



November 21, 2019

VIA EMAIL (DPH.DON@Massmail.state.ma.us)

Margo Michaels, MPH
Director, Determination of Need Program
Massachusetts Department of Public Health
250 Washington Street, 6th Floor
Boston, MA 02108

RE: Partners Healthcare System, Inc. (“Partners”) Brigham and Women’s Hospital/Brigham & Women’s/Mass General Health Care Center (the “Foxborough Center”) DoN-Required Equipment and Services Application (#PHS—19072212-RE) – Written Comments of Sturdy Memorial Hospital Ten Taxpayer Group (“Sturdy group”) re Staff Report Dated November 7, 2019

Dear Ms. Michaels:

On behalf of the Sturdy group, pursuant to the provisions of 105 C.M.R. § 100.510(C), please accept the following written comments in connection with the Staff’s recommendations and conditions relative to the above-referenced Determination of Need (“DoN”) application (the “Application”) for the acquisition of one magnetic imaging unit and one computed tomography unit to be added to Applicant’s existing imaging services at the Foxborough Center, together with associated renovations (the “Project”).

Sturdy Memorial Hospital is a 132-bed disproportionate share hospital meaning that it serves a disproportionate number of patients on public insurance programs such as MassHealth and Medicare. The hospital employs over 1,500 employees. Sturdy, based in Attleboro, serves a broad geographic region with eleven surrounding Massachusetts towns, including Foxborough, as well as nearby Rhode Island.

Please note the following items of concern to Sturdy:

1. Confirmation as to Whether Disaggregation Guidelines Apply to Project and Other Construction at the Foxborough Center:

Sturdy Group wishes to confirm that the Department has ascertained that no portion of the construction of the approximately 150,000 square foot structure on the Foxborough campus is subject to aggregation with the Application pursuant to the Department’s Disaggregation Guidelines dated June 29, 2017 (in effect at the time the Application was filed on July 25, 2019, the “Guidelines”). Under the Guidelines, “Disaggregation” is defined as “the act of dividing up

projects, or component parts of a project that are reasonably related, for the purposes of keeping a Proposed Project below the Substantial Capital Expenditure Minimum or to decrease the Maximum Capital Expenditures. The Guidelines provide that the Department expects Applicants to aggregate any planned projects that are reasonably related and expected to commence within an 18 month time period. Applicants may submit in writing for review by the Director the reasons why a planned project is not reasonably related to the Applicant's proposed project and should be considered a part thereof. The Director will then determine whether the planned project must be aggregated with the other components of the proposed project. Significantly, under the Guidelines, the Department may also determine that a proposed project that is outside the 18 month time frame is so clearly related to the previous project as to require that it be aggregated for DoN purposes.

We have been able to learn only limited information concerning the construction that is currently taking place at the Foxborough campus at this time due to the lack of DoN filings in connection therewith to date. The following information from publicly available information gives reason to raise a Disaggregation issue and to ask whether the Department has previously made a determination with respect to the Project and the other work at the Foxborough Center:

- o Facility: At present, an approximately 150,000 square feet, mixed health care use five-story structure with a skywalk is being constructed to connect this new building to the existing Brigham & Women's/Massachusetts General Health Care Center at 20 Patriot Place, Foxboro (the existing "Foxborough Center"). It is comprised of:
 - a. Dana Farber Medical Oncology Center at Patriot Place: Dana Farber Cancer Institute is occupying a 34,000 square feet hospital satellite which is for clinically affiliated with Partners; and
 - b. Partners Expansion: Partners appears to be occupying the balance of 116,000 square feet, but the amount of such expanded space that will be under the hospital licensure of the Foxborough Center is not known to us.

The capital expenditures associated with a health care facility of this size would be considerable, particularly when combined with the Application's Project cost. It is possible that there is overlap, within the Disaggregation Guidelines time frames, of the Partners Foxborough Center expansion and the Project.

2. Comment re Changing the Proposed DoN Condition #3 - - Monitoring the Percent of CT and MRI Orders Originating Outside the Partners System

In Factor 1a: Patient Panel Need, the Applicant asserts that there is growing demand for both MRI and CT services at the Foxborough Center. This is due in part, according to the Applicant, to Partners' planned expansion of current primary and specialty physician practices which are said to be at capacity, and also that the number of primary care physicians ("PCPs")

relative to the total population in the service area is low (i.e. the ratio of residents to PCPs in Bristol County is the worst ratio in the state, 1,930:1, as compared to Massachusetts, which is, 960:1). Please note, however, that this dramatic ratio is likely due in significant part to the fact that the heavy Medicare/MassHealth and the uninsured (including the chronically homeless) population in this service area is less likely to have a PCP, and not simply because the PCPs in this area have no more room on their panels.

The Sturdy group in its testimony stated that the Foxboro Center may be drawing disproportionately from Sturdy Memorial Hospital's service area those patients with a more favorable payer mix – the ones more likely to already have a PCP. Loss of these patients in turn would make it difficult for Sturdy to survive in the long run, which survival is critical given the hospital serves a large geographical area and operates a busy emergency room.

The Staff Report proposes a Condition to address patient migration through monitoring the percentage of CT and MRIs orders that originate inside and outside of the Partners system. However, the Sturdy group does not think that monitoring the percentage of CT and MRIs will yield sufficient information because it will not target the issue that better paying patients are migrating to the Foxboro Center. Sturdy is generally not worried that the physicians in its service area are referring patients to the Foxboro Center for CTs and MRIs and that such referrals will increase because of the Project. Rather, the concern is that the commercially insured patients in Sturdy's service will increasingly obtain their primary and specialty care services at the Foxboro Center. Thus, a meaningful measure to also include as a DoN Condition would be for Partners to (i) measure the number of patients accepted into the Foxboro Center primary care practice that had an existing PCP and those patients that did not; and (ii) for the ones that had an existing PCP, to also track the prior PCP's affiliation and stated reason for transfer. This information would help to demonstrate whether Partners is actually addressing the primary care shortage they describe, and would also indicate which providers are being most impacted.

In addition, since the Applicant's stated need is to expand their primary care practice to improve primary care access, which is partially driving the need for the additional CT and MRI, the DoN program should consider requesting this suggested information retrospectively from the Applicant not only as a DoN condition but as an additional request for information from Partners prior to proceeding with the final Staff Report. This will help to determine the degree to which Partners already is influencing the movement of care from existing community providers to a Partners provider.

A retrospective review of the growth in primary care panels at Foxboro would also be relevant to Factor 2: Cost Containment, Improved Public Health Outcomes and Delivery System Transformation. If Partners is simply moving patients from a lower cost community provider to a higher cost tertiary care provider, rather than improving patient care access, then further expansion of the Foxborough Center's CT and MRI capabilities should not be allowed given the Commonwealth's cost containment goals.

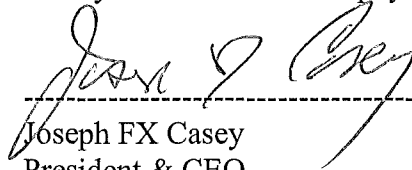
3. Community Health Initiative Should Specifically Encompass the Local Independent Community Hospital

The Foxborough Center already attracts a significant number of commercially insured patients from Sturdy's primary service area which numbers will increase with the expansion of services and equipment at that site. As detailed in the Sturdy group's testimony at the public hearing, commercially insured outpatients are necessary for a community hospital to be able to subsidize the less lucrative services they provide which are so vital for the community. Moreover, the Foxboro patients continue to benefit from being proximate to a full-service community hospital should the need arise. For both these reasons, providers such as the Foxborough Center who operate in close relation to a protected Independent Community Hospitals bear some responsibility for ensuring the continued availability of the local emergency department and other essential community hospital services that are necessary for patient access, and also to support the Commonwealth's cost containment goals by ensuring the provision of lower cost care.

One way to mitigate the adverse impact of the loss of an Independent Community Hospital's more lucrative patients and account for the ongoing need for such hospital's services by the Foxborough patients is through requiring that the Applicant's Community Health Initiative program incorporate both participation by and funding to a the impacted Independent Community Hospital. The Department regulations already attempt to protect Independent Community Hospitals from the siting of certain types of disruptive health care services in their service area. We submit that there is also flexibility in the CHI program requirements to permit this type of DoN Condition to further bolster Independent Community Hospitals from similar adverse impacts.

Thank you for consideration of these comments.

Respectfully submitted on Behalf of the
Sturdy Memorial Ten Taxpayer Group



Joseph FX Casey
President & CEO
Sturdy Memorial Hospital