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January 14, 2014

By e-mail david.seltz@state.ma.us
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David Seltz, Executive Director
Health Policy Commission
Two Boylston Street 6th Floor
Boston, MA 02116

RE: Response of Harbor Medical Associates, P.C.
To Health Policy Commission Preliminary Report dated December 18, 2013
HPC-CMIR-2013-2 Concerning Proposed Acquisition of
Harbor Medical Associates, P.C. by Brigham & Women's Physician Organization

Dear Executive Director Seltz:

Harbor Medical Associates P.C. (Harbor) submits this response to the preliminary report dated December 18, 2013 in HPC-CMIR 2013-2 concerning the proposed acquisition of Harbor Medical Associates, P.C. by Brigham & Women's Physician Organization (BWPO) in accordance with M.G.L. c 6D, Section 13(f). For the multiple reasons stated in this response, the Health Policy Committee (HPC) should change its position in the preliminary report as it pertains to the Harbor/BWPO transaction (Harbor/BWPO Transaction) and NOT refer the Harbor/BWPO Transaction to the Attorney General for further review.

We submit to the HPC that the Harbor/BWPO Transaction is an important development for the South Shore region and a key step to transition the South Shore delivery system into full care coordination across the entire spectrum of care. After much thoughtful consideration and due diligence, Harbor has concluded that acquisition by the BWPO and integration into the Partners' system is the best way to meet the challenges of today's cost containment healthcare environment. The Harbor/BWPO Transaction will take Harbor's existing referral relationship with Partners, whereby Harbor's patients already receive three-quarters of their tertiary hospital services at Partners' academic medical centers, and transform it into the realm of full population management and accountable care. This transaction should be encouraged and supported, not referred for further regulatory review.

1. THE HPC HAS WRONGLY EQUATED THE FAR LARGER SSPHO WITH HARBOR AND HAS FAILED TO CONDUCT A COST AND MARKET IMPACT REPORT OF BWPO'S ACQUISITION OF HARBOR AS REQUIRED BY M.G.L. C. 6D.

The HPC in its preliminary report dated December 18, 2013 wrongly and impermissibly equated Harbor with the independent and much larger South Shore Physician Health Organization (SSPHO). Harbor has 65 physicians. According to the HPC preliminary report, SSPHO has 400 physicians. Using the HPC's own factual findings, Harbor physicians represent only 16.25% of the SSPHO. Clearly, Harbor is not the SSPHO and the SSPHO is not Harbor. Nor does Harbor have access to confidential information about the SSPHO so as to be in a position to confirm or rebut the HPC's many factual assertions about the SSPHO.

In its Executive Summary under the heading "Cost Profile" the HPC tellingly makes no mention of Harbor. Instead, it talks about Partners, SSH and SSPHO. The summary notes, "Partners and SSPHO have high total medical expenses (TME), due in part to high hospital prices." Harbor is not responsible for the TME of the independent SSPHO or the high hospital prices of the independent South Shore Hospital. If the Harbor/BWPO Transaction occurs, then as of January 1, 2015, Harbor physicians may no longer be subject to the SSPHO payor contracts. (That decision ultimately will be made by BWPO.) If the Harbor/BWPO transaction does NOT occur, Harbor physicians will still no longer be subject to the SSPHO payor contracts because Harbor will leave the SSPHO effective December 31, 2014 (contingent upon payer approvals). Harbor physicians are among many other physicians exiting the SSPHO. By the end of 2013, fifty-two (52) non-Harbor physicians will have withdrawn from the SSPHO since 2009. The 27 physicians of Health Care South alone left SSPHO as of the end of 2013.

Without knowing Harbor's TME and Harbor's market share for physician and ancillary services, the HPC has no legitimate factual basis for concluding as it does in its preliminary report that "... the proposed transactions between (*sic*) Partners, SSH and Harbor will increase health care spending, likely reduce market competition and result in increased premiums for employers and consumers." To the contrary, the HPC acknowledges on page 15, "Partners and SSH Receive Higher Prices Than Other Area Providers; Harbor/ SSPHO Does Not" and on page 16, "However, unlike the hospital prices described above, SSPHO (including Harbor) has not had high physician prices compared to area physician groups."

In footnote 39 on page 16 of the HPC preliminary report, the HPC notes, "... SSPHO's statewide relative prices ranged from the 24th percentile to the 73rd percentile, with prices from many payers in the low 40th percentile." Thus, even if the HPC were to use the SSPHO as a proxy for Harbor, which it cannot fairly or legally do, it is clear that Harbor does not meet the second criterion of M.G.L. c. 6D, Section 13 for referral to the attorney general because Harbor does not charge prices for its services that are higher, let alone materially higher, than the median prices charged by all other providers for the same services in the same market. The HPC's own chart on page 17 of the preliminary report shows the SSPHO as the second lowest among eight

competitors for “Relative Prices for PCHI and SSPHO Compared to other Area Physician Groups.” Clearly, Harbor does not have market power. Its below market rates demonstrate that Harbor lacks market power.

The HPC in its preliminary report says nothing about Harbor’s market share. Rather the preliminary report focuses exclusively on the market shares of Partners and SSH. M.G.L. c. 6D Section 13 requires as the very first factor for a CMIR to examine the provider organization’s market share within its primary service areas by major service category and within dispersed service areas. The HPC preliminary report completely fails to examine Harbor’s market share at all. For this reason among others, the HPC should change its position in the December 18, 2013 preliminary report and recommend no referral to the Attorney General’s office for further review.

2. THE HPC WRONGLY CONCLUDED BASED UPON SSPHO INFORMATION, NOT HARBOR INFORMATION, THAT THE BWPO/HARBOR TRANSACTION WOULD REDUCE COMPETITION FOR PHYSICIAN AND ANCILLARY SERVICES IN HARBOR’S MARKETPLACE AND FAILED TO MAKE ANY REQUIRED FINDING ABOUT HARBOR’S TME. IN FACT, ROBUST COMPETITION WITHIN THE PHYSICIAN AND ANCILLARY SERVICES MARKET WOULD STILL REMAIN.

With 65 physicians, Harbor successfully competes in its physician service marketplace with much larger physician organizations including Atrius, Steward HCN, BIDPO, NEQCA, other physicians in the SSPHO, Southeast Physicians Network and Signature Brockton PHO. (See the chart at top of page 17 of the HPC’s preliminary report.) Even after the Harbor/BWPO Transaction, a robust and highly competitive marketplace for physician and ancillary services will exist in Harbor’s service area. The HPC staff in its preliminary report simply failed to analyze the physician and ancillary service market in which Harbor competes.

The HPC in violation of the HPC’s obligation under M.G.L. c. 6D, failed to make any finding about Harbor’s Total Medical Expenses. The HPC admits in footnote 44 on page 19 of the preliminary report, “While we did not have access to TME data for Harbor specifically, it is one of the largest primary care groups in the SSPHO, responsible for about 29% of SSPHO’s HMO/POS member months according to data from one major payer.” Read that sentence critically. Harbor is not the largest primary care group in the 400 physician SSPHO. Other groups within the SSPHO are responsible for 71% of the SSPHO’s HMO/POS member months (more than twice as many as Harbor) and even that tangential information relates to data from only one major payer rather than the customary three major payers used in the rest of the HPC preliminary report. What would the data look like if all three major payers were included, rather than cherry picking only one payor?

Under Massachusetts General Laws c 6D, Section 13, Harbor is legally entitled to have its future professional course with BWPO be based upon real economic information about Harbor, not assumptions about the independent third party organization of the SSPHO of 400

physicians of whom only 65 or a mere 16.25% are Harbor physicians. The HPC staff took a shortcut when it conflated SSPHO with Harbor. This shortcut led to unreliable predictions of the consequences of BWPO's proposed acquisition of Harbor.

3. THE HEALTH POLICY COMMITTEE FAILED TO DETERMINE, AND CANNOT DETERMINE, THAT HARBOR'S PROPOSED MATERIAL CHANGE WOULD BE LIKELY TO RESULT IN A SIGNIFICANT IMPACT ON THE COMMONWEALTH'S ABILITY TO MEET THE HEALTH CARE COST BENCHMARK OR ON THE COMPETITIVE MARKET.

M.G.L. c. 6D, Section 13 sets forth the defined circumstances in which HPC may conduct a cost and market impact review as follows:

Within 30 days of receipt of a notice filed under the commission's regulations, the commission shall conduct a preliminary review to determine whether the material change is likely to result in a significant impact on the commonwealth's ability to meet the health care cost benchmark, established in section 9, or on the competitive market. If the commission finds that the material change is likely to have a significant impact on the commonwealth's ability to meet the health care cost growth benchmark, or on the competitive market, the commission may conduct a cost and market impact review under this section.

The Harbor/BWPO Transaction by itself will not have a significant impact on the Commonwealth's ability to meet the health care cost growth benchmark of 3.6%. The preliminary report concluded at page 35 that,

For example, if Harbor and the other approximately 350 SSPHO physicians (minus Healthcare South) all increased to PCHI prices, it would increase annual spending by the three major payors by \$50.9 million, which equates to a permanent increase in total medical spending (and thus premiums) in the South Shore region of approximately 2.9%.

Any increase in total medical spending attributable to the 27 to 42 primary care physicians whom SSH and Partners have plans to recruit cannot be attributed to BWPO's proposed acquisition of Harbor. Any increase in total medical expenses attributable to the other 335 SSPHO physicians also cannot properly be attributed to the Harbor/BWPO Transaction. Harbor asserts that the increase in total medical spending resulting from its acquisition by BWPO will be less than 1%, not 2.9%. Harbor estimates that if it were acquired by BWPO and in 2015 received Partners non-academic rates, Harbor would make up only 33% to 37% of the \$23 to \$26 million cost increase that the HPC claims in its preliminary report will result in the South Shore based on certain HPC assumptions and projections. The lion's share of the increase flows from the other non-Harbor SSPHO physicians contracting through Partners and from the primary care physicians whom the South Shore Hospital and Partners hope to recruit. Therefore, that lion's share of the increase cannot properly be attributed to the Harbor/BWPO Transaction.

Harbor's share of this alleged increase represents a TME increase of only 0.49%, i.e. the 0.46% noted on page 33 of the HPC preliminary report plus 0.03% for potential academic medical referral pattern change as calculated by Harbor. Given that the SSPHO has received average annual increases of only 2% for each of the past 8 years, this potential added increase amount of 0.49% falls well within the Commonwealth's cost increase benchmark of 3.6% per year. Certainly, by itself, the Harbor/BWPO Transaction does not affect the physician market concentration on the South Shore since the Harbor physicians already practice medicine in that same marketplace. Nor will adding 65 Harbor physicians to the 1600 physicians BWPO increase in any meaningful way Partners' bargaining leverage with insurers.

With regard to the impact on the competitive market, Harbor as part of the BWPO would still compete with Atrius, Steward HCN, BIDPO, NEQCA, other physicians in the SSPHO, Southeast Physicians Network and Signature Brockton PHO. (See the chart at top of page 17 of the HPC's preliminary report.) All of these organizations are much larger in their number of physicians than Harbor. The Harbor/BWPO Transaction will not have a significant adverse impact on the competitive market in which Harbor competes. As part of the larger BWPO, Harbor will be better equipped to compete more strongly with its larger competitors.

4. THE HEALTH POLICY COMMISSION CANNOT PROPERLY COUNT UNKNOWN FUTURE ACTION BY NON-HARBOR PHYSICIANS IN THE SSPHO IN THE MEASUREMENT OF ANY INCREASE OR DECREASE IN TOTAL MEDICAL SPENDING RESULTING FROM THE HARBOR/BWPO TRANSACTION.

The HPC found as a fact, "As SSPHO physicians join Partners, there will be changes in physician prices that increase total medical spending." (Preliminary report at page 30.) This bold speculation on the HPC's part cannot be true in Harbor's case until at the earliest January 1, 2015, more than a year from now. A lot can happen in the rapidly changing health care reform marketplace in the intervening year. Whether former Harbor physicians obtain Partners' rates in 2015 will depend upon future negotiations between Partners and the independent payors. Those negotiations have not yet occurred.

The HPC in its preliminary report goes so far as to speculate not just about Harbor or PCHI or even the SSPHO but about "how physicians from other systems may join Partners and begin receiving PCHI prices." Who are these physicians from other systems? Are they currently practicing medicine on the South Shore? The focus of the preliminary report is required to be upon Harbor and BWPO's proposed material change, not pure speculation about the future conduct of unknown non-Harbor and non-BWPO physicians from other systems in possibly other service markets. In short, the HPC failed to perform its statutorily assigned duty of analyzing the cost and material impact of the BWPO's proposed acquisition of Harbor.

5. THE HPC'S CONCLUSION THAT THE HARBOR/BWPO TRANSACTION WILL MAKE THE COMMERCIAL INPATIENT MARKET SIGNIFICANTLY MORE CONCENTRATED PLAINLY DOES NOT APPLY TO HARBOR.

The HPC concludes without explanation that, "The commercial inpatient market will become significantly more concentrated as a result of the proposed acquisitions." Harbor already refers nearly all of its patients for primary and secondary inpatient hospitalization to the nearby South Shore Hospital and more than 75% of its patients who need tertiary inpatient hospital services to Partners' hospitals. It would be far more accurate for the preliminary report to say that, as a result of BWPO's proposed acquisition of Harbor, the commercial inpatient market will not materially change. Harbor is an outpatient ambulatory care organization. As a result of the BWPO acquisition of Harbor, the commercial inpatient market will NOT become significantly more concentrated. It will continue to reflect the delivery of care today, but in a manner that optimizes integration of the delivery system to achieve the cost-containment goals of today's health care environment.

6. THE HPC FAILED TO CONSIDER THE IMPACT OF THE HARBOR/BWPO TRANSACTION IN THE ABSENCE OF THE PARTNERS/SSH ACQUISITION AND ERRONEOUSLY ASSUMED THAT, AFTER THE HARBOR/BWPO TRANSACTION, HARBOR WOULD RECEIVE ACADEMIC RATES RATHER THAN INTEGRATED RATES.

The HPC preliminary report is significantly flawed because it assumes only that both the Partners' acquisition of SSH and the BWPO acquisition of Harbor will occur. In fact, one transaction could occur without the other. These two separate transactions are in no way interdependent.

Given the HPC's strong objections to the Partners acquisition of SSH, the HPC's preliminary report should have considered what would happen in the Harbor marketplace if only the BWPO's acquisition of Harbor proceeded. Harbor submits that the financial impact of its acquisition by BWPO by itself would be dramatically less financially significant than that depicted in the HPC's flawed preliminary report about the SSPHO. By joining BWPO, Harbor would reduce its administrative overhead costs by \$█M per year. An expense reduction of approximately \$█M a year for a 65 physician group medical practice is substantial and should be strongly encouraged not discouraged. The Affordable Care Act and America's future competitiveness in the international marketplace demands that health care delivery becomes more efficient and cost effective. By joining forces with BWPO, Harbor will become administratively more efficient and cost effective.

The HPC in footnote 92 of the preliminary report again speculates that, "Because Harbor is joining an academic RSO of PCHI, it is possible their physicians will receive PCHI's slightly higher academic rates rather than its integrated rates." That erroneous speculation by the HPC is directly contradicted by Harbor's own submission to the HPC which states on page HAR0003 that, "Harbor does not expect that future payor contracts will compensate the new South Shore

Community Business Unit of the BWPO at academic medical physician rates.” The HPC staff has acknowledged that the HPC preliminary report was largely written BEFORE the HPC staff received or read Harbor’s 308 page informational submission. The HPC has no factual basis to assume that Harbor, a non-academic, multi-disciplinary group medical practice located in 8 suburban offices on the South Shore far from any academic medical center would receive PCHI academic rates.

The HPC preliminary report is further distorted because it erroneously accepts that, “The parties have stated they plan to recruit 27 to 42 new PCPs to their network over five years to support PHM [population health management] in the South Shore region.” Harbor has made no such statement. This recruitment plan does not apply to Harbor or BWPO at all. Harbor is a party to one of the two proposed transactions. Harbor would also like to note that physician recruitment is very difficult to achieve. To the best of Harbor’s knowledge, SSH has recruited few if any PCPs in any recent year. The HPC preliminary report simply accepts that Partners and SSH will succeed in recruiting the full 27 to 42 PCPs and then multiplies its economic effect based on the HPC’s own baseless and unsupported assumption that the new recruits will come from lower priced, non-Partners’ networks only within Massachusetts, rather than from other parts of the United States and abroad and from medical and surgical residency programs in Massachusetts and elsewhere.

7. THE HPC PRELIMINARY REPORT UNFAIRLY IGNORES THE ENORMOUS FINANCIAL SAVINGS IN TME IN MASSACHUSETTS THAT COULD BE ACHIEVED IF BWPO, PCHI AND OTHER PARTNERS AFFILIATES ADOPT HARBOR’S SUCCESSFUL POPULATION HEALTH MANAGEMENT METHODS.

Harbor diligently manages the care of its patients and has successfully reduced unnecessary hospitalizations, readmissions and inappropriate ER use by Harbor patients by establishing Harbor’s own Accountable Care Organization for Medicare patients, an urgent care center with extended hours, disease management programs for congestive heart failure (CHF), chronic obstructive pulmonary disease (COPD) and diabetes mellitus (DM) and in-home visits to home-bound patients. The preliminary report completely ignores the enormous financial savings in TME in Massachusetts that could be achieved if Harbor helped Partners and PCHI reduce TME and succeed in global risk contracting as Harbor has done on the South Shore for the past decade.

In footnote 160 on page 54 of the HPC preliminary report, the HPC notes that, “For the 3 commercial payors that SSPHO contracts with, SSPHO has always been in a surplus condition.” Imagine the TME savings in our Commonwealth resulting from the collaboration of Partners with Harbor to capitalize on Harbor’s tried and true primary care methods of population health management and avoid the need for large annual health insurance premium increases. In short, the HPC report completely ignores the substantial potential for synergies between Harbor and Partners, which would enable Partners and Harbor to enhance their successful existing population health management platform and evolve it into new ideas and strategies for the future.

8. THE PROPOSED HARBOR/BWPO TRANSACTION MEETS NONE OF THE THREE STATUTORY CRITERIA REQUIRED FOR REFERRAL TO THE ATTORNEY GENERAL FOR FURTHER REVIEW.

M.G.L. c. 6D, Section 13(e) obligates the HPC to identify in its preliminary report any provider organization that meets all of three criteria and provides that, “The commission [HPC] shall refer to the attorney general its report on any provider organization that meets all 3 criteria under subsection (e).” (M.G.L. c. 6D, Section 13(f)). Harbor meets not one of these three criteria.

First, Harbor does not possess a dominant market share for the services it provides. As far as Harbor is aware, even after the Harbor/BWPO Transaction, Harbor as part of the BWPO expects not to have a dominant market share for physician services in Harbor’s marketplace.

Secondly, as the HPC report concedes with regard to the SSPHO, Harbor does not charge prices for its services that are higher, let alone materially higher, than the median prices charged by all other providers for the same services in the same market. For 2014, this circumstance will not change. Beginning in 2015, Harbor’s prices will depend upon future contract negotiations with payors.

Thirdly, Harbor does not have health adjusted total medical expenses that are higher, let alone materially higher, than the median total medical expense for all other providers for the same services in the same market. The HPC staff cannot and, with respect to Harbor, has not asserted otherwise.

9. THE HPC PRELIMINARY REPORT FAILED PROPERLY TO CONSIDER THE BENEFITS OF THE HARBOR/BWPO TRANSACTION AND HARBOR’S COMPELLING NEED TO ALIGN WITH A LARGER ORGANIZATION SUCH AS BWPO TO REMAIN COMPETITIVE IN A MARKETPLACE SERVED BY FAR LARGER ORGANIZATIONS THAN HARBOR.

Group medical practices are joining larger health care organizations throughout the United States for a variety of compelling reasons including:

- The need to reduce health care costs by enhancing patient care coordination across all settings, e.g. ambulatory care, inpatient and outpatient acute hospital services, rehabilitation hospitals, home care, hospice, nursing homes and in-home care
- The need to invest significant capital in intraoperative electronic health record systems, patient care analytics (so-called “Big Data”), informatics, practice management systems, patient data warehouses, patient portals and other technology

- The increasing day-to-day administrative complexity of operating a medical practice fully compliant with HIPAA, OSHA, Stark, Fraud and Abuse, and state and federal employment laws
- Increasing group practice overhead for financial, legal, human resources, real estate, and IT services
- Stagnant reimbursement for physician services, thereby eroding the value of Relative Value Unit (RVU) payments
- Uncertainty about CMS' long- term tolerance for physician owned in-office ancillary services such as imaging and laboratory services
- The strong preference of recent medical and surgical residents toward institutional employment rather than becoming stockholders of mid-sized group medical practices whose business they must manage as small business owners. National experts such as Michael Sachs, CEO of Sg2, predict that by 2015 (so next year) 80% of physicians in the U.S. will be employed by institutional providers or large group employers.
- The shortage of primary care physicians available for recruitment by mid-sized group practices in the U.S.
- Increasing downward budgetary pressures on health care expenditures as the U.S. population ages leading to a required slowing of health care spending increases to leave dollars to invest in education, public safety, defense, environmental protection and other important governmental functions.

Faced with these pressing challenges, the 25 Harbor shareholders have chosen to become employees of BWPO so that they can better coordinate their patients' care across all care settings. As noted above, nearly all of Harbor's patients receive their primary and secondary hospital services at South Shore Hospital and three-quarters of their tertiary hospital services at Partners' academic medical centers now. A decision by Harbor to join a network other than Partners would have hugely disrupted existing patient clinical relationships and would likely have led to fragmented rather than coordinated care.

The Massachusetts marketplace for physician services has consolidated dramatically since 2009. As part of BWPO, Harbor will be able to invest in and maintain in a cost effective manner the necessary infrastructure to manage large populations of patients in the value based, rather than volume based, health economy. By joining BWPO and adopting the EPIC electronic health record system that will shortly be in use at all Partners' hospitals, Harbor can better coordinate in real time patient care across all clinical settings. Harbor can reduce its overhead expenses by approximately \$1M per year by using Partners' administrative services and back office support, can enhance its disease management programs and positively affect patient health outcomes. Given the preference of recent medical graduates for larger institutional employers, being aligned with Partners' may enhance Harbor's ability to recruit much needed primary care physicians to work on the South Shore. By becoming a part of the much larger BWPO, Harbor will be better equipped to compete on a more even playing field against its much larger physician competitors such as Atrius, Steward, and BIDPO, among others.

CONCLUSION

The HPC should change its position in its preliminary report with respect to the proposed Harbor/BWPO Transaction and should not refer the BWPO/Harbor Transaction to the Attorney General for further review because the BWPO/Harbor proposed transaction does not meet all of the three statutory criteria for referral set forth in M.G.L. 6D, Section 13(e).

We respectfully ask that the Health Policy Commission and its staff hold this response in a confidential manner to the fullest extent permitted by Massachusetts law, including M.G.L. c. 6D and its applicable regulations. We ask further that if the Health Policy Commission or its staff plans to release any information pertaining to Harbor contained in this response that the HPC staff notify us a reasonable time in advance so as to give Harbor the opportunity to preserve confidential and proprietary information.

Respectfully submitted,

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