



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Determination of Need Program  
250 Washington Street Boston, MA 02108

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MEMORANDUM

TO: Determination of Need Applicants

FROM: Margo Michaels MPH, Director

DATE: October 4, 2019  
*reposted March 19, 2020 for regulatory consistency*

RE: Consolidated Applications

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Effective October 1, 2019 and pursuant to 105 CMR 100.715, Applicants for a Determination of Need (DoN) will be required to submit Proposed Project<sup>1</sup> applications **that consolidate all planned or reasonably foreseeable Capital Expenditures or Substantial Changes in Service for a licensed Health Care Facility during a single Federal Fiscal Year (FFY)**. This includes the Facility's main location and any satellite sites on its license.

Applicants seeking to file Proposed Projects that include location(s) that do not yet meet the requirements of 105 CMR 100.705 must provide adequate information as to how the proposed expenditures meet the DoN factors **and** the Applicant's plan to demonstrate Sufficient Interest in the Site or Facility and evidence it has commenced the process to obtain any necessary municipal authorization within a date certain as necessary to meet the requirements of 105 CMR 100.310(A)(6)(a), or no later than 12 months after the date of the Notice of Determination of Need.

**1. Determining if Capital Expenditures at a Health Care Facility Require a DoN Application**

Applicants must total their planned or reasonably foreseeable Capital Expenditures for each of the 6 categories listed below, as relevant to the Facility. These expenditures<sup>2</sup> should include those related to all plans that require Department approval<sup>3</sup> as required by M.G.L. c. 111, § 51; with the exception of those expenditures that are part of a previous Notice of Determination of Need. Expenditures for services and/or

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<sup>1</sup> 105 CMR 100.100 defines Proposed Project as:

- Any Substantial Capital Expenditure, Substantial Change in Service including, but not limited to, DoN-Required Service, DoN-Required Equipment, Ambulatory Surgery, or any combination thereof; or
- Any Original License or Transfer of Ownership

<sup>2</sup> Expenditures that are exempt from this calculation include, but are not limited to: environmental compliance costs, or other tasks associated with facilities operations, such as provision of central utilities and information technology; major movable equipment (not otherwise defined as DoN-required equipment); office space and shell structures of existing buildings not used for clinical purposes; and parking structures.

<sup>3</sup>Through a Notice of DoN or through the submission and approval of architectural plans and specifications.

construction that will be used for both inpatient and outpatient purposes are considered inpatient expenditures for purposes of applying for a DoN.<sup>4</sup>

If the **total costs** for any category exceed, or are likely to exceed the Capital Expenditure minimums during a FFY,<sup>5</sup> Applicants must submit a DoN application for that category.

- **Category 1: Proposed Non-Conservation Inpatient Capital Expenditures**
  - *Inpatient Substantial Changes in Service must be included in these applications<sup>6</sup>*
- **Category 2: Proposed Non-Conservation Outpatient Capital Expenditures**
  - *Outpatient Substantial Changes in Service must be included in these applications<sup>6</sup>*
- **Category 3: Proposed Conservation Inpatient Capital Expenditures**
- **Category 4: Proposed Conservation Outpatient Capital Expenditures**
- **Category 5: Proposed Non-Conservation Capital Expenditures at a Long-Term Care Facility**
- **Category 6: Proposed Conservation Capital Expenditures at a Long-term Care Facility**

Applications should be clearly labeled according to these categories. Proposed Projects across these categories that are interdependent may be filed together.

## 2. Applications for Substantial Changes in Service at a Health Care Facility

Applicants who are NOT required to file an Application for Substantial Capital Expenditure<sup>7</sup> but who are planning any Substantial Changes in Service **must submit a DoN application that includes all proposed Substantial Changes in Service at a Health Care Facility planned or reasonably foreseeable** during the same FFY for each of the categories listed below.

- **Category 7:** Proposed Inpatient Substantial Change in Services
- **Category 8:** Proposed Outpatient Substantial Change in Services
- **Category 9:** Proposed Substantial Change in Services at a Long-term Care Facility

Applications should be clearly labeled according to these categories. Proposed projects across these categories that are interdependent may also be filed together.

## 3. Proposed Multiyear Projects

To the extent possible, Applicants should submit all Capital Expenditures and/or Substantial Changes in Service related to phased or multiyear Proposed Projects together in a single Application in the applicable category(ies). Applicants need not include or resubmit Capital Expenditures and/or Substantial Changes in Service related to phased or multiyear Projects for which the Applicant was issued a Notice of Determination of Need as part of consolidated Applications in subsequent years.

## 4. Amendments

Pursuant to 105 CMR 100.635, requests for Significant Changes to an approved DoN must be within the scope of the previously approved DoN, and the proposed change must be reasonable. Requests to expand the scope of a previously approved DoN will not be accepted.

Any proposed construction that is not reasonably foreseeable and beyond the scope of the previously issued approval for that FFY should therefore be incorporated into a DoN application for the following FFY.

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<sup>4</sup> See the definition of "Expenditure minimum with respect to substantial capital expenditures" in M.G.L. c. 111, §25 (b).

<sup>5</sup> Minimum Capital Expenditures requiring Determination of Need for FFY 2019 are listed here and updated annually:

<https://www.mass.gov/files/documents/2018/12/27/guidelines-expenditure-minimum.pdf>

<sup>6</sup> Consistent with past practice, expenditures associated with Changes in Service are not included in the calculation of total capital expenditure.

<sup>7</sup> Applicants are not required to file an application in any category if total costs for that category **will not exceed**, or are **likely not to exceed** the Capital Expenditure Minimums over a FFY.

The DoN program will consider requests for Significant Change during the FFY in which a Holder has received a Notice of DoN in the following circumstances:

- the proposed change was not reasonably foreseeable and is within the scope of the approved project;  
or
- the proposed change was not reasonably foreseeable and it is necessary to address an urgent patient or safety concern at the facility.

5. **When to file**

Applications may be filed at any time during a FFY or prior the start of the next FFY, provided the application includes all planned or reasonably foreseeable Capital Expenditures and/or substantial Changes in Services for the current FFY or in advance of next FFY(s), as appropriate. There is no prescribed timing for accepting applications within any FFY.<sup>8</sup>

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<sup>8</sup> Applicant may have more than one application under review for the same license at the same time provided that the applications cover different fiscal years.

## EXAMPLE WORKSHEET: ABC HOSPITAL SYSTEM

ABC Hospital System provides care to patients in both inpatient and outpatient settings. One of its licensed facilities has a main hospital campus with inpatient beds, physician offices, and ambulatory surgery. There are also three satellite locations for the main hospital campus, all on the same license.

They reviewed their TCE for FFY 2022 and determined which projects will require their filing for a DON.

	FY2022 Total Capital Expenditures: \$100M					
	Inpatient Capital Expenditure Proposed Total for Health Care Facility: \$50M			Outpatient Capital Expenditure Proposed Total for Health Care Facility: \$50M		
Anticipated costs	Conservation Inpatient Capital Expenditures Total: \$20M	Non-Conservation Inpatient Capital Expenditures Total: \$30M	Inpatient Substantial Change in Services (cost doesn't apply)	Conservation Outpatient Capital Expenditures Total: \$30M	Non-Conservation Outpatient Capital Expenditures Total: \$20M	Outpatient Substantial Change in Services (cost doesn't apply)
Project Examples	<ul style="list-style-type: none"> <li>• Paint and refresh 20 offices for hospitalists and surgeons</li> <li>• Replace hallway carpeting at ICU</li> </ul>	<ul style="list-style-type: none"> <li>• Construction<sup>9</sup> of 2 floors to convert double rooms to single rooms</li> </ul>	<ul style="list-style-type: none"> <li>• Add CT and MRI for inpatient use</li> </ul>	<ul style="list-style-type: none"> <li>• Paint and refresh 20 outpatient exam rooms (<i>main campus</i>)</li> <li>• Install new flooring in entranceways and lobbies (<i>Satellites 1, 2 and 3</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Add 6 rooms to ED for behavioral health use (<i>main campus</i>)</li> <li>• Renovate outpatient endoscopy suite (<i>Satellite 1</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Add Ambulatory Surgical Wing for Bariatric Care (<i>satellite 2</i>)</li> <li>• Add CT and MRI for outpatient use (<i>main campus</i>)</li> </ul>
Is DoN Required?	Yes	Yes	Yes	Yes	No	Yes
Applicant must...	File Category 3	File together as Category 1		File Category 4	Do nothing	File Category 8

<sup>9</sup> As defined by M.G.L. c. 111, § 25 (b)

## EXAMPLE WORKSHEET: LONG TERM CARE FACILITY

Love Care provides long term care to residents in Berkshire County. They reviewed their total capital expenditures for FFY 2022 and determined which projects will require their filing for a DON.

	FY2022 Total Capital Expenditures: \$5 million	
	Non-Conservation Capital Expenditures for LTC	Conservation Capital Expenditures for LTC
<b>Anticipated costs</b>	Total: \$2.8 M	Total: \$2.2M
<b>Project Examples</b>	<ul style="list-style-type: none"> <li>• Construction<sup>10</sup> on 2 floors to convert double rooms to single rooms</li> </ul>	<ul style="list-style-type: none"> <li>• Replace hallway carpeting on first floor lobby</li> <li>• Replace HVAC</li> <li>• Replace Roof</li> </ul>
<b>Is DoN Required?</b>	Yes	Yes
<b>Applicant must...</b>	File Category 5	File Category 6

<sup>10</sup> As defined by M.G.L. c. 111, § 25 (b)