

## **Memorandum to the Commissioner**

**APPLICANT:** Lifespan of Massachusetts, Inc

**PROJECT NUMBER:** Lifespan of Massachusetts, Inc. Emergency Application  
DON APPLICATION # LMA-24080618-EA

**Filing DATE:** September 12, 2024

### **Introduction**

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

The Applicant files this Emergency Application on behalf of Lifespan of Massachusetts - Fall River, Inc. ("Lifespan-Fall River") seeking approval of the Transfer of Ownership<sup>1</sup> of St. Anne's Hospital in Fall River, Massachusetts ("St. Anne's") and Lifespan of Massachusetts – Taunton, Inc. ("Lifespan-Taunton") for the Transfer of Ownership of Morton Hospital in Taunton, Massachusetts ("Morton").

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**

Lifespan of Massachusetts, Inc. (the "Applicant") is a non-profit corporation that is the sole corporate member of the two aforementioned newly formed entities, which were formed for the purposes of this emergency transaction. Those entities are Lifespan of Massachusetts – Taunton, Inc. and Lifespan of Massachusetts – Fall River, Inc. The Applicant is a parent company with no present assets or operations.

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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."

The Applicant is an affiliate of Lifespan Corporation, the nonprofit parent of an integrated academic health care delivery system serving a population of over 1.6 million patients in Rhode Island and southeastern Massachusetts.<sup>2</sup>

St. Anne's operates 211 beds and offers emergency care, general acute care, cardiology, behavioral health, and specialized services including a Joint Commission-certified Center for Orthopedic Excellence, cancer center, center for pain management, multi-disciplinary spine center and inpatient geriatric psychiatry services.

Morton operates 144 beds and offers emergency care, general acute care, behavioral health and psychiatry, cardiology, cancer care, wound care, imaging services, and a variety of surgical services including vascular surgery, breast surgery, general surgery, orthopedic surgery, and podiatric surgery.

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

On May 5, 2024, Steward and 166 of its affiliates, including the affiliates that operate St. Anne's and Morton, filed 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. The record in the bankruptcy proceeding establishes that Steward is financially unable to support the further operation of St. Anne's and Morton and that, unless the facilities are transitioned to a new operator by September 30, 2024, Steward will close the facilities.<sup>3</sup> The Applicant states this Application is submitted as an emergency Application to avoid the imminent closure of these health care facilities, and the resulting crisis in health care access in southeastern Massachusetts, including access to Essential Health Services as defined in 105 CMR 130.020.

The Applicant indicated that this is an Emergency Situation due to Steward Health Care System LLC ("Steward") and its affiliated debtors, including St Anne's and Morton Hospitals, 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

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<sup>2</sup> Lifespan Corporation's affiliates provide comprehensive inpatient and outpatient medical, surgical, and psychiatric services, for adults and children, through four hospital campuses, approximately 50 off-campus ambulatory locations, and 83 physician practice locations in Rhode Island and Massachusetts. Lifespan Corporation is the primary teaching affiliate of Brown University's Warren Alpert Medical School. Lifespan also operates Gateway Healthcare, Inc., which provides community-based behavioral health services; Lifespan Physician Group, Inc., a multi-specialty physician practice; and Coastal Medical Physicians, Inc., a value-based primary care driven medical practice.

<sup>3</sup> See *Order (I) Approving Additional Funding From The Commonwealth Of Massachusetts For The Planned Transition And Sale Of Massachusetts Hospitals*; and *(II) Granting Related Relief* (Docket No. 2345); *Emergency Motion of Debtors for Entry of an Order (I) Approving Additional Funding from the Commonwealth of Massachusetts for the Planned Transition and Sale of Massachusetts Hospitals*; and *(II) Granting Related Relief* (Docket 2286) ("Absent the payments to be provided to the Debtors pursuant to the Payment Agreement, the Debtors would not have sufficient funds to maintain operations at these hospitals, and would be forced to close the hospitals at a significant social and economic cost").

closure St Anne's and Morton through its corporate affiliate Lifespan of Massachusetts Corporation, entered into an Asset Purchase Agreement ("APA") to buy certain assets and liabilities of both St Anne's and Morton.

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

The Applicant proposes (a) a Transfer of Ownership of St. Anne's to Lifespan-Fall River; and (b) a Transfer of Ownership of Morton to Lifespan-Taunton (the "**Proposed Project**") in order to respond to the aforementioned Emergency Situation. The Proposed Project would be carried out pursuant to the terms of the Asset Purchase Agreement (the "**Purchase Agreement**")<sup>4</sup> subject to satisfaction of certain closing conditions and receipt of all requisite governmental approvals.

The Applicant states that it has been advised by Steward that it plans to convert all 32 substance addiction service beds currently on the hospital license for Morton to medical/surgical beds due to declining volume in Morton's substance use disorder treatment unit, or the MorCap Unit, and a substantial increase in medical/surgical volume. Steward completed the essential services closure process for the MorCap unit in August 2023, noting at the time it planned to temporarily use 14 of these beds as medical/surgical beds and 18 of these beds for substance use disorder treatment until a planned substance use disorder unit at Carney Hospital was operational. Carney Hospital closed on August 31, 2024, thereby precluding a substance use disorder treatment unit from being operationalized at that facility as was planned. Accordingly, consistent with completion of the essential services closure process by Steward, Morton Hospital will not operate any substance use disorder treatment beds upon licensure by Lifespan. Further, the Applicant anticipates that this change will be reflected in the hospital license it will receive pursuant to the Notice of Intent to Acquire that it will submit in connection with the Transfer of Ownership process.<sup>5</sup>

The Applicant asserts it intends to maintain all other services in operation as of the closing, subject to 1) the condition of the Hospitals and 2) the availability of adequate physician and non-physician staffing. However, the Applicant stresses that given the continuing deterioration of the facilities, it may not be feasible to do so in every case. Further, the Applicant asserts *"the condition of these Hospitals deteriorates significantly with each passing day, as the physicians and non-physician staff necessary to maintain the existing services leave for other opportunities."* [emphasis added].

The Total Value of the Transfer of Ownership is \$484,874,230, which the Applicant has been advised reflects the total combined net patient service revenue reported by the Hospitals to CHIA in FY2023. In addition, over time, Lifespan anticipates making capital investments in the Hospitals. These will be funded by investing operating cash flow of the Hospitals and when required, the Applicant will submit associated Determination of Need Applications.

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<sup>4</sup> See Notice of Filing of Asset Purchase Agreement, Schedules, and Exhibits by and among Certain Debtors, Lifespan of Massachusetts, Inc., and Lifespan Corporation (Redacted) (Docket 2266).

<sup>5</sup> The Department was informed by Steward that Morton Hospital will not maintain 32 substance abuse beds and intends to notify the Department that the MORCAP will close effective 10/1/24.

**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 asserts that to address the Emergency Situation, expeditious approval of the Proposed Project is necessary to allow the Applicant to assume timely control of both Hospitals' operations to prevent their closure and preserve access to vital services. The Applicant further asserts that without such approval further deterioration of the Hospitals' facilities, could result in reduction of services or closure that would measurably harm public health. The Applicant provided the example of the impact of potential closure of the emergency department at either Hospital which would require those in need of emergency medical care to travel farther, resulting in measurably worse outcomes and potentially serious harm to patients. Reduction in or closure of other services could also result in measurable harm to patient access and health outcomes in the affected communities.

**Staff Analysis**

Staff notes that the dire financial situation resulting in the Steward bankruptcy is well documented and widely reported and this has left both hospitals in a situation where they have 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.)

Staff also notes that both Hospitals are high public paying hospitals with public payer mixes of ~73%.<sup>6</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.

In the service area of Morton and Saint Anne's there are six total hospitals (Saint Anne's Hospital, Morton Hospital, Charlton Memorial Hospital, Sturdy Memorial Hospital, Good Samaritan Medical Center, St. Luke's Hospital) with a total of 1052 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 62% at Saint Lukes to 119% at Sturdy Memorial Hospital. The two hospitals which are the subject of this application comprise ~21% of the regional med/surg bed capacity and saw ~ 26% of the total ED. For this volume to be absorbed at the other four hospitals in the region (Charlton Memorial Hospital, Sturdy Memorial Hospital, Good Samaritan Medical Center, St. Luke's Hospital) ~ 270 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 either facility were to close.

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<sup>6</sup> Based on the FY 2022 Cost Report, <https://www.chiamass.gov/high-public-payer-hospitals>

Hospital <sup>7</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
St. Anne's Hospital	48,540	23,413	83%	78%	116	109	140	140
Morton Hospital	47,645	23,554	98%	101%	79	82	81	81
Charlton Memorial Hospital	63,201	32,536	59%	67%	146	165	246	246
Sturdy Memorial Hospital	52,979	26,623	113%	119%	106	112	94	94
Good Samaritan Medical Center	72,877	34,666	90%	88%	152	148	168	168
St. Luke's Hospital	87,199	44,013	58%	62%	188	199	323	323
Total	372,441	184,805				815	1052	1052

Data below show Saint Anne's Hospital and Morton Hospital utilization, respectively, 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).

Saint Anne's Hospital	FY17	FY18	FY19	FY20	FY21	FY22
Inpatient Discharges	9,975	9,730	9,874	9,244	9,514	9,378
Inpatient Days	48,180	48,227	48,920	47,346	50,857	48,293
Average LOS	4.83	4.96	4.95	5.12	5.35	5.30
Outpatient Visits	191,976	182,217	178,688	156,185	175,034	-

Morton Hospital	FY17	FY18	FY19	FY20	FY21	FY22
Inpatient Discharges	6,266	5,633	5,361	5,566	6,158	6,887
Inpatient Days	28,027	27,145	25,977	29,468	32,699	37,578

<sup>7</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.

Average LOS	4.47	4.82	4.85	5.29	5.31	5.30
Outpatient Visits	59,097	57,481	60,225	45,750	56,334	

Staff notes that the primary service area of the two Hospitals comprises over 580,000 people.<sup>8</sup> The residents of Fall River, Taunton, and surrounding communities of both hospitals rely on the Essential Services of the two entities. Closure of these services would require patients to travel distances to access care creating an undue burden on those patients, and their accompanying family/caregivers and consequently their outcomes may be negatively impacted.

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 and surrounding communities, to have uninterrupted continuity of care and access to local services.

Staff finds that the Proposed Project will play a critical role in mitigating the potential harm that may result from such closures.

### **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>9</sup>

Based upon a review of the Proposed Project as submitted by the Applicant, DoN staff recommend that the Commissioner determine that there is 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 treatment, 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>10</sup>

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<sup>8</sup> In the Bristol County area.

<sup>9</sup> 105 CMR 100.100 Definitions

<sup>10</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)

## 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 facilities and its operations and an integration plan for incorporating Morton Hospital and St Anne’s Hospital into the operations of Lifespan of Massachusetts with definable benchmarks. The Holder will report on the fiscal and operational health of Morton Hospital and St Anne’s 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 Morton Hospital’s and St Anne’s Hospital’s ability to achieve their 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 Morton Hospital and St Anne’s 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 Morton Hospital or St Anne’s 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 Morton Hospital or St Anne's 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 separately for Morton Hospital and St. Anne's Hospital:
  - a. A report that details the current payer mix of Morton Hospital and St Anne's 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 Morton Hospital and St. Anne's Hospital 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 Morton Hospital or St Anne's 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 at the applicable hospital. 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 at both Morton Hospital and St. Anne's Hospital to ensure continuity of care for patients through good faith efforts to participate in the same insurance plans that Morton Hospital and St Anne's 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 either Morton Hospital or St Anne's 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 by either Morton Hospital or St Anne's Hospital as of the Closing by offering continued employment following the Closing, on the same terms as feasible.