



Massachusetts Department of Public Health

Determination of Need

Application Form

Version: 7-10-2020
mi. corr.

Application Type:	Transfer of Site/Change in Designated Location	Application Date:	
Applicant Name:	The Orthopedics Surgical Center of the North Shore, LLC		
Mailing Address:	1 Orthopedics Dr		
City:	Peabody	State:	Massachusetts
		Zip Code:	01960
Contact Person:	Alan Einhorn	Title:	
Mailing Address:	Foley & Lardner, LLP, 111 Huntington Avenue, Floor 25		
City:	Boston	State:	Massachusetts
		Zip Code:	02199
Phone:	6173424094	Ext:	
E-mail:	aeinhorn@foley.com		

Facility Information

List each facility affected and or included in Proposed Project

1 Facility Name:	The Orthopedics Surgical Center of the North Shore, LLC		
Facility Address:	1 Orthopedics Dr		
City:	Peabody	State:	Massachusetts
		Zip Code:	01960
Facility type:	Freestanding Ambulatory Surgery Facility	CMS Number:	221047
Add additional Facility		Delete this Facility	

1. About the Applicant

1.1 Type of organization (of the Applicant):	for profit
1.2 Applicant's Business Type:	<input type="radio"/> Corporation <input type="radio"/> Limited Partnership <input type="radio"/> Partnership <input type="radio"/> Trust <input checked="" type="radio"/> LLC <input type="radio"/> Other
1.3 What is the acronym used by the Applicant's Organization?	
1.4 Is Applicant a registered provider organization as the term is used in the HPC/CHIA RPO program?	<input checked="" type="radio"/> Yes <input type="radio"/> No
1.5 Is Applicant or any affiliated entity an HPC-certified ACO?	<input type="radio"/> Yes <input checked="" type="radio"/> No
1.6 Is Applicant or any affiliate thereof subject to M.G.L. c. 6D, § 13 and 958 CMR 7.00 (filing of Notice of Material Change to the Health Policy Commission)?	<input type="radio"/> Yes <input checked="" type="radio"/> No
1.7 Does the Proposed Project also require the filing of a MCN with the HPC?	<input type="radio"/> Yes <input checked="" type="radio"/> No

1.8 Has the Applicant or any subsidiary thereof been notified pursuant to M.G.L. c. 12C, § 16 that it is exceeding the health care cost growth benchmark established under M.G.L. c. 6D, § 9 and is thus, pursuant to M.G.L. c. 6D, §10 required to file a performance improvement plan with CHIA? ☐ Yes ☒ No

1.9 Complete the Affiliated Parties Form

2. Project Description

2.1 Provide a brief description of the scope of the project.

to transfer the site of its ambulatory surgery clinic from its current location at 1 Orthopedics Drive, Peabody, MA to 378 Commonwealth Avenue, Danvers, MA

2.2 and 2.3 Complete the Change in Service Form

3. Delegated Review

3.1 Do you assert that this Application is eligible for Delegated Review? ☒ Yes ☐ No

3.1.a If yes, under what section?

4. Conservation Project

4.1 Are you submitting this Application as a Conservation Project? ☐ Yes ☒ No

5. DoN-Required Services and DoN-Required Equipment

5.1 Is this an application filed pursuant to 105 CMR 100.725: DoN-Required Equipment and DoN-Required Service? ☐ Yes ☒ No

6. Transfer of Ownership

6.1 Is this an application filed pursuant to 105 CMR 100.735? ☐ Yes ☒ No

7. Ambulatory Surgery

7.1 Is this an application filed pursuant to 105 CMR 100.715 for Ambulatory Surgery? ☐ Yes ☒ No

8. Transfer of Site

8.1 Is this an application filed pursuant to 105 CMR 100.745? ☒ Yes ☐ No

8.2 Current location of Site

Facility Name:

Physical Address:

City:

State:

Zip Code:

Facility type:

8.3 Location of Proposed Site

Facility Name: The Orthopedics Surgical Center of the North Shore, LLC

Physical Address: 378 Commonwealth Avenue













City: Danvers

State: Massachusetts

Zip Code: 01923

Facility type: Freestanding Ambulatory Surgery capacity

8.4 Compare the scope of the project for each element below:		
	Current Site	Proposed Site
Gross Square Feet	see separate narrative for 8.4	
Primary Service Area Towns served		
Patient Population (Demographics)		
Patient Access		
Impact on Price		
Total Medical Expenditure		
Provider Costs		
Description		

8.5 Detail all Anticipated Capital Expenditures to be incurred as a result of the proposed Transfer of Site.		
Add Del Row	Anticipated Capital Expenditure	Cost
 	see separate narrative for 8.5	
 		
 		
 		
 		
 		
	Total Cost	

9. Research Exemption

9.1 Is this an application for a Research Exemption?

☐ Yes ☒ No

10. Significant Amendment

10.1 Is this an application for a Significant Amendment Change?

☐ Yes ☒ No

11. Emergency Application

11.1 Is this an application filed pursuant to 105 CMR 100.740?

☐ Yes ☒ No

13. Factors

Required Information and supporting documentation consistent with 105 CMR 100.210

Describe supporting data in your responses below, in addition, submit numeric data and charts in an Excel attachment.

Some Factors will not appear depending upon the type of license you are applying for.

Text fields will expand to fit your response.

Documentation Check List

The Check List below will assist you in keeping track of additional documentation needed for your application. Once you have completed this Application Form the additional documents needed for your application will be on this list. E-mail the documents as an attachment to: DPH.DON@state.ma.us

☐ Affidavit of Truthfulness Form

☐ A Copy of Current License

Document Ready for Filing

When document is complete click on "document is ready to file". This will lock in the responses and date and time stamp the form.

To make changes to the document un-check the "document is ready to file" box. Edit document then lock file and submit

Keep a copy for your records. Click on the "Save" button at the bottom of the page.

To submit the application electronically, click on the "E-mail submission to Determination of Need" button.

This document is ready to file:

☐

Date/time Stamp:

E-mail submission to
Determination of Need

Application Number: -23080221-TS

Use this number on all communications regarding this application.

Orthopedic Surgical Center of the North Shore, LLC Articles of Organization

<https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?sysvalue=r28llyMRz3pExlUpMSPX.MisIgRKCfFBbkeAc78uJyQ->



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC HEALTH

CLINIC LICENSE

in accordance with the provisions of the General Laws, Chapter 111, Sections 51-56 inclusive, and the regulations promulgated thereunder, a license is hereby granted to:

Orthopaedic Surgical Center of the North Shore, LLC

Name of Applicant

for the maintenance of

Orthopedics Surgical Center of the North Shore, LLC, 1 Orthopedics Drive, Peabody, MA 01960

Name and Address of Clinic

and Satellites as listed below.

The license is valid until November 11, 2023, subject to revocation or suspension, either wholly or with respect to a specific service or specific services, or a part or parts thereof.

SERVICE(S):

- ☒ Medical
- ☒ Surgical
- ☐ Dental
- ☐ Mental Health
- ☐ Physical Rehabilitation
- ☐ Substance Abuse
- ☐ Birth Center
- ☐ Mobile Medical
- ☐ Lithotripsy
- ☐ Pharmacy
- ☐ Limited Services

Commissioner of Public Health

LICENSE No AJ2S

November 12, 2021

Date Issued

POST CONSPICUOUSLY



Massachusetts Department of Public Health

Determination of Need

Affidavit of Truthfulness and Compliance with Law and Disclosure Form 100.405(B)

Version [MODIFIED]:
7-6-17

Instructions: Complete Information below. When complete check the box "This document is ready to print:". This will date stamp and lock the form. Print Form. Each person must sign and date the form. When all signatures have been collected, scan the document and e-mail to: dph.don@state.ma.us Include all attachments as requested.

Application Number: **-23080221-TS**

Original Application Date: 8/7/2023

Applicant Name: The Orthopedics Surgical Center of the North Shore, LLC

Application Type: **Transfer of Site Notice**

Applicant's Business Type: Corporation Limited Partnership Partnership Trust LLC Other

NOTE: THIS FORM IS MODIFIED BY THE APPLICANT TO BE CONSISTENT WITH THE SUBJECT MATTER OF THIS NOTICE, I.E., NOTICE OF TRANSFER OF SITE

Is the Applicant the operator of the Health Facility(ies) that are the subject of this Application? Yes No The undersigned certifies under the pains and penalties of perjury:

1. The Applicant is the operator of the Health Facility that is the subject of this Notice;
2. I have been informed of the contents of 105 CMR 100.000, the Massachusetts Determination of Need Regulation;
3. I understand and agree to the expected and appropriate conduct of the Applicant pursuant to 105 CMR 100.800;
4. I have been informed of this Notice of Transfer of Site, and certify that all of the information contained herein, including attachments, is accurate and true;
5. I understand that there is no Filing Fee for this Notice;
6. I have submitted the required this Notice in accordance with the terms of the Determination of Need regulations, 105 CMR 100.745(D);
7. If subject to M.G.L. c. 6D, § 13 and 958 CMR 7.00, I have submitted such Notice of Material Change to the HPC - in accordance with 105 CMR 100.405(G);
8. Pursuant to 105 CMR 100.210(A)(3), I certify that both the Applicant and the Proposed Project are in material and substantial compliance and good standing with relevant federal, state, and local laws and regulations, as well as with all previously issued Notices of Determination of Need and the terms and Conditions attached thereto;
9. I have been informed of and understand the limitations on solicitation of funding from the general public prior to receiving a Notice of Determination of Need as established in 105 CMR 100.415;
10. I understand that, if an application for DON is required and thereafter approved, the Applicant, as Holder of the DoN, shall become obligated to all Standard Conditions pursuant to 105 CMR 100.310, as well as any applicable Other Conditions as outlined within 105 CMR 100.000 or that otherwise become a part of the Final Action pursuant to 105 CMR 100.360;
11. Pursuant to 105 CMR 100.705(A), I certify that the Applicant has or will obtain Sufficient Interest in the Site or facility; and
12. Pursuant to 105 CMR 100.705(A), I certify that the Proposed Project is authorized under applicable zoning by-laws or ordinances, whether or not a special permit is required; or,
 - a. If the Proposed Project is not authorized under applicable zoning by-laws or ordinances, a variance has been received to permit such Proposed Project; or,
 - b. The Proposed Project is exempt from zoning by-laws or ordinances.

Operator: The Orthopedics Surgical Center of the North Shore, LLC

Name of Operator

By: 

[Name]

[Title]

Sup of Operations / CEO

The Orthopedics Surgical Center of the North Shore, LLC (attachment)

DoN # 23080221-TS

ASC Transfer of Site-Attachment 8.4, 8.5

Gross Square Feet

As a result of the project, the Center will be housed in a newly constructed facility in Danvers. The relocated Center will have the same number of operating suites and the same number of recovery bays as the existing Center (5 operating suites, 14 bays including pre- and post-operative services), and will continue to provide the same ambulatory surgery services, with no expansion of service lines or overnight stay capabilities. The new Center will also have roughly the same square footage as the licensee's current center (14,977 sq. ft. at the current site, 15,000 sq. ft. at the proposed site), and it will remain a member of the BILH system.

Primary Service Area Towns

The proposed site for the Center is less than one mile from the current site of the Center, and the current and proposed primary service areas (Peabody, Danvers, Beverly, Ipswich, Lynn, Salem, Hamilton, Lynnfield) are accordingly expected to be essentially the same.

Patient Population/Demographics - calendar year 2022

Row Labels	OSC Day Surgery	OSC %
Total Patients	3986	
Age		
0-17	67	1.7%
18-64	2462	61.8%
65+	1457	36.6%
Gender		
Female	2231	56.0%
Male	1755	44.0%
Race		
Afghanistani		0.0%
African	<11 ¹	0.0%
African American	<11	0.0%
American Indian		0.0%
American Indian or Alaska Native	11	0.3%
Arab		0.0%

¹ To ensure patient privacy, we have used the notation "<11" in any instance where the patient count for a demographic category included less than 11 individuals.

Asian	18	0.5%
Asian Indian	<11	0.2%
Bangladeshi		0.0%
Black		0.0%
Black or African American	69	1.7%
Chinese		0.0%
English	<11	0.1%
Filipino		0.0%
Haitian	<11	0.0%
Iqurmuit (Russian Mission)	0	0.0%
Irish	<11	0.0%
Italian	<11	0.2%
Native Hawaiian or Other Pacific Islander	<11	0.0%
Other Race	224	5.6%
Patient Declined	421	10.6%
Taos		0.0%
Vietnamese	<11	0.1%
White	3217	80.7%
Insurance Type		
Commercial	782	19.6%
Group Policy	1004	25.2%
Health Maintenance Organization (HMO)	343	8.6%
Medicaid	415	10.4%
Medicare Part B	1335	33.5%
Other	12	0.3%
Personal Payment (Cash - No Insurance)	95	2.4%

Patient Access

It is anticipated that the new location will enable more efficient operation of the Center in space that is also more accessible to patients than the current space. Accessibility is expected to be improved in the sense that it is anticipated that there will be additional storage capacity at the new location that will afford increased flexibility for surgeons to perform additional cases. (Currently when the Center reaches equipment processing and storage limits, it cannot book additional time-sensitive cases.)

Impact on Price

The proposed relocation of the Center is not expected to have any impact on price of the Center's services or total medical expenditures. The relocation is expected to reduce the licensee's costs, however, as the licensee expects to pay less rent to lease the Center space at the proposed new site. The relocation does not impact payer or staffing agreements.

Total Medical Expenditures

See "Impact on Price," above

Provider Cost

See “Impact on Price,” above

Description

The applicant’s intent is to transfer the site of its ambulatory surgery clinic from its current location at 1 Orthopedics Drive, Peabody, MA to 378 Commonwealth Avenue, Danvers, MA. The Center’s current/extended lease term is due to expire on April 30, 2026 and does not include a right of extension or renewal. In addition, the Center’s current lease is priced at an above-market rate that would only increase going forward, reaching \$57/sq. ft. NNN by the end of its term--a rate that would likely render continued operation of the Center unsustainable even if the lease could be extended. The Center has located a new site at a considerably lower (\$38.50/sq. ft. NNN) rent that, in addition to being far more affordable, will enable more efficient operation of the Center in space that is also more accessible to patients than the current space. The fact that the Center’s current lease ends in early 2026 means that the Center has less than three years to build, permit, license and relocate its facility or risk interrupting orthopedic surgery services for the Center’s many patients (approximately 7000 procedures annually, not including during the PHE). It also means that the Center’s relocation efforts (including financial commitments) must proceed almost immediately in order to ensure continuity of services for the Center’s patients and the service area communities.

Cost of Move is estimated at approximately \$50,000

July 27, 2023

Via Email rebecca.kaye@state.ma.us

Rebecca Kaye
General Counsel
Commonwealth of Massachusetts
Department of Public Health
250 Washington Street
Boston, MA

Re: DON Notice-Proposed Transfer of Site-ASC

Dear Ms. Kaye:

In accordance with the terms of 105 CMR 100.745, Orthopaedic Surgical Center of the North Shore, Inc. (the “Center” or “licensee”) hereby notifies the Department of Public Health (“Department”) of its intent to transfer the site of its ambulatory surgery clinic from its current location at 1 Orthopedics Drive, Peabody, MA to 378 Commonwealth Avenue, Danvers, MA. The Center requests a determination from the Department that the proposed transfer as described herein will not result in a Substantial Capital Expenditure or Substantial Change in Service as those terms are defined in 105 CMR 100.000 et seq.

Pursuant to 105 CMR 100.745(D), the Center offers the following:

(1) A written description of the reasons for the requested transfer of site;

The Center’s current/extended lease term is due to expire on April 30, 2026 and does not include a right of extension or renewal. This means that the Center has less than three years to build, permit, license and relocate its facility or risk interrupting orthopedic surgery services for the Center’s many patients (approximately 7000 procedures annually, not including during the PHE). It also means that the Center’s relocation efforts (including financial commitments) must proceed almost immediately in order to ensure continuity of services for the Center’s patients and the service area communities. In addition, the Center’s current lease is priced at an above-market rate that will only increase going forward, reaching \$57/sq. ft. NNN by the end of its term--a rate that would likely render continued operation of the Center unsustainable even if the lease could be extended.

The Center has located a new site at a considerably lower (\$38.50/sq. ft. NNN) rent that, in addition to being far more affordable, will enable more efficient operation of the Center in space that is also more accessible to patients than the current space.

- (2) A written description of the current and proposed Site, including a comparison of the area in gross square feet associated with the services at each Site, and the current and proposed Primary Service Area;

As a result of the project, the Center will be housed in a newly constructed facility in Danvers. The relocated Center will have the same number of operating suites and the same number of recovery bays as the existing Center, and will continue to provide the same ambulatory surgery services, with no expansion of service lines or overnight stay capabilities. The new Center will also have roughly the same square footage as the licensee's current center (14,977 sq. ft. at the current site, 15,000 sq. ft. at the proposed site), and it will remain a member of the BILH system. The proposed site for the Center is less than one mile from the current site of the Center, and the current and proposed primary service areas (Peabody, Danvers, Beverly, Ipswich, Lynn, Salem, Hamilton, Lynnfield) are accordingly expected to be essentially the same.

- (3) A written description of, and comparison between, the existing and proposed patient populations served;

See response to (2), above.

- (4) A written description of, and comparison between, existing and proposed patient access including, but not limited to, the proposed transfer of site or change in designated location's impact on price, total medical expenditure, provider costs, and other recognized measures of health care spending;

The proposed relocation of the Center is not expected to have any impact on price of the Center's services or total medical expenditures. The relocation is expected to reduce the licensee's costs, however, as the licensee expects to pay less rent to lease the Center space at the proposed new site (as set forth in (1) above).

- (5) A detailed attestation of all anticipated expenditures to be incurred as a result of the proposed transfer of site;

Construction of the re-located Center will be undertaken by the landlord for the relocated Center's space. Moreover, the licensee's rent for the space will, as indicated above, be significantly less than the rental amounts the licensee is paying for the space in which the Center is located currently. Apart from rental fees, the licensee anticipates that it will incur expenditures associated with relocation of certain Center property and equipment to the new site.

- (6) Documentation of Sufficient Interest in the proposed Site and evidence that the Site may be used for the proposed purpose, in accordance with 105 CMR 100.705;

See attached lease proposal (which the management company for the Center will, for the applicable space, negotiate on the Center's behalf) and correspondence relating to permitted use.

(7) An affidavit of truthfulness, signed under the pains and penalties of perjury by the Applicant's chief executive officer and board chair; and

See attached affidavit.

(8) Any additional information deemed necessary by the Commissioner.

None has been requested as of this time.

In closing, it is noted that in correspondence with former DPH Counsel, Rebecca Rodman, relating to transfers of location/site, Ms. Rodman stated that "When an Applicant intends to move location and the costs of acquiring a new lease are the same as the current lease, the cost is not calculated as part of the capital expenditure." In this instance, as noted above, the rental fee for the proposed new location/site for the Center is less than the rental fee at the current Center site. Since the costs of acquiring the new lease are therefore less than those of the current lease, and since there will be no change in the services offered by the Center at the proposed new site, the licensee hereby requests a determination from the Department confirming that there is no Substantial Capital Expenditure or Substantial Change in Service associated with the proposed transfer of site and that the licensee therefor need not submit an application for DON review of the proposed transfer.

Thank you for your attention to this matter.

Very truly yours,

Alan Einhorn

Alan Einhorn

Cc: DON Program DPH.DON@State.MA.US