



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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March 21, 2025

Via email - Benjamin.Wilson@ropesgray.com

Benjamin A. Wilson
Ropes & Gray LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199-3600

Re: Notice of Final Action – Dana-Farber Cancer Institute, Inc.
Substantial Capital Expenditure and Substantial Change in Service
DoN Application #DFCI-23040915-HE

Dear Attorney Wilson,

At their meeting of March 20, 2025, the Commissioner and the Public Health Council, acting together as the Department, voted pursuant to M.G.L. c.111, §25(c) and the regulations adopted thereunder, to approve the Determination of Need application filed by Dana-Farber Cancer Institute, Inc. (Applicant) for a Proposed Project for the construction of a new inpatient hospital dedicated to cancer care that will contain the following:

- 300 adult inpatient beds, including:
 - 280 medical surgical (M/S)
 - 20 Intensive Care Unit (ICU)
 - 270 (250 M/S and 20 ICU) will represent new beds, and 30 will be transferred from the Applicant's current bed complement at Brigham and Women's Hospital, 75 Francis Street;
- 20 new Observation Beds;
- Two new magnetic resonance imaging (MRI) machines, two new computed tomography (CT) machines, and one new positron emission tomography-computed tomography (PET-CT) machine (collectively, the Inpatient Imaging Equipment); and
- Two new CT simulator machines, and three new linear accelerators (LINACs) (the New Radiation Oncology Equipment).

The total capital expenditure for the Proposed Project is \$1,675,700,000.00 (October, 2023 dollars) and the required Community Health Initiative (CHI) contribution is \$83,785,000.00.

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, §25(c) 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 subject to all standard conditions (105 CMR 100.310) and pursuant to 105 CMR 100.360, subject to the Other Conditions listed below.

The Massachusetts Health Policy Commission (HPC) authorized the initiation of a Cost and Market Impact Review (CMIR) which will analyze the impact of the proposed clinical affiliation between Dana-Farber Cancer Institute, Beth Israel Deaconess Medical Center (BIDMC), and Harvard Medical Faculty Physicians (HMFP) at BIDMC. The HPC issued its Preliminary CMIR Report on February 27, 2025, and expects to issue its final report in April 2025. Accordingly, pursuant to 105 CMR 100.310(A)(2), this Notice of Final DoN Action shall not go into effect until 30 days after the HPC completes the CMIR. Pursuant to 100.360 (D)(3), the Department may rescind or amend this approved Notice of DoN on the basis of findings in a CMIR.

In compliance with the provisions of 105 CMR 100.310(A)(2) and (11), the Holder shall submit an 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 DoN-approved 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. Of the total required CHI contribution of \$83,785,000.
 - a. \$20,527,325 will be directed to the CHI Statewide Initiative.
 - b. \$61,581,975 will be dedicated to local approaches to the DoN Health Priorities.
 - c. \$1,675,700 will be designated as the administrative fee.
2. To comply with the Holder's obligation to contribute to the CHI Statewide Initiative, the Holder must submit a check for \$20,527,325 to Health Resources in Action (the fiscal agent for the CHI Statewide Initiative) **within 30 days** from the date of the Notice of Approval.
 - a. 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 #: DFCI-23040915-HE

b. 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.

3. To demonstrate that the Proposed Project is advancing health equity and increasing access across the Holder's services, the Holder will track and report on its efforts to (1) identify barriers to cancer care, including but not limited to patients in the Holder's Patient Panel insured by or through MassHealth, (2) implement evidence-based programs conducted in early detection, screening, and cancer prevention and education through existing and new partnerships with community health centers, community-based organizations, and government entities, including strengthening patient access to primary care settings, and (3) report on its efforts to address identified barriers to care and expand access to care, including measurable metrics.
4. If, during the pendency of the DoN, the Department determines that the MassHealth payer mix of the Holder has materially decreased, the Holder shall submit a plan to the Department detailing its plan to increase its MassHealth payer mix. The plan shall be submitted no later than six months after such time as the Department notifies the Holder that such a plan is required. The Holder shall provide, with its annual report to the Department, a report on implementation of said plan to demonstrate measurable progress resulting from its efforts to increase its MassHealth payer mix.
5. For each full fiscal year, during the Reporting Period the Holder shall report the following metrics to the Department annually for the Project:
 - a. Total Inpatient Revenue
 - b. Total Inpatient Pharmaceutical Revenue
 - c. Total Inpatient Operating Expenses
 - d. Total Inpatient Pharmaceutical Expenses
 - e. Total Inpatient Discharges
 - f. Inpatient Case Mix Index

The DoN Program shall use the data provided to calculate, for each applicable year, the Holder's Annual Cost Per Inpatient without Pharmaceutical Expense as follows:

- a. The Holder's "Annual Revenue per Inpatient without Pharmaceutical Revenue" as follows: (i) Total Inpatient Revenue *minus* Inpatient Pharmaceutical Revenue *divided*

by (ii) the product of Total Inpatient Discharges *multiplied by* the Holder's Inpatient Case Mix Index.

- b. The Holder's "Annual Inpatient Operating Income without Pharmaceutical Revenue or Expense as follows: (i) Total Inpatient Revenue *minus* Inpatient Pharmaceutical Revenue *minus* Inpatient Operating Expenses *plus* Inpatient Pharmaceutical Expenses, *divided by* (ii) the Holder's Inpatient Case Mix Index.

The DoN Program will compare the percentage growth, if any, in Annual Revenue per Inpatient without Pharmaceutical Revenue, as calculated, year over year (the "Annual Growth Percentage") against the health care Cost Growth Benchmark (CGB) established under M.G.L. c. 6D, §9 for such year.

If the DoN program determines that the Holder's Annual Growth Percentage, calculated as outlined above, exceeds the CGB, the Holder shall provide the Department with an explanation for the increase above the CGB to allow the Public Health Council to determine whether the Holder must make equity investments as described below. The Public Health Counsel shall consider whether the increase is a result of the Holder's implementation of innovative cancer treatment or the result of increases in costs that are outside the control of the Holder.

If the Public Health Council determines the increase is not attributable to implementation of innovative treatment and/or forces outside of the Holder's control, the Holder shall develop a plan, as agreed to by the Department, to make equity investments in a manner that is consistent with the health equity and access efforts articulated in Condition 3. The investments required shall not exceed an amount equal to the product of: (a) the Annual Inpatient Operating Income without Pharmaceutical Revenue or Expense *multiplied by* (b) the Annual Growth Percentage *minus* the CGB. For the avoidance of doubt, in no event shall the amount of required investments be less than zero or greater than the Holder's Annual Inpatient Operating Income without Pharmaceutical Revenue or Expense for the applicable year. The plan shall be submitted no later than six months after such time as the Department notifies the Holder that such a plan is required.

If, at any point during the reporting period, the DoN program identifies an increase in Annual Growth Percentage that is below the benchmark but substantial enough to raise concerns regarding cost containment, the Department reserves the right to require the Holder to explain the reasons for that increase to the Public Health Counsel; however, any increases that fall below the benchmark shall not trigger investment by the Holder as described above.

6. Other requirements in terms of the form, frequency and content of the reporting may be set out as contemplated in 105 CMR 100.310(12) and this Notice of DoN, and this information shall be updated annually in accordance with the Regulation.

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
Determination of Need Program

cc:

Teryl Smith, Director, Bureau of Health Care Safety and Quality
Jaclyn K. Gagné, Chief Deputy General Counsel, Health Care Licensure
Stephen Davis, Director, Division of Health Care Facility Licensure and Certification
Judy Bernice, Division of Health Care Facility Licensure and Certification
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