



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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Governor

KIMBERLEY DRISCOLL
Lieutenant Governor

KATHLEEN E. WALSH
Secretary

ROBERT GOLDSTEIN, MD, PhD
Commissioner

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June 12, 2024

Alan Einhorn
Foley & Lardner LLP
111 Huntington Avenue
Boston, MA 02199

Via email: AEinhorn@foley.com

Dear Attorney Einhorn,

At their meeting of June 12th, 2024, 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 Boston Outpatient Surgical Suites, LLC (Applicant) for a Substantial Change in Service to transfer the site of its existing ambulatory surgery center (ASC), Boston Outpatient Surgical Suites, LLC from its current location at 840 Winter Street, Waltham, MA to 71 Border Road, Waltham, MA, and to increase the number of operating rooms from three to eight and increase the number of pre/post-procedure beds from 17 to 30 at the proposed site (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 \$13,100,000 (January 2024 dollars) and the required CHI contribution is \$655,000.

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@mass.gov of the anticipated completion date of all the components of the approved Amendment Project once it has been established. Additionally, please 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 \$655,000 will be directed to the Massachusetts Statewide CHHAF and will be paid by BOSS, LLC in **two installments** of \$327,500. Payments should be made out to:
Health Resources in Action, Inc. (HRiA)
2 Boylston Street, 4th Floor
Boston, MA 02116 Attn: MACHHAF c/o Bora Toro
DoN project #: _____
 2. The first payment of \$327,500 will be due to HRiA **within 30 days** from the date of the Notice of Approval. The second installment is due to HRiA within 1 year of the Notice of Approval date.
 3. Please send a PDF image of the check or **confirmation of payment** to DONCHI@Mass.gov and dongrants@hria.org
- If you should have any questions or concerns regarding the payment, please contact the CHI team at DONCHI@Mass.gov.
4. In addition to BOSS ASC's obligation to participate in MassHealth, pursuant to 105 CMR 100.310(11), the Holder must certify annually that all physicians and health professionals who practice at the facility are enrolled as participating providers of MassHealth to support equitable access to all clinicians at the facility regardless of payer.
 5. In order to support equitable access to BOSS's services, the Applicant will report on annual efforts to promote health equity at BOSS, including but not limited to efforts to identify and address disparities in access to BOSS's services, and efforts to advance the provision of culturally and linguistically appropriate services at BOSS.

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,

Dennis Renaud

Dennis Renaud
Director, Determination of Need Program

cc:

Antonio Sousa, Acting 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
Hilary Ward, Health Care Facility Licensure and Certification
Samuel Louis, Office of Health Equity
Jennica Allen, Division of Community Health Planning and Engagement
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Katelyn Teague, Division of Community Health Planning and Engagement
Katherine Mills, Health Policy Commission
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