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August 9, 2017

Via E-mail and first class mail

Andrew S. Levine, Esq.
Donoghue Barrett & Singal
One Beacon Street Suite 1320
Boston, MA 02108-3106

RE: Notice of Final Action
Project Number 6-3C46.1
North Shore Medical Center

Dear Mr. Levine:

At their meeting of August 9, 2017 the Commissioner and the Public Health Council ("PHC"), acting together as the Department, voted pursuant to M.G.L. c.111, §25C and the regulations adopted thereunder, to approve, with conditions, the application filed by North Shore Medical Center (NSMC) with respect to its request for a Significant Change or an Amendment (hereinafter used interchangeably) to its previously approved Determination of Need (DoN) Project.

This Notice of Final Action (Notice) incorporates by reference the Staff Summary dated July 18, 2017, as amended, the Notice of Final Action dated July 16, 2016, issued in response to the original DoN application, and the PHC proceedings concerning this Application for Significant Change to Project No. 6-3C46. The conditions of approval as set forth in this Notice reflect the amendments thereto voted by the Department at its meeting.

Those conditions of approval are as follows:

Condition 1

NSMC shall, on a quarterly 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:

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:

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- a. The occupancy rate, for each of adult psychiatry, pediatric psychiatry, geriatric psychiatry and medical/surgical ("M/S") 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, including co-occurring substance use disorders, aggregated by quarter, for any psychiatric patients who are either admitted to beds at NSMC or admitted to beds other than at NSMC;
- 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;
- 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.
- h. With respect to the update to the Community Health Needs Assessment (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.

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 or a material increase in average length of stay within the ED for either admitted or transferred M/S or psychiatry patients;

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- 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;
- d. material increase in 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.

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.

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 3

Prior to submitting any future requests for Significant Change to Project 6-3C46, NSMC shall complete 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 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.

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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.

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

Sincerely,



Nora J. Mann
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 and Analysis
Steven Sauter, MassHealth
Katherine Mills, Health Policy Commission
Ben Wood, Office of Community Health Planning
Lynn Health Task Force
SEIU-1199

STAFF SUMMARY FOR DETERMINATION OF NEED
BY THE PUBLIC HEALTH COUNCIL

APPLICANT: North Shore Medical Center 81 Highland Avenue, Salem, MA 01970

PROJECT NUMBER: 6-3C46.1 (Significant Change)

I. Introduction and Background

This memorandum presents, for Public Health Council (PHC) action, the Determination of Need (DoN) Program's recommendation on a request by North Shore Medical Center (NSMC) in Salem, for a Significant Change to its previously approved DoN Project. The terms Significant Change and Amendment will be used interchangeably in this Staff Summary. Because it was submitted before the effective date of the current DoN regulation, the Application will be reviewed under the pre-2017 regulation (Regulation) which provided that: "The request shall contain a detailed description and comparison of the approved project with the proposed change, a description of the cost implications, and the rationale for the proposed change" and that the staff report "summarize the proposed changes to the project, and the comments [of interested parties] if any." See, 105 CMR 100.753 and 100.756.

On October 7, 2015, NSMC submitted a Determination of Need (DoN) Application for a Substantial Capital Expenditure and Substantial Change in Service. At that time, NSMC, a member of the Partners HealthCare System (Partners), operated two campuses, the 268-bed Salem campus (which is the subject of this proposed Amendment) and the 126-bed Union campus in Lynn. The original DoN as approved on July 13, 2016 authorized: construction of 115,405 gross square feet (GSF) a 3-story building to accommodate both a relocated Emergency Department (ED) and 48 medical/surgical (M/S) beds in two 24-bed units; construction of a new main entrance/reception/lobby; renovation of the vacated ED building; and renovation of the former Spaulding Hospital-North Shore (Spaulding) facility adjacent to the Salem campus to accommodate expanded inpatient psychiatric services for pediatric, adult, and geriatric patients.

As part of the same plan, NSMC announced plans to close the Union campus and filed the required notice with the Department of Public Health (Department). The planned closure generated an essential services closure hearing and the development of an essential services closure plan. The essential services closure plan framed important responsibilities of NSMC in connection with how it would continue to serve its patient panel. As a result of Department concerns about the degree to which the proposals in the DoN would accommodate the needs of all NSMC patients, approval of the DoN was conditioned upon NSMC updating and enhancing its Community Health Needs Assessment (CHNA) to specifically address the needs of people and the diversity of the communities in NSMC's primary service area, including Lynn.

NSMC's request for Significant Change proposes the following:

1. Decrease the total GSF of new construction and increase the total GSF that will be renovated.
2. Eliminate plans for the lobby renovation/expansion. The decision to eliminate plans for a new lobby space appears not to have an impact upon access or care and appears reasonable. Because this component of the proposed amendment meets the DoN review criteria for Significant Changes, this portion of the project will not figure further in this analysis.

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3. Decrease the amount of the Project to be financed by including \$10 million in fundraising by NSMC¹. This change appears reasonable and will not figure further in this analysis.
4. Reduce the total number of M/S beds to be relocated from Union from 48 to 32.
5. Reduce the total number of adult psychiatry beds to be added at this time from 34 to four.
6. Create shell space in the new building and the renovated Spaulding building which could be built out in the future as needed and would accommodate, respectively, additional M/S beds and additional adult psychiatry beds.

In accordance with the Regulation, NSMC provided a description of both the approved Project and the proposed change. NSMC offered, as an overarching rationale for its proposed change, what it characterized as “unprecedented and untenable losses in FY2016” to each of Partners and NSMC. These are losses that NSMC asserts will not abate without “changes in how the system operates” and which have resulted in what NSMC characterized as a re-calibration of the Project. Staff requested additional information from NSMC in an effort to understand both the impact of NSMC’s proposed decreases in capacity upon the analysis that NSMC provided in support of its original plan and the impact of the planned changes upon the continuing ability of NSMC to provide care to its patients. NSMC’s rationale is discussed in detail in the remainder of this Staff Summary.

¹ In the original, approved DoN, the NSMC parent, Partners, committed to secure financing, with tax-exempt bonds issued by the Massachusetts Development Finance Agency (“MDFA”), in the total amount of \$180,507,208. In its request for amendment to the DoN, NSMC both proposes to reduce the MCE to \$168,173,839 and to modify the financing methodology by decreasing Partners’ bond financing and by funding \$10,000,000 of the MCE through fundraising by NSMC. NSMC indicates that it has, to date, received a \$5 million pledge payable over five years in equal installments and has raised \$4.5 million to support the oncology suite in the new M/S floor; the remaining \$500,000 is expected by October, 2017.

II. Summary of Proposed Changes

Psychiatry Capacity

NSMC proposed in the original, approved DoN to operate a total of 120 psychiatry beds at Salem: 30 each in geriatric and pediatric psychiatry (GeriPsych and PediPsych, respectively) and 60 in its adult psychiatry service. Through this proposed Amendment, NSMC plans to construct an additional four adult psychiatry beds rather than an additional 34 adult psychiatry beds. The proposed Amendment leaves both the GeriPsych and PediPsych capacity increase unchanged: there will be 30 beds in each unit. Chart 1, below, shows the licensed psychiatry and medical/surgical beds at the two campuses prior to closure of the Union campus; the proposed bed count in the original DoN; and the bed count proposed in this Amendment.

Chart 1 –Licensed Medical/Surgical and Psychiatric Beds at NSMC

Beds	Current	DoN Approved	Amendment
Medical/Surgical	247	219	203
Adult Psych	26	60	30
Geri Psych	20	30	30
Pedi Psych	20	30	30

NSMC notes and Staff acknowledge, that, even under the proposed Amendment, there will be a net increase in psychiatry beds overall as compared to the current number of operating beds. NSMC further notes that the distribution of its psychiatry capacity including GeriPsych and PediPsych, and the fact that NSMC is not proposing to decrease the capacity in either, reflects priorities of the Massachusetts Department of Mental Health (“DMH”). NSMC also points out that the DoN as approved includes a plan to improve the ED layout and design by including a behavioral health area that can accommodate patients awaiting admission and transfer to another facility, and that those plans are unaffected by this proposed Amendment. As noted above, the proposed Amendment includes construction of shell space in the Spaulding building renovation in which, depending upon need and finances, NSMC indicates it can place additional psychiatry capacity.

Inpatient M/S Capacity

Under the proposed Amendment, NSMC proposes to open 16 fewer M/S beds than planned in the approved DoN. The original proposal called for the addition of 48 beds in two newly constructed 24 bed units. In this Amendment, they propose to construct one 24 bed unit and place eight beds in the former cardiac care unit for a total of 32 new beds and a total M/S bed count of 203. In the original DoN, NSMC was approved for a total bed count that was lower than the combined bed count at the two campuses. In the DoN as approved, the projected occupancy for M/S was approximately 72% of licensed beds. With the proposed Amended licensed bed count of 203, the M/S occupancy at Salem is projected to be approximately 77%.

Changes to Approved GSF and Maximum Capital Expenditure (MCE)

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In addition to eliminating the originally planned and approved lobby renovation, this Application for Amendment also proposes changes to NSMC's planned renovations to existing structures and planned construction of a new 3-story building, as approved in the original DoN. These proposed changes include:

1. Relocating the mechanical/electrical level within the new building on the Salem campus;
2. Renovating the Salem campus' former cardiac care unit to accommodate eight M/S beds;
3. Adding an elevator machine room to the new building;
4. Changing the proposed location of the M/S floors within the new building in order to provide for increased floor-to-floor height to accommodate more energy efficient duct work; and
5. Modifying the inpatient connector design due to seismic code requirements².

In total, the proposed Amendment contemplates a net reduction of 2,477 GSF of new construction and an increase of 5,166 GSF of renovation, resulting in an overall 1.06% increase in the GSF for the Project. The requested amended GSF for the Project is 112,928 GSF of new construction and 142,534 GSF of renovation for a total of 255,462 GSF for the Project. These changes, like the decision to eliminate the lobby space, appear reasonable and not to have an impact upon access or care and will not figure further in this analysis.

At the same time, NSMC proposes a reduced Maximum Capital Expenditure (MCE). NSMC states that the reduction in expenditures is a function both of the above-referenced changes in GSF (less new construction, more renovation, and the construction of shell space) and what NSMC describes as an effort to "calibrate the proposed expansion at the Salem campus to implement new beds as demand and capital availability warrant." NSMC ties its decision to reduce the increase in the number of new psychiatry and M/S beds and the decision to construct shell space for potential future capacity, to what it describes as a decline in NSMC's financial capacity. NSMC asserts that in the face of that decline, NSMC re-evaluated the Project and determined to not pursue certain aspects. In its proposal to amend the DoN, NSMC requests a decrease in the total capital expenditure of 6.8% from the approved MCE \$180,507,208 (2015 dollars) to \$168,173,839 (2017 dollars). NSMC will not decrease its contribution to CHI funds despite the decrease in the MCE.

² Many of the changes to the Project result from the development of detailed project designs, commenced after approval.

III. NSMC's Rationale for Proposed Amendment³

In its original DoN Application, NSMC acknowledged annual losses in the amounts of \$11,028,000 in 2012; \$20,272,000 in 2013; and \$22,158,000 in 2014. Assuming approval of the Project, NSMC projected losses in each of the subsequent years as follows: \$18,814,170 in 2019, \$13,787,582 in 2020, \$12,700,489 in 2021, and \$11,931,692 in 2022. (Statement of Revenue and Expenses, Schedule A, Factor 6, Original DoN Application)

NSMC asserts that during the analysis required for plan approval, it “uncovered certain facts that were not reasonably foreseeable at the time of approval [which] result in the need to amend the Project approval.” NSMC also cites “unprecedented and untenable losses in FY2016” to each of Partners and NSMC that NSMC claims will not abate without “changes in how the system operates”. NSMC indicated that it posted a \$48 million loss in FY 2016, which was an increase of \$12 million in losses over FY 2015. In response to questions from Staff about what changed in the period between approval of the DoN in July, 2016 and the fall of that year when NSMC first started to discuss publically its plans to recalibrate, NSMC said “to put [NSMC] on a path to break even following campus consolidation, Partners has set an ambitious goal to reduce NSMC’s operating budget by \$45 million over the next two years – approximately 10% of its operating budget – through improved efficiency in services and programs.”

This proposed justification stands in contrast to NSMC’s acknowledgment in its original DoN Application, as reflected in the Staff Summary, which stated that “despite the expected financial benefits of services consolidation, there currently is not a clear path to an operational cost breakeven point for NSMC...” (Staff Summary page 25) and that while “[NSMC’s] financial status will improve as a result of the project and expenses will be reduced, [NSMC] does not have a projected break-even point.”(Id)

The losses and renewed financial perspective have resulted in what NSMC characterizes as a recalibration of the Project. NSMC asserts that “due to worsening financial conditions, [NSMC] determined that it would be prudent for certain project components to be eliminated or delayed”⁴.

IV. Impact of the Proposed Changes

³ In further support for its Application for Amendment, NSMC states that “since the Project was approved, significant new inpatient psychiatric capacity is planned in the Commonwealth...” NSMC states that the impact of this external inpatient psychiatric capacity may already be manifesting itself. NSMC indicates that inpatient adult psychiatric admissions have decreased by approximately 10% in the first quarter of FY2017 as compared to the same timeframe last year. NSMC further posits that “[as] approximately 12% of [its] adult psychiatric admissions originate from outside of [NSMC’s] primary and secondary service areas...” the off-site capacity that is also located outside of NSMC’s service area may effectively serve those patients.

⁴ Adding to its rationale for the change, NSMC states that the closure of the NSMC cardiac surgery service at the Salem campus resulted in newly available space that could house eight new M/S beds in what NSMC describes as a cost effective manner. As a result, NSMC says it can add some capacity without having to construct the second of the two planned 24-bed units. Instead of opening up two units of 24 beds each, the Amended Project contemplates one new unit of 24 and the eight beds in the former cardiac area for a total new M/S capacity of 32. This is 16 fewer than was originally contemplated. The Applicant indicates that the cardiac surgery service at NSMC resulted in a loss of \$460K in 2015 and therefore that closing this service decreases NSMC’s operating losses.

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In its original DoN Application in the Factor 1 Health Planning section, NSMC described the project as “a major capital expenditure for new construction and renovation at the Salem campus to accommodate the identified service needs and...a redesign of both care delivery and facilities for the future.” (Page 11a, Factor 1 Analysis, original DoN Application) NSMC stated that it planned to consolidate acute care services previously offered at its campus in Lynn to the Salem campus and reported that the decision to consolidate was the result of a multi-year planning process and that, among other things, NSMC sought “to address the urgent need for improved access to inpatient behavioral health services on the North Shore”.(Id) NSMC pointed out that the need “had become a priority focus for state and local officials and [that] the Salem campus expansion represented an 82% increase in NSMC's inpatient psychiatry capacity”.(Id)

Also in the original DoN Application, NSMC documented a consistent trend of growth for its inpatient psychiatric service, and consistent demand for M/S and emergency services. NSMC reported that in its psychiatric service, its adult, pediatric, and geriatric beds operating at the time of the original DoN Application were regularly close to or at capacity. In its original Application, NSMC argued persuasively in support of the need for the full complement of psychiatry beds⁵. In its Factor 1 analysis, NSMC stated: “[NSMC] operates a comprehensive inpatient psychiatric service with a total of 64 beds...Even with this large number of beds, the service is regularly at capacity...Increasing access to psychiatry and behavioral health services is an important component of the Project and is also a priority focus for state and local officials. To address this demand, [NSMC] propose[d] expanding its inpatient psychiatric services to a total of 120 beds through the addition of 56 new beds.”(Page 13e, Factor 2 Analysis, Original DoN Application)

The increased inpatient psychiatry capacity figured into the analysis of financial feasibility of this project when it was approved, as well. NSMC was required to fund an Independent Cost Analysis (“ICA”) in connection with its original Application. A conclusion of the ICA was that “the improvement in margin between the base year 2014 and projection year 2020 is \$11.6 million. This positive change includes an increase in Net Patient Service Revenue (“NPSR”) of \$18.5 million, *from additional behavioral health volume* and increased volume in inpatient and emergency room activity (emphasis added).” (ICA, page 5) The report supported NSMC’s estimates of an increase in NPSR per Adjusted Patient Day (“APD”) as a result of “increased adult behavioral health volume which has a higher acuity level than child behavioral health.”

⁵ “[NSMC] determined demand for inpatient psychiatric beds by evaluating utilization trends in recent fiscal years. In fiscal year 2014, based on an occupancy rate of 95% to account for room blocks due to patient incompatibility, the Hospital's adult [psychiatry] unit was at full capacity 50% of the time, the pediatric [psychiatry] unit was at capacity 21% of the time and the geriatric [psychiatry] unit was at capacity 28% of the time. Viewed another way, this means that there were 173 days where there was no bed available at [NSMC] for adult psychiatry patients who presented to [NSMC's] ED and required admission. This trend has continued for the first eight months of the current fiscal year with all units at capacity a quarter of the time. The high utilization of the units often creates backlogs in [NSMC's] ED daily as patients wait for admission or transfer to another facility with capacity. To accommodate this unmet demand, [NSMC] will add 56 new inpatient psychiatric beds. This will increase overall capacity by 82%, more than double the number of adult beds that [NSMC] currently operates, and allow for 1,730 additional annual admissions by 2020. *This expanded capacity will provide [NSMC] with the capacity to admit patients that are currently transferred to other facilities, thereby improving the continuity of care for these patients as well as providing them with the clinical benefits of inpatient psychiatry connected to a full service acute care hospital.*” (Page 13e-13f, Factor 2 Analysis, Original DoN Application)(Emphasis added)

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Reviewing the revised, proposed adult psychiatry capacity requires several assumptions. In the original project, NSMC proposed to add sufficient capacity to enable it to serve all of the patients who present at the ED but who, historically and currently have to be admitted elsewhere because of lack of bed/space⁶. As amended, the Project will, NSMC asserts, meet the adult psychiatry need for people from within its primary service area (PSA) who present for care but will not provide the capacity to accommodate what NSMC characterized in its original DoN Application as unmet need from outside the PSA. In its original DoN, NSMC projected between 18,600 and 19,700 adult psychiatry patient days. For the amended proposal, NSMC projects 13,804 patient days.

NSMC appears also to have revised its GeriPsych projections: "This plan will result in a reduction in the number of geri[atric] patient days originally projected for the DoN. (...) With the revised plan, [NSMC] will accommodate the historical volume based on FY2016, along with an additional 8% growth [which is] less than the growth originally projected in the DoN application, [but with which NSMC] believes that it will be able to meet the needs of the geri[atric] patients from its service area." NSMC points out that using its projections for GeriPsych the occupancy rate will be 63.3%, leaving 31.7% capacity that NSMC proposes to use for what it calls an "older adult cohort".

Using the adjusted projections for need by GeriPsych patients, NSMC has what it has characterized as excess capacity in its GeriPsych beds. NSMC will locate the GeriPsych beds near to the adult beds and use the excess capacity to accommodate what NSMC describes as an older cohort of the adult psychiatry patients in GeriPsych beds. When fully 10 of the 30 approved GeriPsych beds are used for older adults, the occupancy rate for adult psychiatry patients is about 95%. Without the full 10 GeriPsych beds being used for the adult patients, the occupancy rate for adult psychiatry could be as high as 126%.

Current ED boarding data reflect that about 6% of the average monthly visits to the Salem ED result in boarding (12 hours or longer in the ED) for both M/S and behavioral health (BH) patients. Approximately 3% of the total patients boarding presented with BH indications⁷.

With respect to its M/S capacity, NSMC asserts that by using the former cardiac care unit to house eight new M/S beds, it can accommodate the projected M/S patient days (which have not been revised) with fewer additional M/S beds. NSMC will have a revised, total M/S capacity of 203 beds. With that revised total, as noted above (page 3) the occupancy rate averages out to approximately 77%.

VII. Comments received

A public hearing was held on this Application on March 7, 2017. See, Transcript, Exhibit 1 and List of Speakers at Public Hearing, Exhibit 2. Commenters generally spoke of their frustration and disappointment that the project as originally proposed, which was combined with the loss to the

⁶ NSMC states that it transfers between 1600-1800 behavioral health patients to other facilities for care annually from either the Salem or Union campus. Forty percent of these patients are transferred because NSMC does not currently have the physical capacity to accommodate the psychiatry admissions. NSMC anticipates that after construction of the expanded psychiatry units with additional beds on the Salem campus these patients will remain at NSMC. The remaining 60 percent are currently transferred because they are best served by either a specialty unit, or different level of care such as, but not limited to, DDART (Dual diagnosis Addiction Treatment Services), Enhanced Addiction Treatment services (EATS), or a substance use disorder residential program.

⁷ Note that the boarding data includes all patients whether they ultimately were admitted or left the hospital. And behavioral health data includes both psychiatry and other behavioral health indications including substance use disorders.

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community of the Union campus, was, in their view, being further eroded. In addition, the Department received a letter from the legislative delegation, dated March 7, 2017, Exhibit 3; from the Lynn Health Task Force dated February 7, 2017, Exhibit 4; and from 1199 SEIU dated February 9, 2017, Exhibit 5.

Speakers at the public hearing included current and former elected officials from the city of Lynn; representatives of the National Alliance for Mental Illness – Massachusetts; residents, including from one of the Ten Taxpayer Groups that organized originally in opposition to NSMC's plans to close the Union campus; and staff from each of the Salem and Union campuses, including a nurse on the Telemetry Unit at the Union campus who is also an elected delegate to the 1199 SEIU United Healthcare Workers East. Staff also heard from representatives of NSMC, including an administrator who pointed out that the plan outlined in the proposed Amendment is based on current demand trends and will still result in an increase in its capacity for inpatient psychiatry while also providing NSMC the flexibility to increase capacity in the future while they carefully monitor their census to meet the needs of patients.

Most speakers at the public hearing addressed their lack of trust and sense of betrayal by Partners and NSMC generated by the effect that the proposed changes to the DoN would have on commitments made in the original DoN. Speakers acknowledged that their comments on the proposed amendment to the DoN were made the context of activity at NSMC's Salem campus in the months since approval of the DoN including closure of the cardiothoracic surgical suite and the planned closure of a 24-bed pediatric unit, as well as announced layoffs of employees from both the Salem and the Union campuses. Others addressed the larger context including Partners' construction of a large ambulatory care center in Danvers which, along with the transfer of the cardiac unit to MGH, they assert is part of a plan to move profitable services out of NSMC to other parts of Partners.

The information received in writing and at the public hearing was reviewed by DoN staff and has helped to inform its analysis of the Application for Significant Change. The concerns raised regarding capacity, occupancy rates, and transportation mitigate in favor of certain conditions which Staff recommends below.

VIII. Findings and Recommendation

This Application is presented for review under the regulations in effect at the time of filing and before the 2017 regulations became effective. The Regulation sets out certain requirements for Significant Changes including that they contain a detailed description of the plan, a comparison of the project as approved with the proposed changes, and the rationale for the proposed change⁸. The Application before the PHC today contains a detailed description and comparison of the approved Project with the proposed change. NSMC is forthright in describing the cost implications, indicating that the decisions were informed by, *inter alia*, the financial condition of NSMC and Partners.

When reviewing the proposed Amendments, in particular the decrease in capacity in adult psychiatry beds, Staff is mindful that in making recommendations to approve the underlying DoN, the Regulation

⁸ 105 CMR 100.753 "Changes or modifications which are significant shall not be made unless the Department approves such changes in accordance with the procedures set forth in 105 CMR 100.756."

105 CMR 100.756 "[a] request shall contain a detailed description and comparison of the approved project with the proposed change, a description of the cost implications, and the rationale for the proposed change."

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required a finding that, among other things, the project would result in “the least ... adverse consequences as possible in the circumstances.” Looking at the impact of the decrease in capacity proposed in this Amendment, and seeing that occupancy rates are projected to increase, Staff is concerned about the potential impact the decreased capacity might have on ED boarding as well as on occupancy rates and access to care for the relevant patient population.

NSMC made a compelling case, just under a year ago, that the consolidation of its services at the Salem campus made sense, both financially and from a patient care perspective. In its original DoN, NSMC stated that “this expanded capacity will provide [NSMC] with the capacity to admit patients that are currently transferred to other facilities, thereby improving the continuity of care for these patients as well as providing them with the clinical benefits of inpatient psychiatry connected to a full service acute care hospital.” (Page 13e-13f, Factor 2 Analysis, Original DoN Application)

This amended proposal presumes that some of the patients presenting for psychiatric care to the Salem campus will continue to require transfer to inpatient psychiatry providers outside of NSMC. The proposal also contemplates the construction of shell space which could be built out with adult psychiatry beds if needed. While the proposal will result in increased psychiatric bed capacity as compared to present-day, Staff is concerned about how the current proposal to open only four additional adult psychiatry beds instead of the previously approved addition of 34 new adult psychiatry beds will meet the needs of the patient population without significant negative impact including an increase in ED boarding. Toward that end, in order to address these potential capacity issues Staff recommends certain conditions to any proposed DoN that will allow the Department to track and, potentially address negative impacts on boarding and occupancy.

The approved DoN included certain conditions on which NSMC and the Department contemplated regular review.⁹ These conditions were premised on an effort, “to ensure more equitable geographic and socioeconomic access to health care services for Lynn residents...”; requires that, “*NSMC shall provide the Department with an updated evaluation of community health needs resulting from the impact of the proposed consolidation on access to services for Lynn residents*”; and address “how to most appropriately serve the longer term emergent/urgent needs of all NSMC’s patients and communities post-consolidation.”¹⁰ (Staff Summary, emphasis added) This condition remains in effect, and is of continuing importance because it may support both NSMC’s and the Department’s understanding of the impact of the amended consolidation project (the consolidation of Union and Salem campuses) on the community health needs in the PSA.

In order for Staff to recommend the PHC’s support of the decrease in capacity, Staff recommends that as a part of this DoN approval, the conditions regarding reporting from the original DoN be more finely

⁹ From the Staff Summary: At a minimum, the Department shall review compliance with the above conditions within one year of issuance of DoN approval and again after the completion of the project. At each time, NSMC’s report of the status of compliance shall be reviewed by the Staff of Department and presented to the PHC by Staff of the Department after consultation with NSMC and community parties specified in these conditions. Further, NSMC and the community parties shall have an opportunity to address the PHC in regard to these conditions. Upon consideration of such presentations, the PHC will be the final arbitrator as to compliance with the conditions, and reserves the right to continue the progress reports beyond the specified one year if needed and, if so, decide the timeline for the preparation of said reports to the PHC.

¹⁰ The first update was to be provided to the Department within one year of the issuance of DoN approval and is thus, due shortly. A review of progress in that regard shows that the group charged with addressing emergency services needs in Lynn has met four times: in each of May, June, and October 2016 and again on May 1, 2017.

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tuned to require regular and specific reporting by NSMC to the Department and that additional reporting be required for the purpose of tracking and, potentially addressing any negative impact of the decreased capacity.

Condition 1

NSMC shall, **on a quarterly 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:

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;
- 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;
- 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.
- 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

Condition 2

Review

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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.

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.

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Condition 3

Prior to submitting any future requests for Significant Change to Project 6-3C46, NSMC shall complete 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 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.

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.