 The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

250 Washington Street, Boston, MA 02108-4619

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Commissioner

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[**www.mass.gov/dph**](http://www.mass.gov/dph)

April 24, 2023

Rami Rustum, MD

1641 Salem Street

North Andover, MA 01845

Via Email: RRRUSTUM@yahoo.com

Dear Dr. Rustum,

At their meeting of April 19th, 2023, the Commissioner and the Public Health Council, acting together as the Department, voted pursuant to M.G.L. c.111, §25C and the regulations adopted thereunder, to approve the Determination of Need (DoN) application filed by Excel Surgery Center, LLC for a Substantial Change in Service for the development of a single-specialty, freestanding ambulatory surgery center (ASC) with two operating rooms, to be located at 386 Merrimack Street Suit #D, Methuen, MA (Proposed Project). This Notice of Final Action incorporates by reference the Staff Report and the Public Health Council proceedings concerning this application.

This application was reviewed pursuant to M.G.L. c. 111, §25C and the regulatory provisions of 105 CMR 100.000 et seq. Based upon a review of the materials submitted, the Department found that the Applicant has met each DoN factor and approves this Determination of Need application for a Substantial Change in Service subject to all standard conditions (105 CMR 100.310) and pursuant to 105 CMR 100.360, subject to Other Conditions listed below. The total capital expenditure for the Proposed Project is $1,200,000.00 (November 2022 dollars) and the required CHI contribution is $60,000.00.

In compliance with the provisions of 105 CMR 100.310(A)(2) and (11) the Holder shall submit and acknowledgment of receipt to the Department (attached) and include a written attestation of participation or intent to participate in MassHealth.

In compliance with 105 CMR 100.310(A)(12), which requires a report to the Department, at a minimum on an annual basis, including the measures related to achievement of the DoN factors for a period of five years from completion of the Proposed Project, the Holder shall address its assertions with respect to all the factors.

Please notify the DoN Program at DPH.DON@State.MA.US of the anticipated completion date of all the components of the DoN-approved Project once it has been established. Additionally, send an email confirming the Project's completion (licensure/ amended licensure approval date) and the first day of operations to determine the annual DoN reporting timeline.

**Other Conditions to the DoN**

1. The total required CHI contribution of $60,000 will be directed to the Massachusetts Statewide Community Health Funds.
2. To comply with the Holder’s obligation to contribute to the Massachusetts Statewide Community Health Funds, the Holder must submit the payment, a check for $60,000, to Health Resources in Action (the fiscal agent for the CHI Statewide Initiative).
	1. The Holder must submit the funds to HRiA within 30 days from the date of the Notice of Approval.
	2. The Holder must promptly notify DPH (CHI contact staff) when payment has been made.

Payment should be sent to:

Health Resources in Action, Inc., (HRiA) 2 Boylston Street, 4th Floor

Boston, MA 02116 Attn: Ms. Bora Toro

Ongoing compliance with the conditions and all terms of the DoN is, pursuant to the Regulation, a precondition to the filing of any future DoN by the Holder.

Sincerely,

[signature on file]

Dennis Renaud

Director Determination of Need Program

cc:

Elizabeth D. Kelley, Director, Bureau of Health Care Safety and Quality Rebecca Kaye, General Counsel’s Office

Stephen Davis, Director, Division of Health Care Facility Licensure and Certification Judy Bernice, Division of Health Care Facility Licensure and Certification

Daniel Gent, Health Care Facility Licensure and Certification Samuel Louis, Office of Health Equity

Jennica Allen, Division of Community Health Planning and Engagement Elizabeth Maffei, Division of Community Health Planning and Engagement Katelyn Teague, Division of Community Health Planning and Engagement Elizabeth Almanzor, Center for Health Information Analysis

Katherine Mills, Health Policy Commission Eric Gold, Office of the Attorney General

Tomaso Calicchio, Executive Office of Health and Human Services Hai Nguyen, Executive Office of Health and Human Services Karina Mejias, Executive Office of Health and Human Services

Priscilla Portis, Executive Office of Health and Human Services