

Friends of Prouty Garden Testimony presented at 2016 Health Care Cost Trends Hearing

October 11, 2016

Mr. Chairman,

My name is John Lynch and I'm here today representing the Anne Gamble Ten Taxpayer Group, which is the entity formed by the Friends of Prouty Garden to participate in the Determination of Need Application of Boston Children's Hospital that will be decided upon by the Public Health Council two days from now.

This application is the largest in DoN history and, as noted in the Executive Summary of our recent submission to the DoN Program that's been distributed here today, it's also the first to propose a 50% expansion in its most expensive beds solely to serve non-Massachusetts patients.

This group's original purpose was to preserve the Prouty Garden at BCH - which has been a central healing garden there for the past 60 years - from the destruction planned for it if BCH's DoN Application is approved.

While this remains the group's primary purpose, what we've learned in our research and participation in the proposed Project's DoN review process to date has unveiled some deeply troubling aspects of the Commonwealth's professed commitment to containing our state's health care costs - and none of it is promising in terms of the Commonwealth's actual commitment to containing health care costs.

Instead, what we've found is a DoN regulatory process that has abandoned any pretense of making the hard choices necessary to put teeth into the high-sounding rhetoric about health care cost containment. I say this as a veteran of the early days of the DoN process when tough choices were being made, when major medical institutions were, in fact, told "No" - they didn't actually need all the new building and expansion they argued was essential to their survival.

We continue to hear the same kind of lofty rhetoric we heard back then about the need to finally rein in our rate of growth in health care spending in Massachusetts. Back then, however, we had a State Health Plan with prescribed numbers for how many hospital beds of different categories were needed to help guide DoN and other

regulatory decisions about how best to allocate these expensive resources.

That no longer exists, nor does the DoN process even bother to do more than go through the motions of regulatory review.

BCH's pending DoN Application is a classic case example. It conflates the hospital's need to update some of its facilities with its purported need to expand those facilities to accommodate a 50% increase in its most expensive ICU, or intensive care, beds.

The DoN Staff Summary of this proposal - the one the state's Public Health Council is currently reviewing for its vote in two days - never even mentions that BCH's patient discharges have steadily declined since 2010 - something the data from its sister agency, the Center for Health Information Analysis, or CHIA - documents in its latest annual profile of BCH.

With all due respect, Mr. Chairman, you don't need to be a health care economist to see the folly in a hospital whose inpatient use has declined by almost 18% since 2010 seeking now to expand its most expensive beds by 50%.

Expanding in a contracting market violates every rule of economics, business judgment, and common sense - yet nowhere, other than this group's submissions, is this contrary factual evidence even noted in the state's DoN record for this project. This is no oversight - it's open defiance of the legislative intent and regulatory objectives of the process it purports to be implementing.

Nor is this noted in the state's leading newspaper publication, which has endorsed BCH's expansion proposal without mentioning this disqualifying evidence of declining utilization. Neither has it disclosed the conflict of interest in its recent op-ed criticizing the Health Policy Commission for doing its job by questioning the impact BCH's proposal would have on Massachusetts payers, community hospitals, and health care spending.

At the risk of sounding overly cynical, perhaps these oversights have something to do with the full page ads BCH has placed in their publication touting their expansion proposal, which never bother to distinguish their need for bigger operating and patient rooms from their proposal to expand their ICU capacity by 50% - something for which they've failed to submit relevant data that might demonstrate need for said expansion.

That's because no such data exists. Shame on them for pretending it does by criticizing the HPC's data analysis. But greater shame is due the DoN process for ignoring this regulatory requirement and recommending that BCH's unwarranted expansion be approved despite the absence of evidence that its proposed expansion is actually needed.

The obvious concerns are that overbuilding at BCH will drive up health care costs and jeopardize other hospitals' pediatric services. The cost threat appears to us to be far greater than the Health Policy Commission's \$8 to \$18 million dollar annual estimate. BCH projects an incremental \$150 million plus in net revenues in its third year of expanded operations, of which only 21% is expected to come from patients it identifies as "mostly international".

The remaining 79% - or almost \$120 million dollars annually - is expected to come from domestic payers, both government and commercial insurers. Given the decline in pediatric hospitalizations regionally and nationally, it's highly likely that a significant portion of that incremental \$120 million plus a year will be borne by Massachusetts payers, employers, and families.

The DoN Program evades this issue with a proposed condition on its recommended approval of the project it claims will "mitigate" any financial damage BCH's proposed expansion would cause to Massachusetts payers - the threat of which has prompted the Mass. Association of Health Plans, the Retailers' Association of Massachusetts and the National Federation of Independent Businesses to also record their opposition to BCH's proposed expansion plan.

But the proposed condition, which caused the HPC to wrongly withdraw its earlier concerns about the proposed expansion project's spending impact, lacks legislative or regulatory authority and is thereby illegal and unenforceable. That's because, by attempting to limit access by Massachusetts residents to BCH's proposed expansion of services, it is directly contrary to the DoN legislative objective of improving access for Massachusetts residents.

The proposed condition on BCH's recommended project approval is thereby in direct conflict with the DoN Program's objectives, which is prohibited by its own regulations.

And even if it weren't, all such conditions are required by regulation to be within BCH's control and it can easily be argued that the hospital has no control over where demand for its services originates - rendering the proposed condition ineffective and unenforceable in this regard as well.

Suffice it to say that, back in the day of a more robust DoN Program that took its legislative charge more seriously, BCH's proposed expansion would never have seen the light of day. They'd have known better than to propose an expansion of beds when their volume has done nothing but decline.

Now they brazenly tout their claim they need to expand despite the explicit evidence to the contrary - factual evidence the DoN Program chooses to ignore while adopting the hospital's boilerplate PR language instead, an obvious example of regulators being co-opted by those they regulate.

What we have here, in sum, is an abandonment of the legislative intent of the DoN program for political expediency. No amount of contorted camouflage by way of unenforceable conditions can conceal this abandonment. And no amount of lofty rhetoric about containing health care costs will offset this abandonment.

The proof, as they say, is in the pudding. If all the Commonwealth intends is more lip service about containing health care costs, it should do us all a favor and stop misleading the public that it intends more than that. As it is, we believe approval of BCH's DoN will adversely affect the ability to meet the state's cost containment goals to a far greater extent than your own analysis suggested.

As John Hurst, the head of the Retailers' Association of Massachusetts, has publicly stated, "We've studied the hell out of all this stuff... We need to take some action." The Commonwealth can demonstrate whether it intends to put teeth behind the talk in two days' time with its vote on BCH's expansion application.

Let's see what they choose to do when the rubber hits the road, as it has with BCH's unprecedented and wholly unworthy expansion proposal.

Thank you and I'm happy to answer any questions you may have.