



Executive Office of Health and Human Services
Department of Public Health
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MEMORANDUM

TO: Interested Parties

FROM: Lara Szent-Gyorgyi, Director, Determination of Need Program

DATE: April 28, 2021

RE: Applications for Determination of Need from Long-Term Care Facilities

Effective immediately, the Determination of Need Program (DoN) will accept applications for new long-term care beds if the potential Applicant can demonstrate that all of the following five criteria are met:

1. The Proposed Project addresses at least one of the following:
 - a. Demonstrated ability to treat substance misuse and mental health disorders in a long-term care setting, including the ability to provide Medications for Opioid Use Disorder (MOUD) Treatment and psychiatric medications/treatments;
 - b. Addresses unmet cultural or linguistic needs of a population; or
 - c. Treatment and/or services for specialized populations, including but not limited to residents with COVID-19.
2. The Proposed Project ensures that any new facility or construction to add capacity in an existing facility includes enhanced infection control measures.¹ To do so, the potential Applicant must demonstrate that they have worked with an Infection Preventionist² to identify and mitigate infection control risks posed by the Proposed Project, including at minimum the following:

¹ https://www.fgiguilines.org/wp-content/uploads/2015/07/ASHE-FGI_Monograph-EOC_and_HAIs.pdf

² The Centers for Medicare and Medicaid Services defines an Infection Preventionist as someone who must:
(1) Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field; (2) Be qualified by education, training, experience or certification; (3) Work at least part-time at the facility; (4) Has completed specialized training in infection prevention and control.

- Minimizing horizontal surfaces
 - Having a handwashing sink that is as close to the entrance as possible and is deep enough to prevent splashes.³
 - Utilizing systems to increase the number of air exchanges in the space such as by maximizing outdoor air ventilation, and/or reducing the recirculation of air back to the space.⁴
3. The potential Applicant can demonstrate that some of the new capacity is reserved for individuals whose payments are provided by MassHealth directly or through a contractor, or whose payments are provided directly or indirectly by another agency in the Commonwealth, based on the Patient Panel associated with the project.
 4. If the potential Applicant is a current long-term care facility licensee, its mean performance scores for all facilities operated in the Commonwealth must be among the top quartile performers as measured and reported in the Commonwealth's Nursing Home Survey Performance Tool. If the potential Applicant does not currently operate any facility within the Commonwealth or has not operated a facility for at least three recertification surveys, it may use the CMS Nursing Home Compare Rating System as an alternate indicator of quality. When using the CMS measure, no facility under the ownership or management of the potential Applicant may have a composite score below 3, and 75% of the facilities under the potential Applicant's ownership or management must have a score above 3.

Potential Applicants with a current license for only Level IV⁵ beds that are not scored using the Commonwealth's Performance Tool or the CMS Rating System must not have had any deficiencies within the past 2 years in the following areas addressed in long-term care regulations: nursing services; dietary services; social services; administration; and resident bathrooms and washrooms.⁶

5. The Proposed Project must address at least one of the DoN Health Priorities:
 - a. Social Environment;
 - b. Built Environment;
 - c. Housing;
 - d. Violence and Trauma;
 - e. Employment;
 - f. Education; and

³ https://wwwnc.cdc.gov/eid/article/7/2/70-0354_article

⁴ <https://www.ashrae.org/file%20library/technical%20resources/covid-19/ashrae-building-readiness.pdf>
https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html?ACSTrackingID=USCDC_425-DM53360&ACSTrackingLabel=Weekly%20Summary%3A%20COVID-19%20Healthcare%20Quality%20and%20Worker%20Safety%20Information%20%E2%80%93%20March%2029%20C%202021&deliveryName=USCDC_425-DM53360

⁵ As defined in 105 CMR 150.001.

⁶ For specific regulatory requirements for each of these areas, please see 105 CMR 150.007, 105 CMR 150.009, 105 CMR 150.011, 105 CMR 150.002, and 105 CMR 150.470.

- g. In addition to the DoN Health Priorities listed, any other long-term care priorities identified by the Department.

Once a Proposed Project is determined to meet the above criteria, the DoN Program will evaluate accepted applications in accordance with the factors set forth in 105 CMR 100.210, including confirming that the Applicant is in compliance with applicable federal and state laws and regulations.

Please direct any questions or comments about this memorandum to the DoN Program at dph.don@state.ma.us.