
(H) The Government Agency license of the Health Care Facility or Health Care Facilities for which, and on behalf of, the Holder possesses a valid Notice of Determination of Need, shall be conditioned with all Standard and Other Conditions attached to the Notice of Determination of Need.
(I)-(J) Intentionally Omitted
(K) If the Health Care Facility or Heath Care Facilities for which the Notice of Determination of Need has been issued is eligible, the Holder shall provide written attestation on behalf of the Health Care Facility or Heath Care Facilities, under the pains and penalties of perjury, of participation, or their intent to participate, in MassHealth pursuant to 130 CMR 400.000 through 499.000.
(L) The Holder shall report to the Department, at a minimum on an annual basis, and in a form, manner, and frequency as specified by the Commissioner. At a minimum, said reporting shall include, but not be limited to, the reporting of measures related to the project's achievement of the Determination of Need Factors, as directed by the Department pursuant to105 CMR 100.210.
(M) Intentionally Omitted
(N) The Holder shall provide to Department Staff a plan for approval by the Office of Health Equity for the development and improvement of language access and assistive services provided to individuals with disabilities, non-English speaking, Limited English Proficiency (LEP), and American Sign Language (ASL) patients.
(O) The Holder shall provide for interpreter services to the Holder's Patient Panel. The Holder shall ensure that all medical and non-medical interpreters, inclusive of staff, contractors, and volunteers providing interpreter services to the Holder's Patient Panel maintain current multilingual proficiency and have sufficient relevant training. Training for non-medical interpreters should include, at a minimum:

(1) the skills and ethics of interpretation; and
(2) cultural health beliefs systems and concepts relevant to non-clinical encounters.
(3) Training for medical interpreters should include, at a minimum:
(a) the skills and ethics of interpretation; and
(b) multilingual knowledge of specialized terms, including medical terminology, competency in specialized settings, continuing education, and concepts relevant to clinical and non-clinical encounters.

(P) The Holder shall require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically appropriate services (CLAS), including, but not limited to, patient cultural and health belief systems and effective utilization of available interpreter services.
(Q) All Standard and Other Conditions attached to the Notice of Determination of Need shall remain in effect for a period of five years following completion of the project for which the Notice of Determination of Need was issued, unless otherwise expressly specified within one or more Condition.

105 CMR 100.735(D) Other Conditions. A Notice of Determination of Need issued to a Holder resulting from an Application required pursuant to 105 CMR 100.735(A) shall include the following Other Condition(s):

(1) (a) Unless rescinded pursuant to 105 CMR 100.735(D)(1)(c), any Notice of Determination of Need issued to a Holder that is subject to a Cost and Market Impact Review pursuant to M.G.L. c. 6D § 13 and 958 CMR 7.00 shall not go into effect until: 30 days following HPC's completed Cost and Market Impact Review. Unless extended for Good Cause Related to Project Implementation, or as a result of an approved amendment to a previously issued Notice of Determination of Need, the Notice of Determination of Need shall constitute a valid authorization for a period of not more than three years following the approval of the Department, unless otherwise expressly noted as an Other Condition, and shall only be for the purposes of the approved project. No Notice of Determination of Need shall remain in authorization unless the Holder complies with all prescribed terms and Conditions as set forth by the Department.

(b) The Department shall receive within 30 days of issuance of the written notification made pursuant to 105 CMR 100.625(A) a written acknowledgement of receipt of such written notification by the Holder, documented in the form of an attestation, signed by the Holder's chief executive officer and board chair, and returned to the Department and all Parties of Record.

(c) Notwithstanding 105 CMR 100.735(D)(1)(a), as part of a completed Cost and Market Impact Review, the HPC may provide a written recommendation to the Commissioner that the Notice of Determination of Need should not go into effect on the basis of findings contained within the completed and publicly released Cost and Market Impact Review. Upon receipt, the Commissioner shall determine if the Cost and Market Impact Review contains information sufficient for the Commissioner to conclude that the Holder would fail to meet one or more of the specified Factors. Should the Commissioner determine that the Holder would fail to meet one or more of the specified Factors, the Department may rescind or amend an approved Notice of Determination of Need. The Department shall consider the HPC's written recommendation pursuant to the Commissioner's determination prior to the Notice of Determination of Need going into effect, and within the context of all specified Determination of Need Factors. If a Notice of Determination of Need is rescinded by the Department, the Person for which the rescinded Notice of Determination of Need was issued must file a new Application for Determination of Need, if so desired. Such Application must satisfy 105 CMR 100.210 and shall account for the concerns expressed by the Department within their findings.

(2) Intentionally omitted

(3) If it is determined by the Department that the Holder has failed to sufficiently demonstrate compliance with the terms and Conditions of the issued Notice of Determination of Need, the Holder shall fund projects which address one or more of the Health Priorities set out in Department Guideline, as approved by the Department, which in total, shall equal up to 5% of the Total Value of the approved project. In making such determination, the Department shall provide written notification to the Holder at least 30 days prior to requiring such funding, and shall provide the Holder the opportunity to appear before the Department. The Department shall consider factors external to the Holder that may impact the Holder's ability to demonstrate compliance.

(4) Upon Notice of Determination of Need issued pursuant to 105 CMR 100.735(A), where the acquired Health Care Facility is a Holder of an approved, but not yet implemented Notice of Determination of Need, the acquired Health Care Facility's unimplemented Notice of Determination of Need shall be rendered null and void, unless the acquiring Holder receives the express written approval from the Department, pursuant to a Significant Change amendment, see 105 CMR 100.635(A)(3).

Attachment 2
Speakers at the Public Hearing held on
September 27, 2017 at
250 Washington Street, Boston, MA 02108

Peter Markell, Executive Vice President of Administration, Chief Financial Officer and Treasurer of Partners Healthcare System, Inc.

John Fernandez, President and Chief Executive Officer of MEEI

Sunil Eappen MD, MBA, Chief Medical Officer at MEEI

Jim Sullivan, founder of MEEI's Patient and Family Advisory Council

Tom Sequist, MD at Brigham and Women's Hospital and Chief Quality and Safety Officer at Partners

Joanne Mellen, RN, clinical resource Pediatric nurse, and patient

Sylvia Dodge Palomba, RN, nurse navigator and case manager at MEEI

Chris Hartnick, Pediatric Otolaryngologist at MEEI

Katie Catapano, Parent of pediatric patient of MEEI

Matthew Gardiner, MD, Medical Director of MEEI Emergency Department Eye Trauma Center

Will McNamara, Patient at MEEI

Elizabeth Mort, MD, Senior Vice President of Quality and Safety at Massachusetts General Hospital

Attachment 3
Assessment Tools Proposed by the Applicant (From the Application)

(1) Increased Access. This will be measured through the following metrics:

a. The number of Partners HealthCare patients receiving OPH and ORL services from MEE physicians.
b. The average length of time between a primary care referral for OPH or ORL services to the date of an assigned appointment at MEE.

(2) Increased Patient Satisfaction. Partners HealthCare will track patient perceptions of care and satisfaction with services by surveying the Partners HealthCare's patients who are seen in MEE's clinics for services on the following metrics:

a. Would the patient recommend the provider?
b. Would the patient recommend the provider's office?
c. Did the provider know the patient's medical history?

(3) Improved Health Outcomes, Process Measures and Structural Measures: Through this transaction, MEE may integrate its quality measurement system into Partners HealthCare's existing performance improvement infrastructure, allowing for the adoption of system- wide measuring and reporting on OPH and ORL metrics and ultimately to improved care.
The following clinical and structural measures will be reviewed to assess the impact of the proposed transaction.

a. Annual eye exams for diabetic patients. This measure evaluates the linkage between Partners HealthCare and MEE in providing population health management to diabetic patients.

The following metric will be reviewed: Percent of Partners Healthcare primary care patients with diabetes that are screened annually for an OPH exam by a MEE provider.

b. Improved efficiency of administrative processes for pre-operative procedures. These efficiencies improve patient safety by ensuring that only appropriate tests are performed prior to surgery and reduce costs by eliminating unnecessary testing.

The following metric will be evaluated: The percentage of time protocols are followed for eliminating unnecessary testing.

c. Participation of MEE in Partners HealthCare's Pharmacy Infrastructure. Partners HealthCare has numerous initiatives in place to improve use of medications in the hospital and ambulatory setting. Through the proposed transaction, Partners HealthCare will integrate MEE into its current process to evaluate pharmacy costs and utilization for patients.

The following structural measures will be reviewed: Tracking MEE participation in Partners HealthCare's pharmacy steering committees including the Partners Pharmacy and Therapeutics committee and subcommittees.