

STAFF SUMMARY FOR DETERMINATION OF NEED
BY THE PUBLIC HEALTH COUNCIL
September 16, 2015

APPLICANT: Reliant Rehabilitation Hospital
Braintree, LLC d/b/a Braintree
Rehabilitation Hospital

PROGRAM ANALYST: Jere Page

LOCATION: 250 Pond Street
Braintree, MA 02184

REGION: HSA IV

DATE OF APPLICATION: June 26, 2015

PROJECT NUMBER: 4-3C43

PROJECT DESCRIPTION: Transfer of ownership of Braintree Rehabilitation Hospital and its satellite locations arising from the sale of the ownership interests in the Applicant to an indirect subsidiary of HealthSouth Corporation.

ESTIMATED MAXIMUM CAPITAL EXPENDITURE: Not applicable

ESTIMATED FIRST YEAR INCREMENTAL OPERATING COSTS: Not applicable

LEGAL STATUS: A unique application for a Determination of Need filed pursuant to M.G.L. c.111, § 51 and the regulations adopted thereunder.

ENVIRONMENTAL STATUS: No environmental notification form or environmental impact report is required to be submitted for this project since it is exempt under 301 Code of Massachusetts Regulations 10.32 (3) promulgated by the Executive Office of Environmental Affairs pursuant to Massachusetts General Laws, Chapter 20, §§ 61-62H. As a result of this exemption, the project has, therefore, been determined to cause no significant damage to the environment.

OTHER PENDING APPLICATIONS: Project No. 4-3C44 (Change of Ownership of New England Rehabilitation Hospital)

COMPARABLE APPLICANT(S): None

COMMENTS BY CENTER FOR HEALTH INFORMATION AND ANALYSIS: None submitted.

COMMENTS BY EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES ("EOHHS"): EOHHS has determined that there is adequate access for Medicaid recipients in Braintree Rehabilitation Hospital's service area.

COMMENTS BY INTERESTED PARTIES: Staff notes that a public hearing was held on July 31, 2015 in Braintree. The hearing was attended by approximately 20 people, four of whom testified. Subsequent to the hearing, two letters voicing concern about the transfer were received.

RECOMMENDATION: Approval with a condition.

I. BACKGROUND AND PROJECT DESCRIPTION

Reliant Rehabilitation Hospital Braintree, LLC (“Applicant,” or “Hospital”) has filed a Determination of Need application with respect to a change of ownership of Braintree Rehabilitation Hospital (“Hospital”), a 166-bed non-acute care hospital located at 250 Pond Street in Braintree, its 21-bed inpatient satellite facility located at 125 Newbury Street in Framingham, and eight outpatient satellites located in Braintree, Taunton, Plymouth, Milford, Lynnfield, Brockton, and Abington.

Specifically, the change of ownership of Braintree Rehabilitation Hospital will result from the sale of the equity interests in the Applicant to Cowboy Holding, LLC, which will be, upon the closing, a wholly owned, indirect subsidiary of HealthSouth Corporation (“HealthSouth”). The legal name of the Applicant will change to HealthSouth Rehabilitation Hospital of Braintree, LLC d/b/a HealthSouth Braintree Rehabilitation Hospital. No changes in service are contemplated as a result of the change of ownership.

Braintree Rehabilitation Hospital provides inpatient and outpatient rehabilitation services, mainly to residents of Massachusetts and other New England states. At its main campus in Braintree, the Hospital provides a full range of inpatient services for patients whose physical function has been impaired by injury or illness. The inpatient programs focus on amputees, acquired brain injuries, cardiac issues, major multiple traumas, Multiple Sclerosis, neurologic disorders, orthopedics, Parkinson’s disease, pulmonary disease, spinal cord injuries and strokes. The Hospital’s eight outpatient satellites provide comprehensive adult and pediatric rehabilitation and wellness programs.

HealthSouth specializes in post-acute healthcare services and home-based patient care. It currently operates 109 inpatient rehabilitation hospitals, including Fairlawn Rehabilitation Hospital in Worcester and HealthSouth Rehabilitation Hospital of Western Massachusetts in Ludlow, 89 outpatient rehabilitation locations, as well as home health and hospice programs.

II. STAFF ANALYSIS

Based upon a review of the application as submitted and clarification of issues by the Applicant, Staff finds that the application satisfies the requirements for the alternate process for change of ownership found in 105 CMR 100.600 *et seq.* Staff finds that the Applicant satisfies the standards applied under 105 CMR 100.602 as follows:

A. Individuals residing in the hospital's primary service area or health systems area comprise a majority of the individuals responsible for the following decisions:

- (1) Approval of borrowings in excess of \$500,000;
- (2) Additions or conversions which constitute substantial changes in service;
- (3) Approval of capital and operating budgets; and
- (4) Approval of the filing of an application for determination of need.

Based on information supplied by the Applicant, three of the four total members of the local Board of Directors will be residents of the Hospital’s service area after the transfer, as indicated below:

Arthur Williams, MD – Hingham, MA
John Scola, MD – Braintree, MA
Randy Doherty – Bridgewater, MA
Peter Mantegazza – Ridgefield, CT

B. Evidence that consultation has taken place with the Division of Medical Assistance, prior to submission of the application, regarding access problems of Medicaid recipients to medical services in the facility's primary service area.

The Applicant consulted with EOHHS through its MassHealth Office of Providers and Plans concerning the access of medical services to Medicaid recipients at Braintree Rehabilitation Hospital and its satellites. EOHHS has determined that there is adequate access for Medicaid recipients in the Hospital's primary service area (See Attachment 1).

C. Neither the Applicant nor any health care facility affiliates of the applicant have been found to have engaged in a pattern or practice of violating the provisions of M.G.L. c. 111, § 51D.

Staff has searched the List of Excluded Individuals/Entities ("LEIE") of the Office of Inspector General of the U.S. Department of Health & Human Services, and determined that neither the Applicant nor its affiliates nor individuals representing the Applicant currently excluded from participation in Medicare, Medicaid and all other federal health care programs.

Staff notes that the Bureau of Health Care Safety and Quality's Division of Health Care Facility Licensure and Certification ("HCFLC") is performing a suitability review of this transaction as part of the licensure process. HCFLC, which must find any applicant suitable before issuing any new license, has not informed DoN staff of any violation by Braintree Rehabilitation Hospital or HealthSouth Corporation of the provisions of M.G.L. c.111, §51D.

D. If the application is for a transfer of ownership of a hospital, then the applicant is a hospital licensed by the Department or is an affiliate of a hospital licensed by the Department.

The Applicant is a hospital licensed by the Department.

III. COMMENTS BY INTERESTED PARTIES

A public hearing was held on July 31, 2015, at Braintree High School. The hearing was attended by approximately 20 people, four of whom testified. Subsequent to the hearing, two letters regarding the project were received.

The names and affiliations of the people testifying or submitting written comments are as follows:

Peter Mantegazza, HealthSouth Regional President for Northeast Operations
Paul Marshall, Braintree resident
Brigid Whalen, Braintree resident
Peter Kotowski, Braintree resident

The major issues of the testimony and written comments are presented below:

HealthSouth

The HealthSouth representative noted that because of the synergy between the two organizations, the change of ownership with HealthSouth will result in a partnership that will continue to promote the delivery of high quality rehabilitation services in the communities the Hospital serves, as well as assure the continued financial stability of the Hospital. The Hospital has a national reputation for treating people with physical disabilities as a result of stroke, amputation, trauma, brain injury and orthopedics, while HealthSouth is the nation's largest provider of physical rehabilitation services.

Hospital Neighbors

The three Braintree residents identified themselves as neighbors of the Hospital and noted that the Hospital is situated in the center of a tightly packed residential area, and as such has a direct influence on the neighbors' quality of life. The neighbors stated that over the years there have been significant Hospital physical plant issues such as excessive noise at night resulting from the Hospital's trash removal, the need for shielding of the parking lot lights, dumpster odors, the need for more appropriate access to the Hospital parking lot and for more appropriate signage for patients, and maintenance of a fence and trees between the neighbors and the Hospital.

While the neighbors testified that the current owners of the hospital have been very responsive to their concerns, the neighbors are seeking assurances that the proposed new owners will also address any neighborhood concerns. In addition, the neighbors are concerned that with new ownership, the mission of the Hospital may expand from physical rehabilitation services to include substance abuse services.

As a result of these concerns, the neighbors have requested that approval of the Hospital's transfer to HealthSouth include conditions similar to those provided for in the agreement of November 15, 1986, between the Paul D. Marshall Ten Taxpayer Group and the Kelton Corporation, prior to a previous transfer of ownership of the Hospital. The neighbors requested extensive conditions relating to the physical plant and to their concern about the Hospital's focus. Staff notes that the review process for a transfer of ownership DoN in 1986 was different than it is today, and there was a process for considering such concerns at that time. Although the neighbors' concerns do not address the current DoN factors, Staff has summarized these points because they were raised at the public hearing on this DoN application.

The 1986 physical plant requirements included: prohibiting drivers' access to the Hospital from certain neighboring streets and additional signage to identify the Hospital entrance; the maintenance of trees and fences to act as a screen between the Hospital and the neighborhood; relocating the Hospitals' trash dumpsters; and shielding the parking lot lights. The neighbors also requested assurance that the Hospital will not now or in the future seek to change the focus or mission of the Hospital from its present license form (physical rehabilitation) to any form of drug treatment or substance abuse services. Finally, the neighbors requested assurance that the Hospital will not seek to expand at the present site onto any contiguous site.

Staff Response

Staff notes that, as indicated above, the concerns expressed by the neighbors regarding the physical plant are similar to those included in an agreement between a neighborhood group and the owners of the Hospital prior to a transfer of ownership in 1986. However, as noted above,

these concerns are not among the factors upon which the Department is authorized to base a decision related to a transfer of ownership DoN.

Staff does note that the Applicant has informed Staff that it intends to create a community advisory council at the Hospital. According to the Applicant, the council will meet on a quarterly basis and will provide an opportunity for open discussion about quality, patient satisfaction, clinical program development and accreditations. The Applicant expects that the council will be beneficial to both the community at large and to the Hospital. In addition, the Applicant informed Staff that the Hospital's CEO will be a member, as well as a former hospital patient, a neighbor, a local business leader, a local healthcare provider, and possibly a representative of local government. Any community concerns regarding the Hospital are more appropriately addressed through this community advisory council and other mechanisms available to address the neighbors' concerns, such as enforcement of local ordinances and zoning rules.

In addition, Staff notes that the suggested conditions by the neighbors regarding no changes in the focus or mission of the Hospital from its present license form or further expansion of the Hospital at the present site are contained in a March 6, 1986 Covenant between the Kelton Health Corporation (Hospital owner at the time) and the Town of Braintree. The Department was not a party to the Covenant and has no legal authority to interpret or enforce its restrictions. The Town of Braintree is the appropriate authority to address the neighbors' concerns. Further, Staff notes that the Hospital has stated that its mission will continue to be the delivery of physical rehabilitation services and if there are any future changes to that mission, such changes are beyond the scope of this DoN application.

After careful consideration of the above comments, Staff recommends approval of the change of ownership of Braintree Rehabilitation Hospital to become part of HealthSouth Corporation.

IV. Interpreter Services

The Office of Health Equity ("OHE") recently conducted a review of the interpreter and language access services available to limited- and non-English proficient patients at Braintree Rehabilitation Hospital. Improvements recommended by OHE at the Hospital are presented in Attachment 2 of this Staff Summary, and have been included as a condition of approval for this project.

V STAFF RECOMMENDATION

Based upon the above analysis, Staff recommends approval with a condition of Project Number 4-3C43 regarding the transfer of ownership of Braintree Rehabilitation Hospital and its satellite locations arising from the sale of the ownership interests in the Applicant to an indirect subsidiary of HealthSouth Corporation.

Failure of the Applicant to comply with the condition of approval may result in Department sanctions, including possible fines and/or revocation of the DoN.

The condition of approval is as follows:

1. Braintree Rehabilitation Hospital shall continue to provide language access services at the Hospital with the improvements described in the document prepared by the Office of Health Equity, as amended from time to time by agreement of the Applicant and OHE, which is attached hereto as Attachment 2 and is incorporated herein by reference.

The Applicant has agreed to this condition of approval.

List of Attachments

1. Letter from Executive Office of Human Services regarding Medicaid access issues
2. Comments by the Office of Health Equity



The Commonwealth of Massachusetts
Executive Office of Elder Affairs
One Ashburton Place, 5th Floor
Boston, Massachusetts 02108

Attachment 1

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

ALICE F. BONNER
Secretary

June 23, 2015

Tel: (617) 727-7750
Fax: (617) 727-9368
www.mass.gov/elders

RECEIVED

JUN 25 2015

MA Dept. of Public Health
99 Chauncy Street
Boston, MA 02111

Mr. Bernard Plovnick, Program Director
Determination of Need Program
Massachusetts Department of Public Health
99 Chauncy Street
Boston, MA 02111

RE: DON Change of Ownership Applications: Braintree Rehabilitation Hospital and New
England Rehabilitation Hospital

Dear Mr. Plovnick:

This is to confirm consultation between the Executive Office of Health and Human Services, through its MassHealth Office of Long Term Services and Supports, and representatives for Reliant Rehabilitation Hospital Braintree, LLC and Reliant Rehabilitation Hospital New England, LLC, both subsidiaries of Reliant Hospital Partners, LLC, in accordance 105 CMR 100.602(B) regarding the change of ownership of Braintree Rehabilitation Hospital, located at 250 Pond Street, Braintree, Massachusetts 02184 and New England Rehabilitation Hospital, located at 2 Rehabilitation Way, Woburn, Massachusetts 01801. The MassHealth agency is not aware of any specific access problems for MassHealth members that may result from this transaction and anticipates that the hospitals will continue to make access to MassHealth providers and medical care for MassHealth patients a priority.

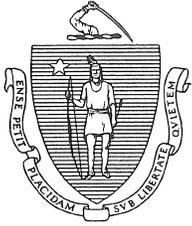
The new owner must apply for a MassHealth provider participation status for the impacted hospitals by contacting MassHealth Provider Enrollment and Credentialing at 1-800-841-2900 or provider.support@mahealth.net as well as completing a Chronic Disease and Rehabilitation Hospital Request for Application and Contract (RFA). The applications should be filed in advance of the effective date of the change of ownership in order to ensure no interruption in payment of services provided to MassHealth members. The RFA is available on the Commonwealth of Massachusetts Procurement Access and Solicitation System website at www.commbuys.com or by contacting Lenora Mobley at 617-222-7489 or lenora.mobley@state.ma.us.

Thank you for your consideration of this letter.

Sincerely,

Lenora Mobley, Program Manager
MassHealth Office of Long Term Services and Supports

Cc: Daria Niewenhous, Mintz Levin P.C.



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

August 28, 2015

Randy Doherty, CPA
Chief Executive Officer
Braintree Rehabilitation Hospital
250 Pond Street
Braintree, MA 02184

Dear Mr. Doherty:

Pursuant to Braintree Rehabilitation Hospital's Determination of Need (DoN) application for Change of Ownership, the Office of Health Equity has determined that a continuity of the recently imposed conditions with addendum is warranted:

- Braintree Rehabilitation Hospital shall maintain its capacity to provide quality and timely interpreter services and continue to satisfactorily implement all previously imposed conditions (October 25, 2013).

Supplemental Conditions:

Braintree Rehabilitation Hospital shall:

- Expand its implementation plan of the CLAS standards to include all of its clinics. A proposed plan is to be developed and include specific goals and objectives, action steps, targeted staff/departments, evaluation, and outcomes
- Identify and report on the different mechanisms and/or projects the hospital is currently implementing, and how it will continue to use the data collected on race, ethnicity, and language to improve patient care and achieve health equity
- Provide ongoing training for all hospital and clinic staff, new hires, and volunteers on the appropriate use of Interpreter Service and emerging issues
- Continue to provide oversight and support to all of its clinics

An implementation plan that addresses the aforementioned conditions and includes anticipated outcomes, evaluation, and **periodic submission of progress reports**, is to be submitted within 30 days of DoN's approval to:

Samuel Louis, M.P.H.
Massachusetts Department of Public Health
Office of Health Equity
250 Washington Street, 5th Floor
Boston, MA 02108

The overall plan shall include anticipated goals, action steps, anticipated outcomes, evaluation, and periodic submission of progress reports.

If you wish to discuss any of the conditions, or other areas covered at the visit, please contact me at (617) 624-5905 or at samuel.louis@state.ma.us.

Sincerely,



Samuel Louis, M.P.H.
Health Care Interpreter Services Coordinator

Enclosure

Cc: Carol Gorman, LSW, Director, Case Management
Jere Page, Analyst, Determination of Need Program
Georgia Simpson May, Director, Office of Health Equity