

October 5, 2016

Monica Bharel, MD, MPH  
Commissioner, Department of Public Health  
250 Washington Street  
Boston, MA 02108

**RE: Proposed Revision of 105 CMR 100.000: Determination of Need**

Dear Commissioner Bharel,

I am writing on behalf of the American Society of Plastic Surgeons (ASPS) to register our opposition to the draft regulations relative to 105 CMR 100.000 on Determination of Need (DoN). While ASPS supports the proposed elimination of the 1994 moratorium on new Ambulatory Surgery Centers (ASCs), it does not support the restrictive and anti-competitive provision that requires a freestanding ASC applying for a DoN to be affiliated with an acute care hospital. **If enacted as written, this provision presents serious anti-trust concerns and will, in turn, drive up health care delivery costs.**

Founded in 1931, ASPS is the largest association of plastic surgeons in the world, representing more than 7,000 members and 94 percent of all American Board of Plastic Surgery board-certified plastic surgeons in the United States. Because ASPS's mission includes advancing the highest standards of ethics and physician practice, we have serious concerns about this draft regulation and believe that the DoN program should instead aim to create a level playing field.

ASCs provide high quality care and save the U.S. health care delivery system a truly staggering amount of money, and as such ASPS supports the Department of Public Health's (Department's) initiative to lift the moratorium on ASCs. In fact, a review conducted this year by Healthcare Bluebook, a repository of commercial medical-claims data, discovered that U.S. health-care costs are reduced by more than \$38 billion per year due to the availability of ASCs as an appropriate setting for outpatient procedures. Of that \$38 billion, more than \$5 billion accrued to patients through lower deductible and coinsurance payments.

Unfortunately, the anti-competitive components of this regulation hold the potential to undermine this key benefit of the ASC setting and have a chilling effect on the cost savings that could be achieved by ASCs in Massachusetts. Forcing private entities to partner with hospitals – their market competitors – will: 1) inhibit the formation of new ASCs, as ASCs are direct competition to hospital operating rooms, and 2) potentially lead to the loss of existing ASC's if hospitals will not allow affiliation. Since reimbursement is less in ASCs compared the hospital's operating rooms, the hospitals will have no incentive to open new ASCs or to affiliate with ASCs, thus driving all the operations to their higher cost operating rooms. This will result in less competition, less access for patients, reduced innovation, and higher costs for Massachusetts employers and patients. Perhaps most troubling the hospital partnership requirement extends to existing ASCs looking to expand service lines or to undertake new construction projects. This is patently unfair and creates a legitimate anti-trust concern.

Please work to ensure that Massachusetts employers, payers and patients can benefit from the high quality care at lower costs that ASCs provide. Please remove the moratorium on ASCs without imposing onerous and anticompetitive new requirements.

Thank you for the opportunity to comment and for the good work you do on behalf of the citizens of Massachusetts. Please do not hesitate to contact Patrick Hermes, Senior Manager of Advocacy and Government Affairs, at [pghermes@plasticsurgery.org](mailto:pghermes@plasticsurgery.org) or at 847-228-3331 with any comments, questions or concerns. Additionally, ASPS would be happy to discuss this important issue with the Department.

Sincerely,

A handwritten signature in black ink that reads "Debra Johnson MD". The signature is written in a cursive, flowing style.

Debra Johnson, MD  
President, American Society of Plastic Surgeons  
444 East Algonquin Road  
Arlington Heights, Illinois 60005