

## **Memorandum to the Commissioner**

**APPLICANT:** Lawrence General Hospital on behalf of LG Newcorp Inc.

**PROJECT NUMBER:** HFH 24090820 EA

**Filing DATE:** September 11, 2024

### **Introduction**

This memorandum presents, for Commissioner's Review and action, the Determination of Need (DoN) Program's recommendation pertaining to a request by Lawrence General Hospital ("the Applicant") for an Emergency DoN pursuant to 105 CMR 100.740.

The Applicant files this Emergency Application on behalf of LG Newcorp Inc., a wholly owned subsidiary of Lawrence General Hospital, seeking approval of the Transfer of Ownership<sup>1</sup> of Holy Family Hospital – Methuen and Haverhill Campuses ("HFH") from Steward Health Care System, LLC.

There is neither a Community Health Initiative (CHI) contribution nor a DoN filing fee required for an Emergency DoN. As required by 105 CMR 100.740(A), the Applicant must explain the following: 1) the identity of the Applicant, 2) the nature of the Emergency Situation, 3) the nature, scope, location, and projected costs of the proposed project, and 4) that the proposed project will address the emergency situation, and that without issuance of a notice of determination of need, the public health will be measurably harmed.

#### **1. Identity of The Applicant**

The Applicant, Lawrence General Hospital, located at 1 General Street, Lawrence MA 01841, is a Massachusetts non-profit integrated health care system and is the sole corporate member of LG Newcorp Inc., which was formed for the purpose of this Proposed Project.

The Applicant states that Lawrence General Hospital has been providing patient-centered, quality health care for the whole family to those in the Merrimack Valley and southern New Hampshire for

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<sup>1</sup> Transfer of Ownership is defined in the applicable regulations at 105 CMR 100 as including but not being limited to "(1) A transfer of a majority interest in the ownership of a Hospital or Clinic; (2) In the case of a privately-held for-profit corporation, transfer of a majority of any class of the stock thereof; (3) In the case of a partnership, transfer of a majority of trustees; (4) In the case of a trust, change of the trustee or a majority of trustees; (5) In the case of a nonprofit corporation, such changes in the corporate membership and/or trustees to constitute a shift in control of the Hospital or Clinic as determined by the Commissioner; or (6) In the case where foreclosure proceedings have been instituted by a mortgagee in possession of a Hospital or Clinic. For the purposes of 105 CMR 100.000, Transfer of Ownership may also mean any change in the ownership interest or structure of the Hospital or Clinic, or of the Hospital or Clinic's organization or parent organization(s), such that the change results in a shift in control of the operation of the Hospital or Clinic, as determined by the Commissioner."

150 years. and communities it serves treating all patients, regardless of their race, ethnicity, national origin, gender, religion, age, marital status, sexual orientation, gender identity, socioeconomic status, veteran status, disability, and other characteristics that make their patients and employees unique. The Applicant further notes that Lawrence General Hospital is committed to preventing, identifying, educating, and addressing issues that may hinder residents from leading healthy lives or accessing the social services they may require.

## **2. Nature of the Emergency**

The Applicant indicated that this is an Emergency Situation due to Steward Health Care System LLC ("Steward") and its affiliated debtors, including Holy Family Hospital – Methuen and Haverhill Campuses ("HFH"), filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas ("Emergency Situation"). Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, and in an effort to preserve patient care and prevent the closure of HFH, the Applicant, through its corporate affiliate Lawrence General Hospital, entered into an Asset Purchase Agreement ("APA") to buy certain assets and liabilities of HFH.

LG Newcorp Inc, entered into an Asset Purchase Agreement (APA) with Steward Holy Family Hospital on August 29, 2024. The Applicant asserts because the sale of the Steward hospitals must be finalized by October 1, 2024, the abbreviated time frames and the lack of Steward resources to fund the operations of Holy Family Hospital, would create a public health emergency, in the Merrimack Valley should the hospital be forced to close due to the bankruptcy process. Accordingly, the Applicant is filing this Application pursuant to 105 CMR 100.740.

## **3. Proposed Project: Nature, Scope, Location, and Projected Costs**

Pursuant to the APA, LG Newcorp Inc. will replace Steward Holy Family Hospital as the corporate entity intending to operate the hospital campuses and take ownership of the land on the two campuses (located at 70 East Street, Methuen, MA 01844, and at 140 Lincoln Avenue, Haverhill, MA 01830).<sup>2</sup> The Applicant states to ensure ongoing continuation of services the employment of certain Steward Medical Group physicians by LGH or LG Newcorp, Inc is included in the transaction. Upon the transaction's closing, Lawrence General Hospital and LG Newcorp will remain two separate hospitals. There will be ongoing engagement by the Executive Office of Health and Human Services to ensure continued coordination of services in the Merrimack Valley.<sup>3</sup> Under the terms of

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<sup>2</sup> LG Newcorp, Inc is also entering into an agreement with the Archdiocese of Boston to preserve the name "Holy Family Hospital" for a short transition period to allow a seamless transaction period.

<sup>3</sup> The Applicant adds that LGH has entered into a Memorandum of Agreement with the Commonwealth of Massachusetts to provide financial assistance with the transition of Holy Family Hospital to provide support while the clinical services and operations are transferred over to LGH control. The state financial assistance in principle provides the level of financing that will be used to 1) complete the acquisition of the real estate as well as the operations 2) make necessary improvements to its real property since critical areas have deteriorated (e.g., roofing and imaging services) and 3) make necessary technological investments to serve the overall Merrimack Valley in a true coordinated

the APA, the Applicant will pay a total of \$28,000,001.00 to acquire the assets necessary to assume operations of the Hospitals, including the purchase of real property in Methuen and Haverhill.

HFH is a 320-bed acute care community hospital on two campuses, with both providing comprehensive inpatient, outpatient, and 24/7 emergency service to the greater Merrimack Valley, southern New Hampshire, and the New Hampshire Seacoast. Specialized services in orthopedics, cancer care, wound care, cardiac and vascular care, diabetes management, neurology, behavioral health, weight control, general surgery, maternity, and emergency care are also offered across the two campuses.

The Applicant asserts that the condition of these Hospitals continues to deteriorate daily, as the physicians and non-physician staff necessary to maintain the existing services leave for other opportunities. The Applicant asserts that the closure of these Hospitals will substantially impact public health. Closure would require that patients travel farther and wait longer to access essential services such as emergency medical care, thereby further straining overburdened emergency departments at regional hospitals, including Lawrence General, and exacerbating the existing inpatient capacity crisis in the Merrimack Valley.

**4. Demonstration that the Proposed Project will address the Emergency Situation, and that without issuance of a Notice of Determination of Need, the public health will be measurably harmed.**

The Applicant stresses that this Proposed Project will ensure that area residents have access to all health care services along the continuum, and also that it will ensure that under-resourced populations have continued access to timely services, addressing disparities, and promoting health equity. The Applicant states it intends to maintain the services in operation as of the closing; however, this is subject to the condition of the Hospitals and availability of adequate physician and non-physician staffing. LGH plans to utilize its experience and full operational team to maintain and strengthen the ongoing services within HFH.

The Applicant asserts the Proposed Project will address the need within the Merrimack Valley to strengthen the delivery of health care services while also strategically reviewing ways to promote efficiencies and innovation within critical hospital based ancillary services.

Access to local care is important to low-income patients, because these patients may not have the financial resources or access to transportation to travel to Boston or elsewhere for services. This acquisition will allow more patient care to remain in the local community and enable currently unmet needs for more convenient, high quality, specialty care to be addressed in the community whereas the Applicant states Steward often sent critical and high acuity patients to Boston or other locations outside of the Merrimack Valley. When care goes out of the Merrimack Valley, the care

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regional manner.

becomes fragmented, communication becomes difficult, information can be lost, and utilization is often increased unnecessarily (e.g., duplication of tests). By keeping care at LGH and HFH, patients in the community will be able to receive convenient, high-quality care and the combined regional system will be able to keep total medical expenses low thereby not adversely impacting total medical expenses or competition.

Through the Proposed Project, the facilities will coordinate financial, management, administrative resources, and community-based expertise to help the hospitals to operate as financially sustainable, community resources that provide a full spectrum of inpatient and outpatient services - a critical factor in delivering high quality, care in the Merrimack Valley. Thus, the acquisition directly addresses a fundamental public health need to make high-quality care accessible in the local community.

Through a newly formed regional collaborative with the Executive Office and Health and Human Services (EOHHS), LGH, along with HFH and other local providers, will work to reorganize healthcare delivery and services in the Merrimack Valley. The strategic plan is to improve management of patient care across a continuum of inpatient, acute care to post-acute care, and ambulatory care by keeping patients within the overall provider networks of the Merrimack Valley.

The Applicant asserts without developing a true system of care, LGH and HFH individually would have needed to consider reductions in services, thereby reducing access, due to insufficient funds. Through the acquisition, a new coordinated system of care intends to improve access to necessary medical care and have a positive overall impact on the health of the Merrimack Valley.

### **Staff Analysis**

Staff notes that the dire financial situation resulting in the Steward bankruptcy is well documented and reported and has left Holy Family in a situation where it has been under financial constraints leading to underinvestment in infrastructure and operations. The Applicant reports that it does not have full access as to the extent of the damage caused by the current situation or what resources will be needed to bring it back to a fully functioning healthy entity. (Staff recommends annual reporting on the Status of the facility in Other Conditions.)

In the service area of Lawrence General there are five total hospitals (Lawrence General Hospital, Holy Family Hospital – Methuen, Holy Family Hospital – Haverhill, Anna Jacques Hospital, and Lowell General Hospital) with a total of 523 licensed beds. All hospitals are struggling to staff all licensed beds; about 25% of beds, across the hospitals, are not fully staffed. Using licensed beds to define occupancy rates, rates range from 20% (Holy Family Hospital - Methuen) to 93% (Lowell General Hospital). The two Holy Family campuses comprise ~31% of the regional med/surg bed capacity and saw about 30% of the total ED visits. For this volume to be absorbed at the other three hospitals in the region (Lawrence General Hospital, Anna Jacques Hospital, Lowell General Hospital) ~167 beds would be required. Staff finds that there is not capacity to absorb this med/surg volume

and ED capacity would be further strained if Holy Family Hospital were to close.

Hospital <sup>4</sup>	ED Visits		med/surg occupancy rate (occupied/ licensed)		occupied m/s beds		licensed m/s beds	
	2023	2024 (weeks 1 - 26)	2023	2024 (1/1 - 6/30)	2023	2024	2023	2024
Holy Family Methuen	70,956	30,301	54%	53%	55	54	101	101
Holy Family Haverhill	-	2,770	25%	20%	15	12	59	59
Lawrence General	68,342	36,808	89%	91%	106	108	119	119
Anna Jaques	27,035	12,958	79%	78%	50	49	63	63
Lowell General	55,930	28,179	92%	93%	167	169	181	181
Total	222,263	111,016			393	392	523	523

Data below show Holy Family utilization during FY17 to FY22 (FY23 and FY24 are not included as Steward has not provided the state with financial and inpatient data for those fiscal years).

Holy Family Hospital	FY17	FY18	FY19	FY20	FY21	FY22
Inpatient Discharges	13,422	13,024	13,308	12,769	13,473	10,265
Inpatient Days	63,705	65,103	64,226	61,809	62,155	61,224
Average LOS	4.75	5	4.83	4.84	4.61	4.83
Outpatient Visits	130,005	129,698	129,698	109,602	120,005	-

Staff also notes that HFH is a high public paying hospital with public payer mix of 69.5%.<sup>5</sup> The persistent need for access to health care for under resourced populations is well documented in Massachusetts, and a cessation of these services would create an undue burden on patients and their families in terms of unnecessary delays in treatment, travel, and time off from work thereby potentially resulting in negative public health outcomes.

<sup>4</sup> These data are based on the Massachusetts Department of Public Health, Health Care Capacity Dashboard, including Syndromic Surveillance Program, Division of Surveillance, Analytics and Informatics, Bureau of Infectious Disease and Laboratory Services, Massachusetts Department of Public Health. WebEOC is an industry-standard, secure, cloud-based platform specifically built to enhance situational awareness and information gathering capabilities of Emergency Management organizations. Per CMS-3401-IFC, hospitals are required to report a series of data points, including numbers on bed capacity and occupancy, which are collected by MADPH in WebEOC and reported to the federal level on behalf of the facilities.

<sup>5</sup> Based on the FY 2022 Cost Report, <https://www.chiamass.gov/high-public-payer-hospitals>

The Applicant asserts that the primary purpose of this Proposed Project is to ensure continued access to high quality community-based health care services in the Merrimack Valley which aligns with the DoN program's factors of ensuring public health value related quality and health outcomes, health equity, operational efficiencies, and maintaining reasonable costs.

As such, staff finds the Applicant made a convincing case that there is indeed an Emergency Situation and an urgent need for patients residing in Methuen and Haverhill and the surrounding communities to have uninterrupted continuity of care and access to local services.

### **Findings**

The definition of *Emergency Situation* includes “...a situation involving either:  
 (1) a Government Declaration of emergency or a Catastrophic Event; or  
 (2) an existing Health Care Facility which the Commissioner determines has been destroyed, or otherwise substantially damaged, or where there is a clear and present danger of such damage, such that the damage could substantially impact public health...”<sup>6</sup>

Based upon a review of the Proposed Project as submitted by the Applicant, DoN staff recommends that the Commissioner determine that this transaction is in response to an Emergency Situation, as defined in 105 CMR 100.100. Staff further finds that the Applicant convincingly demonstrates that the Proposed Project will address the Emergency Situation and that without the issuance of a Notice of Determination of Need, the public health will be measurably harmed. Staff further recommend that, in light of the urgent need to maintain access to and continuity of care, certain notice and comment regulations be waived, specifically pursuant to 105 CMR 100.435(D) and 105 CMR 100.440 (B), and the related sections of 105 CMR 100.405(C)(2).

Based on review of the materials submitted and additional analysis, staff recommend that the Commissioner issue a Notice of Determination of Need, subject to all Standard Conditions set out in 105 CMR 100.310(A) except 100.310(A)(5), (6), (7), (9), (10) and (13).<sup>7</sup>

### **Other Conditions**

In establishing Conditions, the DoN Program (“Program”) acknowledges that due to the Emergency Situation at the time of closure, the Holder reports that it does not have full access to information that would provide an accurate picture of the operations of the Hospital. In the interest of ensuring ongoing viability of the Hospital, the Holder will report to the Department on the following:

1. Within six months of the transaction’s closing (“the Closing”), the Holder will provide the Department with an initial assessment of the condition of the facility and its operations and

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<sup>6</sup> 105 CMR 100.100 Definitions

<sup>7</sup> (B)(1) A Determination of Need Application for Transfer of Ownership pursuant to 105 CMR 100.735 is exempt from 105 CMR 100.310(A)

an integration plan for incorporating Holy Family Hospital into the operations of Lawrence General Hospital with definable benchmarks. The Holder will report on the fiscal and operational health of Holy Family Hospital and its ability to achieve its stated benchmarks and measures annually for five years following the Closing (“the Reporting Period”).

2. Within six months of the Closing, the Holder will propose measures to assess the impact of the Transaction, including (1) clinical quality metrics such as patient mortality; (2) patient safety, as measured by Patient Safety Indicator (PSI) events; (3) patient experience scores, as measured through patient survey responses; and (4) health equity, as measured by the MassHealth health equity incentive program metrics. As part of its report to the Department, within one year of the Closing, and annually for five years, the Holder will report on Holy Family Hospital’s ability to achieve its stated benchmarks and measures.
3. Within 12 months of the Closing, the Holder will submit a plan outlining ongoing service provision by the Holder, including at Holy Family Hospital (“the Plan”). The Plan must address the duration of the reporting period and include an analysis of utilization patterns by service line since the Closing, budgeted and actual Full Time Equivalent (FTE) staffing for each service line, a data supported assessment of community need, and a summary reflecting the Holder’s good faith expectations for potential modification of services, including potential closures or reductions, to any service during the Reporting Period. The Plan must also include how the Holder will engage in reasonable efforts to inform the public and relevant stakeholders of any such service reductions or closures or other changes with likely impact on the patient panel or local communities.
4. To allow for Program monitoring of the Holder's implementation of the Plan on a quarterly basis during the Reporting Period, the Holder must inform the Program of any anticipated material or prolonged reduction of any essential service at Holy Family Hospital during the upcoming quarter. In any such notice, the Holder will provide an analysis of utilization patterns since the Closing, budgeted and actual FTE staffing for each of the services referenced for reduction, a data supported assessment of community need, and rationale for the reduction the service, including alternatives considered and alternative sites where access can be reasonably assured for its Patient Panel. Following a notice of anticipated reduction of any essential service at Holy Family Hospital during the Reporting Period which is not outlined in the Plan, the Holder may be referred to the Public Health Council for review of the long-term implications of such reduction and compliance with the DoN approval.
5. In its first report to the Department, due 6 months after this approval and annually thereafter during the Reporting Period, the Holder will provide the following:
  - a. A report that details the current payer mix of Holy Family Hospital reported by each of the health insurance coverage categories reported on by the Center for Health Information and Analysis (CHIA).

- i. Private Commercial – Overall
  - ii. Private Commercial – MA Health Connector QHPs (Subsidized and Unsubsidized)
  - iii. MassHealth – Overall
  - iv. MassHealth – Managed Care Organizations (MCO)
  - v. MassHealth –Accountable Care Organizations (ACO)
  - vi. Senior Care Options, One Care, PACE
  - vii. Medicare Fee-for-Service (Parts A and B)
  - viii. Medicare Advantage
  - b. A description of the current network participation of Holder including but not limited to the number of:
    - i. Limited network products;
    - ii. Tiered products, including Holder’s and each subsidiary hospitals’ and physician organization’s tier level for each of these products;
    - iii. Other commercial products;
    - iv. MassHealth Fee for Service;
    - v. MassHealth Managed Care Organizations;
    - vi. MassHealth Accountable Care Organizations;
    - vii. Senior Care Options, One Care, PACE;
    - viii. Medicare Fee for Service; and
    - ix. Medicare Managed Care Organizations.
  - c. A description of efforts to identify and address barriers to access, including for patients insured by or through MassHealth.
  - d. If, during the pendency of the DoN, the Department determines that the MassHealth payer mix of Holy Family Hospital has materially decreased since the Closing, then 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.
6. The Holder will make good faith efforts to ensure continuity of care for patients through good faith efforts to participate in the same insurance plans that Holy Family Hospital participated in as of the Closing and, to the extent possible, at the same rates through the end of the applicable payer contract period.
7. The Holder shall develop a plan for review and approval by the Department through which, within two years of the approval of the DoN, all employed physicians and other employed licensed providers at Holy Family Hospital who are authorized to participate in MassHealth, shall have applied to participate in MassHealth (the MassHealth Plan). The Holder shall certify annually thereafter during the Reporting Period its continuing compliance with the intent of the MassHealth Plan that all employed physicians and other employed licensed providers who are so authorized are participating in MassHealth and its contracted managed care entities.

8. The Holder will make good faith efforts to offer jobs to the individuals who had been employed at Holy Family Hospital as of the Closing by offering continued employment following the Closing, on the same terms as feasible.