

Memorandum to the Commissioner

APPLICANT: Lifespan of Massachusetts, Inc.

PROJECT NUMBER: Lifespan of Massachusetts, Inc. Emergency Application
DON APPLICATION # LMA-T-24102218--EA

Filing DATE: October 31, 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 - Taunton, Inc. ("Lifespan-Taunton") due to imminent closure of certain health care Satellites licensed to Norwood Hospital, specifically at:

- 1- The Norwood Hospital Cancer Center at Foxborough, 70 Walnut Street, Foxborough; and,
- 2- Radiology/infusion center, 70 Walnut Street, Foxborough.

To address the Emergency Situation, the Applicant proposes a Substantial Change in Service in which the following three elements are included in the scope of the Proposed Project:

- (a) the hospital operations of the above referenced Satellites be transferred to Morton Hospital;
- (b) the Satellites be added to the Morton Hospital License; and,
- (c) Morton Hospital will operate the DoN-Required Equipment and DoN-Required Services for the existing two Computed Tomography ("CT") and LINAC services. One CT is used solely for simulation purposes.

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 two newly formed entities, which were formed for the purposes of the emergency transaction approved by the Department on September 24, 2024 related to the transfers of Morton Hospital and St. Anne’s Hospital from Steward to Lifespan of Massachusetts – Taunton, Inc., and Lifespan of Massachusetts – Fall River, Inc respectively.¹

The Applicant is an affiliate of Brown University Health, the nonprofit parent company of an integrated academic health care delivery system serving a population of over 1.6 million patients in Rhode Island and southeastern Massachusetts.²

Lifespan- Taunton includes Morton Hospital (“Morton”) which is a Department of Public Health (“DPH”) licensed acute-care hospital, operating 144 beds and offering 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

Norwood Hospital’s hospital license expires on November 5. On September 25th, 2024, Steward Healthcare Inc. filed a Transition and Closure Plan for Norwood Hospital with the Department for the proposed closure of the Steward Norwood Hospital, Inc (the “hospital”) licensed satellites.³ On October 7, 2024, Steward filed a notice (“Notice”) with the United States Bankruptcy Court for the Southern District of Texas, stating that it was abandoning Norwood Hospital and its four affiliated clinics, including the Satellites.⁴ On October 11th, 2024, Steward Healthcare filed a Closure Notice with the Department.

The Transition and Closure Plan included the 90-day schedule of patients (see chart below). With the statement of the intent to close both Oncology services on October 25th, 2024 and to close Diagnostic Imaging on October 31st, 2024. Steward also provided a list of alternative sites ranging in distance from 1.7 miles to 16.8 miles.

¹ <https://www.mass.gov/doc/decision-letter-pdf-lifespan-of-massachusetts-emergency-application/download>

² According to the application, Brown University Health’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. Brown University Health is the primary teaching affiliate of Brown University’s Warren Alpert Medical School. Brown University Health 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.

³ Norwood Hospital closed 4 years ago, June 2020, due to a catastrophic flood.

⁴ See *Notice of Closure of Norwood Hospital Facilities and Abandonment Of Property In Connection Therewith* (Docket 2803).

Service	October	November	December
Hematology / Oncology	113	48	5
Radiation / Oncology	31	30	14
Diagnostic Imaging incl. CT	544	285	212

As noted above, there are two Satellites, both located in a 19,800 square foot medical office building in Foxborough that is subleased to various providers including Stewardship Health, associated with this Emergency Application. The first Satellite, the Norwood Hospital Cancer Care Center is an approximately 10,600 sq. ft. cancer care center for the provision of oncology care and related treatments including radiation therapy using a LINAC and simulation CT, which is a DoN required service. The second Satellite is a radiology/infusion center that houses the CT. Based on the diligence information provided by Steward to the Applicant, in FY23, 8,254 medical oncology chemotherapy treatments were provided at the cancer care facility, as well as 3,300 radiation therapy treatments. Approximately 4,411 CT scans were provided at the radiology center in FY23.

Steward plans to abandon the property and all equipment at the Satellites by November 5, 2024. With this Approval, the Applicant will lease the space from the landlord and assume ownership of the assets. The Applicant asserts that closure of the Satellites will cause disruptions to vital patient care for patients in the Foxborough service area, impacting a vulnerable population and resulting in continuity of care disruptions for patients who depend on regular access to vital care and who are on rigorous treatment plans, including oncology patients. Accordingly, closure of these Satellites would mean that patients will need to travel farther and wait longer to access lifesaving care and thus failure to prevent the closure of these Satellites would substantially impact public health.

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

To address the Emergency Situation, the Applicant proposes a Substantial Change in Service in which:

- (a) Morton assumes control of operations of the aforementioned Satellites;
- (b) the Satellites are added to the Morton Hospital License; and,
- (c) Morton Hospital will operate the DoN-Required Equipment and DoN-Required Services for the two existing CTs and one LINAC.

Additionally, the Applicant confirms that in the event the LINAC needs replacement, the Applicant commits to use reasonable efforts to prevent disruptions and ensure continuity of care for patients undergoing radiation therapy.

According to the aforementioned Transition and Closure Plan there were approximately 35 full and part-time employees at the Foxborough satellites. The Applicant anticipates it will make offers of employment to all Steward and Steward Medical Group employees, including the professional staff and the physician who oversees the cancer center. This includes making offers of employment to

employees represented by the SEIU and Massachusetts Nurses Association. It is expected that those employees will be covered by the collective bargaining agreements between Morton Hospital and each of those unions. Morton Hospital will be responsible for ensuring adequate staffing of the Satellites once they are added to its license.

The Total Value of the Proposed Project is \$0. The Proposed Project involves no Capital Expenditure and does not involve a Transfer of Ownership.

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 the Proposed Project would address the Emergency Situation by allowing the Applicant to assume operation of the Satellites thereby preventing their closure and allowing for continuity of care and continued access to vital services as well as preserving important union jobs in the region. The Applicant further asserts that without timely approval, prior to November 5, 2024, disruptions in patient care will occur for a vulnerable population that depends on reliable access to treatment, and further that measurable harm impacting health outcomes for the affected patients could ensue.

Staff Analysis

Staff notes that the dire financial situation resulting in the Steward bankruptcy is well documented and widely reported and this has left a situation of uncertainty for patients, some of whom are experiencing ongoing cancer treatments for whom a disruption in service after November 5, 2024 could result in measurable harm. The Applicant reports that it does not have full access as to the extent of the current situation or what actions Steward, the current owner, may take prior to the expiration of the license; however, on October 11th, 2024, Steward filed a notice of intent to close with the Department and filed a closure plan on September 25th, 2024, which is currently under review by the Department.

While the chart above of the final three months of scheduled visits shows a drastically reduced anticipated volume, the Closure Notice included historic utilization volumes of the satellites demonstrating strong utilization in 2022 and a decline of approximately 10% for both services in 2023. (see the chart below).

	Patient Volume		
Satellite	FY 2022	FY2023	FY 2024 ⁵
Foxboro CT	15,980	14,561	9,488
Norwood Hospital Cancer Care Center at Foxboro	3,282	2,945	2,206

⁵ Fiscal year is the same as the calendar year. FY 24 is through September 2024.

Staff also notes that both Norwood and Morton Hospitals have long been high public paying hospitals.⁶ 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, increased travel times and time off from work thereby potentially resulting in negative public health outcomes.

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...”⁷

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, contingent upon the Applicants securing the rights to occupy and operate the existing assets and subject to all Standard Conditions set out in 105 CMR 100.310(A) except 105 CMR 100.310(A)(10).

Other Conditions

In establishing Conditions, the DoN Program (“Program”) acknowledges that due to the Emergency Situation the Holder reports that it does not have full access to information that would provide complete picture of the operations of the Satellites.

1. In the interest of ensuring ongoing viability of the satellites, the Holder will report to the Department on the ability of the Holder to secure the rights to occupy and operate the existing assets.
2. The reporting requirements of all conditions assigned to Morton Hospital’s Emergency Application⁸ (September 24, 2024) approval shall include this approval where applicable.

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

⁷ 105 CMR 100.100 Definitions

⁸ <https://www.mass.gov/doc/decision-letter-pdf-lifespan-of-massachusetts-emergency-application/download>