



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Determination of Need (DoN) Program
250 Washington Street Boston, MA 02108

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September 12, 2018

VIA EMAIL - alevine@barrettsingal.com

Andrew Levine, Esq.
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One Beacon Street
Suite 1320
Boston, MA 02108-3106

RE: Significant Change PHS-18050912-AM (DoN # 6-3C46.2)
Partners HealthCare System, Inc. – North Shore Medical Center

Dear Mr. Levine:

At their meeting of September 12, 2018, the Commissioner and the Public Health Council, acting together as the Department, voted pursuant to 105 C.M.R. 100.635(A)(3) to approve the request by Partners Healthcare System, Inc. (Partners) for a Significant Change to a previously approved project located at North Shore Medical Center (NSMC) in Salem (the Request). This approval incorporates the Memorandum to the Public Health Council (Memorandum) and the Public Health Council proceedings concerning this Request.

Based upon a review of the materials submitted, the Department found that this Request falls within the definition of Significant Change and that the proposed change is both within the scope of the Notice of Determination of Need and is reasonable. As the Applicant for this Amendment and as the Provider Organization, Partners is the obligated party with respect to, and must comply with all Conditions upon which the DoN and any amendments are approved.

Under 100.635(a)(3)”... Final Actions may include additional terms and Conditions to be attached to the Notice of Determination of Need.” This approval is conditioned as described in the Memorandum, a copy of which is attached hereto and made a part hereof.

Sincerely,

~S~

Nora J. Mann, Esq. Director
Determination of Need Program

cc: Sherman Lohnes, Director, Division of Health Care Facility Licensure and Certification
Rebecca Rodman, Deputy General Counsel
Samuel Louis, Office of Health Equity
Mary Byrnes, Center for Health Information Analysis
Steven Sauter, MassHealth
Katherine Mills, Health Policy Commission
Ben Wood, Office of Community Health Planning
Elizabeth Maffei, Office of Community Health Planning
Eric Gold, Attorney General’s Office

Memorandum to the Public Health Council

APPLICANT: Partners Healthcare System, Inc.
North Shore Medical Center
81 Highland Avenue, Salem, MA 01970

PROJECT NUMBER: 6-3C46.2 (Significant Change)
PHS-18050912-AM

DATE OF APPLICATION: June 7, 2018

Introduction

This memorandum presents, for Public Health Council (PHC) action, the Determination of Need (DoN) Program's recommendation in connection with a request by Partners Healthcare System, Inc. (Partners) for a Significant Change to a previously approved project located at North Shore Medical Center (NSMC) in Salem. Partners, on behalf of NSMC, the current Holder, seeks approval to return planned capacity to the originally approved total of 60 Adult psychiatric beds, resulting in a total of 120 psychiatric beds. NSMC intends to use previously approved shell space for this restored capacity. There will be no change to the CHI contribution associate with this project.

This request falls within the definition for Significant Change that includes "... Any build out of shell space that was subject to a Notice of Determination of Need" and will be reviewed pursuant to 105 C.M.R. 100.635(A)(3), which requires that the proposed change falls within the scope of the Notice of Determination of Need and is reasonable.

Background Overview

On July 13, 2016, the Department approved a Determination of Need for a project at NSMC which authorized new construction to house a relocated Emergency Department (ED), and additional medical/surgical beds in two 24-bed units (the 2016 DoN). The 2016 DoN also authorized renovation of the former Spaulding Hospital-North Shore (Spaulding) to accommodate expanded inpatient psychiatric services for adult, geriatric, and pediatric patients for a total of 120 beds.¹

In January, 2017, NSMC filed a request for Significant Change to the 2016 DoN (the 2017 Amendment). The 2017 Amendment, which was approved by the Department in July 2017,

¹ Concurrently, NSMC filed the required notice to close its Union campus with the Department's Bureau of Health Care Safety and Quality (BHCSQ). As required, hearings were held and an essential services closure plan developed for NSMC to address the continuation of services for its patient panel. Additionally, a DoN condition of approval required NSMC to update and enhance its Community Health Needs Assessment (CHNA) to address the needs and diversity of NSMC's primary service area population, including Lynn.

included a reduction in the number of both psychiatric and Medical/Surgical beds.² In support of its request to decrease capacity, in the 2017 Amendment, NSMC cited unprecedented and untenable financial losses in FY2016 for both Partners and NSMC.³

Proposed Amendment: Psychiatry Capacity Changes and Rationale

NSMC returns to the Department seeking authorization to add back the 30 adult psychiatry beds by using the shell space approved at the time of the 2017 Amendment.⁴ Partners reports that the cost of floor build-out (\$4,133,439) will be covered from already approved funds that will be re-allocated as a result of savings realized during construction planning.⁵ There is no request to change the maximum capital expenditure (MCE) of \$168,173,839 (2017 dollars).

The 2016 DoN approved the addition of 34 Adult psychiatric beds, and 10 additional beds each for Geriatric and Pediatric Psychiatry (GeriPsych and PediPsych) at the former Spaulding site. The 2017 Amendment reduced the total number of Adult psychiatry beds leaving both the GeriPsych and PediPsych approved capacity unchanged, and authorized the construction of shell space in the Spaulding building for future expansion of psychiatric services.

This proposal before the Department at this time is to return planned capacity to the originally approved total of 60 Adult psychiatric beds, resulting in 120 psychiatric beds.

Psychiatric Bed Complement at NSMC

Beds	Currently Operating	DoN Approved 7/16	First Amendment 7/17	Current Amendment Proposed
Adult Psych	26	60	30	60
Geri Psych	20	30	30	30
Pedi Psych	20	30	30	30
Total	66	120	90	120

² As part of the 2017 Amendment, NSMC also eliminated plans to renovate and expand the lobby, decreased the total gross square feet of new and renovated space, and made changes to the method of financing the construction. These amendments to the original plan remain.

³ While the 2016 DoN and 2017 Amendment were approved under the previous DoN Regulations, this Amendment is being reviewed under the January 2017 regulations.

⁴ The 2017 Regulation requires that the Applicant for a DoN or an amendment be the Provider Organization and thus, this request for Significant Change is filed by Partners HealthCare System, LLC.

⁵ This represents 2.5% of the amended approved amount.

In the 2017 Amendment, NSMC argued that delaying the construction of the 30 Adult beds was supportable because of the anticipated addition of 380 new psychiatric beds in the community. Here they assert that since that time only some of those anticipated new beds have come into operation⁶ and that, separately, 120 beds at two unaffiliated facilities (Westwood Lodge and the Lowell Treatment Facility) have closed.⁷ Here, Partners believes that the full complement of 120 beds will accommodate demand within the NSMC service area. Partners states, at the same time, that its system is “experiencing unmet demand for inpatient psychiatric beds at its other facilities” including the Massachusetts General Hospital (“MGH”), and that MGH is increasingly unable to accommodate demand from patients who live in the NSMC service area and who present to MGH for inpatient psychiatric admissions. Partners suggests that by adding back these beds at NSMC, at no additional cost, the system will address unmet demand in a cost effective way. Partners asserts that this will alleviate the outflow of referrals, and reduce both the number of boarders, and the ED admit-to-departure times.

Partners anticipates completion of construction and receipt of the Certificate of Occupancy for all components of the approved project by June 30, 2019, and to begin accepting patients the week of October 14, 2019.

Impact on Costs

NSMC is not requesting an increase in capital expenditures for this amendment and states that the build-out is feasible now due to savings in construction costs that became evident during construction planning. Partners states, as well, that psychiatric care provides a positive per case contribution margin, and that the additional psychiatric floor is projected to provide a “positive return of 11%.” The project, it reports, “will not result in a negative impact in terms of cost on the patient panel.”

Public Comments received

Two of the Ten Taxpayer Groups (TTGs) that had formed for the original DoN Filing commented on this amendment: the Union Hospital TTG and the Lynn Health Task Force (LHTF) TTG. Both had opposed the 2017 Amendment’s scale-back of the 30 psychiatric beds and both support the re-implementation of those beds.

⁶ Exact numbers of operating beds in operation were not available from the Department of Mental Health (DMH) as some are licensed but only gradually opening. The best estimates at this time, based upon information received from DMH that approximately 200 of those anticipated beds are in operation.

⁷ Both the 2016 DoN and the 2017 Amendment required reporting as a condition of approval. NSMC has been complying with reporting required as conditions of the 2016 DoN and the 2017 Amendment. We note that at the time of this analysis, none of the psychiatric bed capacity approved in either the 2016 DoN or the 2016 Amendment has been implemented and NSMC is at pre-DoN capacity.

The LHTF TTG offered additional comments and recommendations: LHTF believes that the 30 beds are needed to serve the existing demand within the NSMC service area, and is concerned that if Partners intends to serve its system's need for the psychiatric beds more broadly than the NSMC patient panel, there will still be an insufficient number of beds overall; LHTF articulated its concern that Health Safety net and MassHealth patients be admitted and treated equally irrespective of payer status; and LHTF stated its concern about discharge planning protocols for patients who are homeless or who have unstable housing, given their increased risk for decompensation and readmission.

Department staff considered this input when recommending conditions to this request for Amendment and responds further that Massachusetts law, GL 151B §4(10), and MassHealth regulations 130 CMR 450.202, prohibit providers from discriminating against individuals based on the fact that they receive MassHealth; and that the Applicant has clarified that this project will serve patients from the NSMC area who may present to MGH for care.

Findings and Recommendation

The 2016 DoN was conditioned on reporting back to the Department and the 2017 Amendment more finely tuned the required reporting to DoN staff and required, specifically, information about ED boarding for behavioral health, occupancy rates, and access to care for the patient population. NSMC has submitted and staff has reviewed all required reports and NSMC is following the approved timelines for completion of the Community Health Needs Assessment and the Essential Services Closure plan with their respective oversight bodies.

Based upon the information submitted, the Department can find that the “the proposed change or modification falls within the scope of the Notice of Determination of Need as previously approved by the Department, and ... is reasonable”, 105 C.M.R. 100.635(A)(3), which are the requirements for approval of an Amendment. As the Applicant for this Amendment and as the Provider Organization, Partners is the obligated party with respect to, and must comply with all Conditions upon which the DoN and any amendments are approved.

Under 100.635(a)(3)” ... Final Actions may include additional terms and Conditions to be attached to the Notice of Determination of Need.” Staff recommends certain changes to the conditions imposed in the 2017 Amendment to reflect the return to the full complement of adult psychiatry beds and to reflect the application of the current regulation to this request for a Significant Change. To those remaining conditions, we also recommend certain additions set out below. Deletions are shown in ~~strike through~~, and additions in **bold, blue**:

Condition 1

The following Standard conditions set out in 105 CMR 100.310 shall apply to this DoN and all amendments thereto:

105 CMR 100.310(H) The Government Agency license of the Health Care Facility or Health Care Facilities for which, and on behalf of, the Holder possesses a valid Notice of

Determination of Need, shall be conditioned with all Standard and Other Conditions attached to the Notice of Determination of Need.

105 CMR 100.310 (K) If the Health Care Facility or Health Care Facilities for which the Notice of Determination of Need has been issued is eligible, the Holder shall provide written attestation on behalf of the Health Care Facility or Health Care Facilities, under the pains and penalties of perjury, of participation, or their intent to participate, in MassHealth pursuant to 130 CMR 400.000 through 499.000.

105 CMR 100.310(L) The Holder shall report to the Department, at a minimum on an annual basis, and in a form, manner, and frequency as specified by the Commissioner. At a minimum, said reporting shall include, but not be limited to, the reporting of measures related to the project's achievement of the Determination of Need Factors, as directed by the Department pursuant to 105 CMR 100.210."

105 CMR 100.310(M) If it is determined by the Department that the Holder has failed to sufficiently demonstrate compliance with one or more Conditions, the Holder shall fund projects which address one or more of the Health Priorities set out in Department Guideline, as approved by the Department, which in total, shall equal up to 2.5% of the total Capital Expenditure of the approved project. Said projects shall address one or more of the Health Priorities set out in Department Guideline, and shall be in addition to those projects approved by the Department in fulfillment of 105 CMR 100.210(A)(6). In making such determination, the Department shall provide written notification to the Holder at least 30 days prior to requiring such funding, and shall provide the Holder the opportunity to appear before the Department. The Department shall consider circumstances external to the Holder that may impact the Holder's ability to demonstrate compliance.

105 CMR 100.310(N) The Holder shall provide to Department Staff a plan for approval by the Office of Health Equity for the development and improvement of language access and assistive services provided to individuals with disabilities, non-English speaking, Limited English Proficiency (LEP), and American Sign Language (ASL) patients.

105 CMR 100.310(O) The Holder shall provide for interpreter services to the Holder's Patient Panel. The Holder shall ensure that all medical and non-medical interpreters, inclusive of staff, contractors, and volunteers providing interpreter services to the Holder's Patient Panel maintain current multilingual proficiency and have sufficient relevant training. Training for non-medical interpreters should include, at a minimum:

- (1) the skills and ethics of interpretation; and
- (2) cultural health beliefs systems and concepts relevant to non-clinical encounters.
- (3) Training for medical interpreters should include, at a minimum:
 - (a) the skills and ethics of interpretation; and

(b) multilingual knowledge of specialized terms, including medical terminology, competency in specialized settings, continuing education, and concepts relevant to clinical and non-clinical encounters.

105 CMR 100.310(P) The Holder shall require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically appropriate services (CLAS), including, but not limited to, patient cultural and health belief systems and effective utilization of available interpreter services.

105 CMR 100.310(Q) All Standard and Other Conditions attached to the Notice of Determination of Need shall remain in effect for a period of five years following completion of the project for which the Notice of Determination of Need was issued, unless otherwise expressly specified within one or more Condition.

Condition 1-2

In addition to and as a part of the reporting required under Condition 1, above, NSMC shall, ~~on a quarterly basis~~ **on an annual basis**, commencing with the approval of this Amendment and continuing for a period of five years after the later of the commencement of operations of any Satellite Emergency Facility (SEF) in Lynn or the complete cessation of operations of the Union campus as an inpatient facility, provide a report (in native format) to DoN staff setting out the following:

1. With respect to individuals presenting for care in the Salem campus ED or at any SEF operated by or on behalf of NSMC in Lynn:
 - a. ~~The occupancy rate, for each of adult psychiatry, pediatric psychiatry, and geriatric psychiatry patients, by month, calculated as follows: the number of actual patient days divided by the capacity defined as the number of operating beds multiplied by thirty days. In each report, please indicate the number of beds being used for each of adult psychiatry and geriatric psychiatry patients;~~
 - b. ~~The average number of people, by month, who are admitted for inpatient psychiatric care to a facility outside of the NSMC system, the facility to which those patients were admitted, and the zip code of origin;~~
 - c. ~~The number of patients, by month, who present at NSMC (either Salem or at any emergency facility Partners operates in Lynn) with psychiatric indications and leave against medical advice;~~
 - d. ~~The primary and secondary diagnoses, aggregated by quarter, for any psychiatric patients who are admitted to beds other than at NSMC;~~
 - a. e. The monthly average number of psychiatric patients and M/S patients who present at either the Salem campus ED or any SEF in Lynn and are boarded for 12 or more hours at either facility;

- b. ~~f.~~ The average turnaround time, by month, for both psychiatric and M/S patients presenting at either the Salem campus ED or any SEF in Lynn from presentation at either facility to admission to a bed at NSMC or transfer to another facility;
- ~~g.~~ For all of the above reports, subject to HIPAA confidentiality requirements, these reports shall include the following: race, ethnicity, primary language spoken, and insurance type.
- c. ~~h.~~ With respect to the update to the CHNA as required by the initial approval of Project 6-3C46:
 - i. the status of the process, including dates of meetings, agendas, and attendance;
 - ii. a description of how the process maintains a targeted focus on assessing the needs, including transportation to care, of the general populations throughout the hospital's primary service area, including the City of Lynn; and
 - iii. evidence that NSMC is working in active consultation with and ensuring the active participation by Lynn City elected officials or their designees, the Lynn Health Taskforce, SEIU, and other stakeholders in the Greater Lynn area

Reporting under this Condition 2 shall be made annually. A finding of material failure to make meaningful progress on the revised CHNA may be viewed as a violation of the original DoN or of this Amendment with appropriate consequences.

Condition 2

Review

~~The DoN program shall review the data received from NSMC in accordance with Condition 1 to determine whether one or more of the following Referral Indicators is present:~~

- ~~a. material increase in ED boarding;~~
- ~~b. material increase in adult psychiatry patients transferred from NSMC to other providers;~~
- ~~c. material failure to make meaningful progress toward the development of the revised CHNA as contemplated in the initial approval of Project 6-3C46.~~

Referral

~~If the DoN Program finds, based upon Reporting by NSMC or otherwise, any one or more of the Referral Indicators, the matter shall be referred to the PHC for review to determine whether NSMC is in violation of one or more of the Referral Indicators.~~

~~Upon referral to the PHC based upon any one or more of the Referral Indicators, NSMC shall have an opportunity to show cause why the PHC shall not find one or more of the Referral Indicators.~~

~~If the PHC finds that evidence of need for additional adult psychiatry capacity, NSMC agrees that the PHC may require that NSMC show cause why it shall not construct additional capacity in the shell space: at that time, NSMC shall have the opportunity to present to DoN Staff, for referral to the PHC, another option that addresses capacity or occupancy concerns or may present evidence that the purported violation occurred as a result of factors beyond the control of NSMC.~~

Condition 3

Prior to submitting any future requests for Significant Change to Project 6-3C46, **NSMC the Holder** shall **ensure that NSMC** completes the revised CHNA, as outlined in the Department's initial approval of Project 6-3C46, and align any requests for proposed changes with the findings of the revised CHNA. ~~This condition shall not preclude the filing of a request for Amendment which, in its entirety, addresses adding additional psychiatry capacity in the shell space built for same.~~

~~Condition 4~~ As part of any future requests for Significant Change to Project 6-3C46, **NSMC the Holder** shall provide documentation that the revised CHNA and any proposed deviations from this Project, as amended, have been reviewed with and result from active participation by and consultation with Lynn City elected officials or their designees, the Lynn Health Taskforce, SEIU, other stakeholders in the Greater Lynn area that are inclusive of the diverse socio-economic groups that exist in the city, and other community representatives from the NSMC PSA.

~~This condition shall not preclude the filing of a request for Amendment which, in its entirety, addresses adding additional psychiatry capacity in the shell space built for same.~~

Condition 4

~~As part of any future requests for Significant Change to Project 6-3C46, NSMC shall provide documentation that the revised CHNA and any proposed deviations from this Project, as amended, have been reviewed with and result from active participation by and consultation with Lynn City elected officials or their designees, the Lynn Health Taskforce, SEIU, other stakeholders in the Greater Lynn area that are inclusive of the diverse socio-economic groups that exist in the city, and other community representatives from the NSMC PSA.~~

Condition 5

NSMC shall return to PHC one year following the opening date of the new psychiatry capacity at Salem Hospital, at the invitation of the PHC, to present an update on the status of NSMC's compliance with the conditions of this DoN; **to report on the utilization of the psychiatric beds; and to address and describe discharge planning especially with respect to any patients who are experiencing homelessness or have unstable housing.**

All other conditions in DoN 6-3C46 remain in effect.

Recommendation

With inclusion of the above conditions, Staff recommends approval of this request for Significant Change.