

# HUSCH BLACKWELL

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August 4, 2023

## Via Email

Stephen Davis, Division Director  
Division of Health Care Facility Licensure and Certification  
Massachusetts Department of Public Health  
67 Forest Street  
Marlborough, MA 01752

Re: Response to the Department's Comments on Hospital's Response to Essential Services Access Plan dated July 27, 2023.

Dear Mr. Davis:

We write on behalf of Morton Hospital, A Steward Family Hospital Inc. ("Hospital") in response to the Department of Public Health's (the "Department") review of the Hospital's comments on the plan for access to services following the closure of the Morton Hospital Comprehensive Addiction Program ("MORCAP"). The Hospital provided these comments on July 5, 2023, outlining the projected impact to patients, the Hospital's support of patients in accessing alternative site healthcare, and the efforts by the Hospital with respect to equity and inclusion and community engagement activities. On July 27, 2023, the Hospital received the Department's review of the Hospital's comments and provide the following response to the Department's additional request for comments.

- 1. Transportation: Your Response states that the Hospital will offer "guidance on the various public transit routes to Carney Hospital and other alternative site services." 105 CMR 130.122(F) requires that the plan include "an assessment of transportation needs post closure and a plan for meeting those needs," and assure ongoing access to the service, as required by MGL c. 111, s. 51G(4) and 105 CMR 130.122. The Department has determined your Response does not meaningfully address the statutory and regulatory requirements noted above, and requires additional information on how the Hospital intends to assist families and patients who lack resources and need access to transportation once MORCAP is closed. While the Hospital's stated intent is to keep the MORCAP services open until the SUD services at Carney are operational, it remains unclear, other than providing "sustained guidance", how the Hospital plans to address transportation needs of patients in and outside of the Hospital's service area post MORCAP closure. The Hospital is reminded of its obligation to ensure access to these substance use disorder treatment services for the surrounding community post-closure.**

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The Hospital respectfully wishes to reiterate the initial assessment of transportation needs and further share the reasons behind the determination to provide information and guidance on public transportation routes. As discussed previously, MORCAP patients are typically not directly admitted or transferred from emergency departments or other acute care facilities. MORCAP patients present to MORCAP via personal and public transportation to receive services on a referral from the Hospital's emergency department or other acute care facilities after discharge. The patient is then evaluated by the MORCAP staff, and the patient is offered information on the MORCAP services and other local substance use disorder (SUD) service providers. Patients then voluntarily choose to enter the MORCAP service or seek out services elsewhere. Many patients reach out to MORCAP independent of their treatment at an emergency department, calling in to seek evaluation and admission. Some patients receive referrals from their primary care physician or obtain referrals from state agencies such as the Department of Children and Families. MORCAP is simply not the type of acute care service that warrants a transfer by ambulance or similar transportation.

The Hospital provides the below chart showing the admissions of all patients between April 24, 2023, and August 2, 2023, and their admission source. As this chart shows the vast majority, over 85% of patients arrived on their own volition.

Admission Source	Number of Patients
Morton Inpatient Units	2
Morton Emergency Department	8
Other Acute Care Facility	14
Self present/non-healthcare referral	166
Referral from another HC facility	5

The Hospital also reviewed the mode of arrival for patients presenting at MORCAP from acute care facilities. The following chart shows that half of these patients arrived independently. The Hospital does note that the other half of these patients received ambulance transportation by the transferring facility. Based on review of other SUD emergency departments' approach to transportation of patients, there appears to be a policy to provide transportation to level 4.0 SUD facilities for alcohol withdrawal patients receiving intravenous benzodiazepines or equivalent medication. However, the majority of opioid-withdrawal patients arrived by personal, family, or private transportation. Only 4% of all admitted patients were admitted from the Hospital's emergency department.

Arrival Mode from Other Acute Care Facility	Number of Patients
Personal Car	0
Ambulance	7
Family Transport	1
Lyft/Uber/Cab/Private	6

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Based on this analysis, the Hospital has decided to establish a policy for arranging basic life support ambulance transportation for patients requiring medically necessary (e.g. patients receiving certain IV-drugs for withdrawal) transportation from the Hospital's emergency department to another level 4.0 or higher level detoxification facility.

The Department's comments asking how the Hospital plans to address transportation needs of patients in and outside of the service area post-MORCAP closure seems to suggest that the Hospital should provide either direct transportation or utilize a voucher-type program for taxi or rideshares. The Hospital wishes to share that the approach of providing vouchers for taxis or rideshares was considered, but because of the Hospital's enrollment in federal payer programs, the Hospital is subject to liability under the fraud and abuse rules ("Rules"). The Hospital is required to be in compliance with such requirements and our analysis of the Rules has confirmed that under the circumstances provided, there is no "safe harbor" to allow the Hospital a legal pathway to provide vouchers to patients.

Thus, this basic life support ambulance transport policy, combined with public transportation routes and the availability of personal transport options supports the Hospital's position that it has developed an approach for transport to alternative care sites that ensures access for the surrounding community post-closure of the MORCAP.

- 2. Community Engagement: In your Response, the Hospital stated that it continues to work diligently to provide updates to various stakeholders and elected officials in monthly community forums. While the Hospital has provided information related to one community group, the Community Crisis Intervention team, it does not clearly communicate how long the Hospital intends to continue these meetings and if the Hospital intends to initiate any additional forums, either in person or through other media, that will include other stakeholders, specifically local providers, patients, and state and local elected officials.**

The Hospital will continue to meet with the Community Crisis Intervention team for the period that the MORCAP service remains open. These Community Crisis Intervention meetings are attended by elected officials and various other stakeholders in the Taunton community. The Hospital continues to maintain an open dialogue with the elected officials and stakeholders and are committed to providing public updates at this forum, through signage and notices around the facility, and responding to any requests for information from these stakeholders and officials. Additionally, the Hospital's providers and primary care physicians are actively educating their patients on the planned closure, alternate service locations, and taking feedback from these patients. This information is included in current and new patients' admissions packets. Lastly, the Hospital is open to hold additional community forums and will do so when the time for MORCAP to close approaches.

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- 3. Staffing: In the response, the Hospital stated that it continues to engage in recruiting activities as part of the Hospital's commitment to staff and keep the 18 MORCAP beds open. The Hospital previously indicated that the required nursing staff for the 18 Level 4.0 beds will be available while MORCAP remains open, ". . . to the extent the census and the nursing staff support such staffing." In the Hospital's prior communication on June 15, 2023, the Hospital indicated "MORCAP will maintain 18 beds in operation until CARCAP opens with 25 beds." It is still unclear whether the Hospital intends to keep the MORCAP unit open regardless of the census, despite the language from the June 15, 2023 communication. The Department again requests the Hospital confirm that the MORCAP unit will remain operational regardless of census, as indicated in prior communications, and provide additional detail on how the Hospital plans to provide appropriate staffing, including agency and/or travel nurses.**

The Hospital wishes to reiterate that MORCAP will remain open for all 18 Level 4.0 beds until the transition of services to Carney Hospital. However, the Hospital cannot commit to staffing empty beds, so staffing will be commensurate with the census. This is not to say that the Hospital is manufacturing a lower census by staffing fewer nurses, rather, MORCAP beds are staffed to the patients receiving services. Staffing over the past month compared to actual staffing actually shows that there are more than enough staff compared with the census.

There are external factors that drive the census, including benefit coverage by MassHealth and its contracted benefits administrator. Because MORCAP offers the higher-level, 4.0 SUD service, the number of eligible patients is limited by the historical utilization criteria of MassHealth. Specifically, many patients are characterized as needing 3.7 SUD service and are directed to other facilities instead of MORCAP's level 4.0 service. The MORCAP population includes a majority of MassHealth beneficiaries and the lower characterization criteria of the patient's authorized SUD service is a major driver of lower census.

The Hospital reiterates its commitment and intention to keep 18 Level 4.0 beds open for the duration of MORCAP's service. The Hospital cannot commit to staffing a full complement of nursing staff for all 18 beds where the actual census does not support such staffing. However, the Hospital remains committed to meet the SUD needs of those patients in need of the MORCAP level of service.

Furthermore, in order to be staffed for 18 patients, MORCAP will need 5.6 RN FTEs on days and evenings and 4.2 FTEs on nights. At this point in time, based on our current hired in data (including traveler positions to augment staff), assuming patient demand, MORCAP's goal is to be able to staff for 18 patients by October.

We thank you for your attention to this matter. Please do not hesitate to contact Dominic Castillo, Esq., or me, if you have any questions or comments.

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Sincerely,



Andrew S. Levine

cc: E. Kelley, DPH  
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