



# Massachusetts Department of Public Health Determination of Need Application Form

Version: 11-8-17

Application Type:  Application Date: 04/02/2018 11:19 am

Applicant Name:

Mailing Address:

City:  State:  Zip Code:

Contact Person:  Title:

Mailing Address:

City:  State:  Zip Code:

Phone:  Ext:  E-mail:

## Facility Information

List each facility affected and or included in Proposed Project

1 Facility Name:

Facility Address:

City:  State:  Zip Code:

Facility type:  CMS Number:

## 1. About the Applicant

1.1 Type of organization (of the Applicant):

1.2 Applicant's Business Type:  Corporation  Limited Partnership  Partnership  Trust  LLC  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?  Yes  No

1.5 Is Applicant or any affiliated entity an HPC-certified ACO?  Yes  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)?  Yes  No

1.7 Does the Proposed Project also require the filing of a MCN with the HPC?  Yes  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.

During the process of construction, the Applicant is experiencing unforeseen conditions and/or requirements and incurring higher costs than originally forecast. As a result, the Applicant is seeking a minor amendment to increase its permitted MCE. There are no changes in GSF or scope of the Project.

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

## 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 100.740(A) for Ambulatory Surgery?  Yes  No

## 8. Transfer of Site

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

## 9. Research Exemption

9.1 Is this an application for a Research Exemption?  Yes  No

## 10. Amendment

10.1 Is this an application for a Amendment?  Yes  No

10.2 This Amendment is:  Immaterial Change  Minor Change  Significant Change









10.3 Original Application number:

10.3.a Original Application Type:

10.3.b Original Application filing date:

10.3.c Have there been any approved Amendments to the original Application?  Yes  No

10.3.d For each approved Amendment list all Amendment Numbers, Amendment types, and Approval Dates.

Add/Del Row	Amendment Number	Amendment Change Type	Approval Date
 	1st	Significant	05/06/2006
 	2nd	Significant	02/08/2010
 	3rd	Immaterial	01/10/2013
 	4th	Significant	11/25/2015

**For Immaterial or Minor Amendment changes:**

10.4.a Briefly describe the Approved Project.

This DoN was approved originally on July 9, 2003. The prior holder began the implementation of the DoN but encountered difficulties with costs far in excess of what it initially expected and declining census that impaired its ability to implement the DoN. The Applicant acquired the Facility in 2008 and implemented a variety of operational improvements. The census grew dramatically resulting in the Applicant's improved ability to obtain financing and increase the bed capacity through the addition of its 12 DoN exempt beds and 15 beds from the closed Dana Home of Lexington. The resulting amendments to the DoN increased the total bed capacity of the Facility from 123 to 150. The majority of the increase in beds relates to the Level IV unit as it increases from 22 to 42 beds. The remaining seven (7) new beds added result in a forty-eight (48) beds Level II unit and a sixty (60) bed Level III unit.

Every nursing unit and support area is affected by the project. The nursing stations are improved and day room and other spaces are increased in size. Bathroom facilities are improved with the addition of handicap accessible showers in several rooms. All resident rooms are refurbished and new call systems, lighting and related enhancements installed.

Support areas are receiving significant modernization and improvements. The therapy area is expanded and improved and a building formerly used of office and storage is converted for use to expand the Level IV unit. Almost all major systems are being upgraded or replaced. An emergency generator has been added. Leaking windows were replaced and the exterior repaired. Material improvements are being made to dietary and other support services. Outdated furnishings and equipment are being replaced and all resident and public areas are receiving upgraded finishes and amenities.

The entire physical facility is impacted by this renovation project. The limited new construction in the Project relates to the enclosure of a fire exit. The current approved GSF for the Project is 72,177 GSF, with the GSF approved for new construction of 1,396 and for renovation a total of 70,781 GSF. The approved MCE is \$12,241,150 in August 2015 Dollars, and adjusted for inflation through March 2018, the approved MCE is \$12,637,764. The majority of the approved MCE (97.3% or \$11,909,000) is related to the renovation work. This cost and project scope reflects the fact that this facility has not had a major renovation or facility improvements since the 1970s.

10.4.b Describe the proposed change and associated costs.

This project involves very old buildings, one of which is more than 150 years old, which had not had any material improvements for more than 40 years. In many cases, the available plans did not provide sufficient information on the existing conditions. As a result there were many unforeseen circumstances that necessitate additional expenditure under the DoN in order to accomplish the approved Project scope. The applicant is seeking an additional \$1,242,708 (March 2018 Dollars) above its current inflation adjusted, approved MCE of \$12,637,764 (March 2018 Dollars). This is a 9.83% increase requested in the MCE.

Exhibit A illustrates the current approved MCE by the various DoN cost categories compared to the inflation adjusted MCE as of March 2018, along with the amended MCE requested in this amendment. The majority of the cost increases are in the construction related costs for the renovation portion of the project. There also were minor increases in equipment and furnishing related costs. Other minor changes in cost categories included certain savings projected in post DoN filing costs due to reduction in projected legal and accounting services. There also are some minor cost savings in the new construction as less new construction was required than ultimately projected. The resultant net increase in the MCE requested is \$1,242,708 or an increase in the MCE of 9.8% from the March 2018 inflation adjusted MCE of \$12,637,764 (using inflation factor of 3.24% for the period April, 2015 to March, 2018).

As indicated, the primary areas of cost increase are in the construction contract, architectural costs and other items such as laundry/kitchen, common areas and information systems/security/telephone. The following discussion provides further detailed information relative to the more material circumstances that necessitate this amendment:

- **Additional Asbestos Removal.** The project was amended for asbestos abatement previously; however, more asbestos was found in a later demolition phase that involved flooring that was previously covered and piping. As the construction work involved these areas, it had to be removed. This required additional expenditures of approximately \$80,000.
- **Romex Wiring.** Romex wiring was discovered in the Olander Building and had to be replaced with code compliant wiring. In addition, the prior owner left abandoned wiring in multiple areas that was required to be removed to run new wiring, adding unexpected costs to

the electrical work in the approximate amount of \$20,000.

- Hidden Wall Paper. Wall paper was discovered in the 150 year old Lilly Building. It had been painted over and was not readily detected. It had to be removed and the wall surfaces repaired for painting resulting in additional costs of approximately \$20,000.
- Handrail Replacement. During one inspection it was noted that the handrails in the Jepson building were not code compliant. This resulted in the replacement of the handrails at an additional cost of \$55,000.
- Signage. Additional signage was required to be installed that exceeded the signage specified in the plans filed with Plan Review. This signage will add an additional \$5,000 of cost to the Project.
- Worcester Fire Department Requirements. The Fire Department is requiring an increase in the fire suppression system and removal of a wooden shaft adjacent to the Olander back stairs. In addition, the Worcester Fire Department is requiring certain measures not included in the DPH Plan review, including installing sprinkler heads on the loading dock and installation of additional sprinkler heads throughout the various buildings that comprise the physical plant. The Fire Department also required additional fire alarm measures. This results in additional costs of about \$120,000.
- Wall and Ceiling Penetrations. Certain bathroom and vestibule ceilings had to be replaced as there were voids and penetrations discovered. In addition, once these areas were fully opened, many of the materials were determined to be rotten or rusted. The additional construction work resulted in \$about \$10,000 of unforeseen construction costs. These various more minor or isolated issues result in about \$310,000 of additional expenditures.

Many cost increases are related to how long it is taking to implement this DoN Project. This Project has been in an active planning and implementation process for several years. It involves multiple phases due to the fact that all work is being done in an operating facility. Moreover, as the primary planning for this Project was done in 2014, certain circumstances have changed requiring modifications of the work required. The following examples illustrate the additional work required that was identified since the 2015 amendment to this DoN and are examples of changes that arose related to the amount of time the project is requiring to implement as standards changed or needs became better identified:

- It was determined that an additional emergency generator was required to provide service to the Lilly and Jepson building and power a second elevator. This by itself added an additional \$125,000 in costs.
- Additional improvements, over those contemplated during 2014 planning, were determined to be necessary for both the telephone system and the Facility's information network. Additional phones are required as the standard of care has evolved so that every resident expects their own phone and to have a larger number of phones in more locations for staff use. Also, residents increasingly require internet access. This resulted an expanded wireless system for better coverage and replacement of all switches in the IT environment. These costs are expected to be approximately \$65,000 when all the work is complete.
- The Applicant determined that greater security measures were necessary. Additional security cameras and video surveillance systems were added to protect the residents and employees. In addition, the footprint of the wonder guard system was expanded to additional resident areas. Lastly, a magnetic lock system is to be installed throughout the building increasing the safety and security of the residence. These additional security measures added \$190,000 in additional costs.

The large majority of the requested increase in costs related to inaccuracies and errors in the architectural and engineering plans. These errors resulted from a variety of reasons. The "as-built" plans were not as accurate as they should have been resulting in certain change order to address changed conditions. Also there were certain errors or inaccuracies in the underlying construction drawings that required change orders and higher construction costs than originally expected. These various change orders and errors in the original constructions drawings have built up over time. The current estimate is that these issues have resulted in \$140,000 additional costs.

The remaining cost increases relate to costs that are higher than originally projected when the project was planned. Such increases in labor, material and equipment costs were not clearly foreseeable in 2014 when the material budgeting and projections for the Project were done. As a result of these unforeseen conditions and requirements and related cost increases, the Applicant is requesting approval of this minor amendment.

#### 10.4.c Describe why this is reasonable and within the the approved project.

The increased costs are reasonably necessary in order for the Applicant to implement the Project as approved. Without this amendment approval, the scope of the Project would need to be revised and reduced, which would be difficult at this point in time due to the construction phasing. The Applicant is not proposing any changes in the scope of the Project and desires to implement the full scope of the Project as Previously approved. As a result, it is requesting an increase in its approved MCE as a result of unforeseen required expenditures and general cost increases that it was unable to reasonably project.

The Facility is very old and in need for material repairs and improvements. It has not incurred any major renovation since the Olander Building was constructed in the 1970's. The Jepson building was constructed in 1925 and the Lilly Building in the 1850's. As a result, a significant renovation like this can reasonably expect to encounter numerous unexpected conditions. Additionally, a phased project such as this one in an occupied, operating facility is more expensive as work must be done in small components and appropriate barriers constructed separating the work from the Facility areas in use to provide care and services.

The Applicant continues to maintain high census levels despite the disruption imposed by the construction. It continues to demonstrate the need for the beds through these higher census levels. Moreover, it continues to maintain the financial ability to support the project.

This Project has been in planning for more than 15 years since the original DoN approval in 2003. Various plans have been pursued and multiple difficulties encountered over the years. This remains one of the final hurdles for the Project in order to assure its completion as planned. The Project is now well under construction finally at this time and requires approval of this Amendment in order to fully implement the full approved, Project scope.

## 11. Emergency Application

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

Yes  No

## 12. Total Value for Immaterial or Minor Amendments

Your project application is for an: Immaterial or Minor Amendment

Filing Fee: \$0

No additional information is need for this section.

### 13. Factors

Required Information and supporting documentation consistent with 105 CMR 100.210

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](mailto:DPH.DON@state.ma.us)

- Electronic copy of Staff Summary for Approved DoN
- Electronic copy of Original Decision Letter for Approved DoN
- Electronic Copy of any prior Amendments to the Approved DoN

## 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: 04/02/2018 11:19 am

E-mail submission to  
Determination of Need

**Application Number: -18040211-AM**

**Use this number on all communications regarding this application.**

Community Engagement-Self Assessment form



**Affidavit of Truthfulness and Compliance**



**Massachusetts Department of Public Health  
Determination of Need  
Affidavit of Truthfulness and Compliance  
with Law and Disclosure Form 100.405(B)**

Version: 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](mailto:dph.don@state.ma.us) include all attachments as requested.

Application Number:  Original Application Date:

Applicant Name:

Application Type:

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


Is the Applicant the sole member or sole shareholder 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 sole corporate member or sole shareholder of the Health Facility[ies] that are the subject of this Application;
2. I have read 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 read this application for Determination of Need including all exhibits and attachments, and certify that all of the information contained herein is accurate and true;
5. 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);
6. 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 therein;
7. I have read 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;
8. Pursuant to 105 CMR 100.705(A), I certify that the Applicant has Sufficient Interest in the Site or facility; and
9. 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.

**LLC**

All parties must sign. Add additional names as needed.

Patrick Sheehan, Manager    
 Name: Signature: Date

This document is ready to print:

Date/time Stamp:

**Original DoN Approval**



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Determination of Need Program  
250 Washington Street, Boston, MA 02108-4619  
(617) 624-5002

MITT ROMNEY  
GOVERNOR

KERRY HEALEY  
LIEUTENANT GOVERNOR

RONALD PRESTON  
SECRETARY

CHRISTINE C. FERGUSON  
COMMISSIONER

July 9, 2003

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NOTICE OF DETERMINATION OF NEED  
PROJECT NUMBER 2-1456  
The Lutheran Home of Worcester  
(Substantial Renovation)

J. William D. Gady  
Landa & Altsh, PC  
42 Thomas Patton Drive  
Randolph, MA 02368-3975

Dear Mr. Gady:

This is to notify you that pursuant to M.G.L. c.111, s.25C and the Regulations adopted thereunder, including the provisions of 105 CMR 100.504, I hereby approve with conditions the DoN application filed by The Lutheran Home of Worcester, Inc. for substantial renovation of the existing 123-bed (101 Level II and 22 Level IV beds) The Lutheran Home of Worcester located at 26 Harvard Street in Worcester, Massachusetts. This Notice of Determination of Need incorporates by reference the attached Staff Summary.

The total approved gross square footage (GSF) for this project is 51,660 for substantial renovation of the 123-bed facility.

The recommended maximum capital expenditure approved for the project is \$4,123,991 (January

2003 dollars), item as follows:

<u>Construction Costs:</u>	
Depreciable Land Development Cost	\$ 75,000
Construction Contract (including bonding costs)	3,370,092
Pre-filing Planning and Development Costs	53,000
Other: Computer Software	50,000
Laundry and Kitchen Equipment	25,000
Net Interest Expense During Construction	118,927
Major Movable Equipment	391,140
Total Construction Costs:	\$4,083,159
<u>Financing Costs:</u>	
Cost of Securing Finance	40,832
Total Financing Costs:	40,832
Estimated Total Capital Expenditure	\$4,123,991

In addition to the \$4,123,991 (January 2003 dollars) recommended MCE, the Applicant will be refinancing an existing loan of \$1,876,054 for a total loan of \$6,000,045 through a mortgage from an affiliated entity, Lutheran Social Services of New England, Inc., at an interest rate of 6.0% for a term of 40 years. Lutheran Social Services of New England, Inc. is the sole member of the Applicant. Consistent with the Determination of Need for Nursing Facility Replacement and Renovation Guidelines, no equity contribution is required since it is assumed that the Applicant already has equity in the existing facility.

The estimated incremental operating costs of \$343,616 (January 2003 dollars) for the first full year of operation, FY 2004, are itemized as follows:

Salaries, Wages, Fringe Benefits	\$ 13,586
Purchase of Services	(278,639)
Supplies and Other Expenses	117,459
Depreciation	231,593
Interest	259,648
Pension	(31)
Total Operating Expenses	\$ 343,616

All operating costs are subject to review by the Division of Health Care Finance and Policy and third party payers according to their policies and procedures.

The reasons for this approval in part with conditions are as follows:

1. The Applicant is proposing substantial renovation of the 123-bed (101 Level II and 22 Level IV beds) The Lutheran Home of Worcester located at 26 Harvard Street in Worcester, Massachusetts.
2. The Department found that the health planning process for this project was satisfactory.
3. The Department found that, consistent with the Determination of Need Guidelines for Nursing Facility Replacement and Renovation, (Guidelines), the Applicant has demonstrated need for substantial renovation of the Lutheran Home as discussed under the health care requirements factor of the Staff Summary.
4. The Department found that the project, with adherence to certain conditions, met the operational objectives factor of the Guidelines.

5. The Department found that the project, with adherence to a certain condition, met the standards compliance factor of the Guidelines.
6. The Department found the recommended maximum capital expenditure reasonable compared to similar, previously approved projects.
7. The Department found the recommended incremental operating costs reasonable based on similar, previously approved projects. All operating costs are subject to review by the Division of Health Care Finance and Policy and third party payers according to their policies and procedures.
8. The Department found that the project, with adherence to certain conditions, is financially feasible and within the financial capability of the Applicant.
9. The Department found the project met the relative merit requirements of the Guidelines.
10. The Executive Office of Elder Affairs submitted no comments on the proposed project.
11. The Division of Health Care Finance and Policy submitted comments on the proposed project.
12. The project is exempt from the community health initiatives requirement.

This Determination is effective upon receipt of this Notice. The Determination is subject to the conditions set forth in Determination of Need Regulation 105 CMR 100.551, including Sections 100.551 (C) and (D) which read in part:

(C) ...such determination shall be valid authorization only for the project for which made and only for the total capital expenditure approved.

(D) The determination ...shall be valid authorization for three (3) years. If substantial and continuing progress toward completion is not made during the three (3) year authorization period, the authorization shall expire if not extended by the Department for good cause shown (see 105 CMR 100.756) .... Within the period of authorization, the holder shall make substantial and continuing progress toward completion; however, no construction may begin until the holder has received final plan approval in writing from the Division of Health Care Quality.

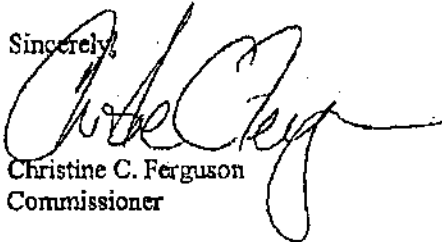
This Determination is subject to the following conditions, in addition to the terms and conditions set forth in 105 CMR 100.551. Failure of the Applicant to comply with the conditions may result in Department sanctions, including possible fines and/or revocation of the DoN.

1. The Applicant shall accept the maximum capital expenditure of \$4,123,991 (January 2003 dollars) as the final cost figure except for those increases allowed pursuant to 105 CMR 100.751 and 752.
2. The approved gross square feet (GSF) for this project shall be 51,660 for the renovation of the 123-bed nursing facility.
3. The Applicant shall, prior to construction, sign a formal affiliation agreement with at least one local acute care hospital and one local home care corporation that addresses provision for respite services.
4. The Applicant shall establish a plan to protect the privacy, health and safety of the residents during the construction process that takes care to provide that they experience as little disruption as possible to their daily routines.

5. Upon implementation of the project, any assets such as land, building improvements, or equipment which are either destroyed or no longer used for patient care, shall not be claimed for reimbursement for publicly aided patients.

6. The Department shall reserve the right to conduct a review of the financial feasibility of the project based on the Division of Health Care Finance and Policy's established rates of reimbursement for Medicaid patients at the time final maximum capital expenditures or any adjustments to the final maximum capital expenditures are submitted to the Determination of Need Program for approval in the event that such expenditures exceed the approved maximum capital expenditure. The Applicant shall submit a revised Factor Six (Financial Schedules) upon request by the Department. The Applicant is advised that an increase in equity may be necessary to assure the financial feasibility of the project.

Sincerely,



Christine C. Ferguson  
Commissioner

CCF/hw

cc: Michael Berolini, Division of Health Care Finance and Policy  
Sherman Lohnes, Division of Health Care Quality  
Donna Allen, Division of Health Care Quality  
Lisa MacDowell, Division of Medical Assistance  
Mary McKenna, Executive Office of Elder Affairs  
Decision Letter File  
Public File  
MIS  
Holly Wright, Program Analyst

## **Original DoN Staff Summary**



STAFF SUMMARY FOR DETERMINATION OF NEED  
BY THE COMMISSIONER OF PUBLIC HEALTH  
(DELEGATED REVIEW PROCESS)  
JULY 2003

APPLICANT: The Lutheran Home of Worcester, Inc.      PROGRAM ANALYST: Holly Wright

LOCATION: 26 Harvard Street      REGION: HSA II  
Worcester, MA 01609

DATE OF APPLICATION: January 2, 2003      PROJECT NUMBER: 2-1456

PROJECT DESCRIPTION: Substantial renovation of the existing 123-bed (101 Level II and 22 Level IV beds) The Lutheran Home of Worcester located at 26 Harvard Street in Worcester, Massachusetts.

ESTIMATED MAXIMUM CAPITAL EXPENDITURE:

Requested: \$4,123,991 (January 2003 dollars)

Recommended: \$4,123,991 (January 2003 dollars)

ESTIMATED FIRST YEAR INCREMENTAL OPERATING COSTS:

Requested: \$343,616 (January 2003 dollars)

Recommended: \$343,616 (January 2003 dollars)

LEGAL STATUS: A regular application for substantial capital expenditure pursuant to M.G.L. c.111, s25C and the Regulations adopted thereunder.

ENVIRONMENTAL STATUS: No environmental notification form or environmental impact report is required to be submitted for this project since it is exempt under 301 Code of Massachusetts Regulations 11.00, promulgated by the Executive Office of Environmental Affairs pursuant to Massachusetts General Laws, Chapter 30, Sections 61-62H. This exemption has the effect of a determination that the project will cause no significant damage to the environment.

COMPARABLE APPLICANTS: None

COMMENTS BY THE DIVISION OF HEALTH CARE FINANCE AND POLICY: DHCFP submitted comments related to the financial feasibility of the proposed project (Attachment 1).

COMMENTS BY EXECUTIVE OFFICE OF ELDER AFFAIRS: None submitted

COMMENTS BY THE DIVISION OF MEDICAL ASSISTANCE: None submitted

TEN TAXPAYER GROUPS: None formed

RECOMMENDATION: Approval with conditions

## I. BACKGROUND AND PROJECT DESCRIPTION

The Lutheran Home of Worcester, Inc. (the Applicant) filed a DoN application for substantial renovation of the existing 123-bed (101 Level II and 22 Level IV beds) The Lutheran Home of Worcester located at 26 Harvard Street in Worcester, Massachusetts. The Applicant owns and operates one other nursing facility in eastern Massachusetts.

## II. STAFF ANALYSIS AND FINDINGS

### A. Health Planning Process

The Applicant consulted with:

Appropriate state agencies /Yes / /No

Area providers /Yes / /No

Staff finds the health planning process for the project satisfactory.

### B. Health Care Requirements

#### Substantial Renovation

Repairs, replacements and improvements include one or more of the following major building components: roof structure; ceiling, wall or floor structures; foundations; plumbing systems; heating, ventilation and air conditioning (HVAC) systems; and electrical systems. /Yes / /No

The repairs, replacements, improvements and major movable equipment include work necessary to meet current State and local standards as well as pertain to elements that are peculiar to residential health care facilities (e.g. nursing stations including call systems, utility and staff work areas and other related components). /Yes / /No

The additions are being built as part of the existing facility which requires substantial rehabilitation as defined above. /Yes / /No

The Applicant reports that the facility is over 30 years old. The proposed substantial renovations will include work to improve plumbing, electrical, heating and hot water systems and to correct physical plant deficiencies including undersized resident rooms and insufficient bathing facilities and storage.

Staff finds that the proposed project demonstrates need for substantial renovation consistent with the Determination of Need Nursing Facility Replacement and Renovation Guidelines (Guidelines).

### C. Operational Objectives

The proposed project meets the requirements of the Guidelines with regard to:

- |  |              |
|--|--------------|
| One-time 12 bed expansion exemption.   | / /Yes /x/No |
| Affiliation agreements with local acute care hospitals and home care corporations. | /x/Yes / /No |
| Proposed size of units will be above the 41-bed limit.                             | /x/Yes / /No |
| Medicare access will be assured through Medicare Certification.                    | /x/Yes / /No |
| Affiliation agreements will provide for respite services.                          | / /Yes /x/No |

Staff finds that, with adherence to certain conditions, the project meets the operational objectives requirements of the Guidelines. These conditions include obtaining a signed formal affiliation agreement with at least one local acute care hospital and at least one local home care corporation that address provision for respite services; establishing a plan to ensure that the privacy, health and safety of residents of the facility are protected during the construction process; and obtaining from the Division of Health Care Quality (DHCO) a waiver for one unit above the 41-bed limit. The Applicant is proposing to establish one 60-bed Level II unit.

### D. Standards Compliance

The proposed project meets the requirements of the Guidelines with regard to the following:

- |   |              |
|---|--------------|
| The Applicant is suitable for licensure.                        | /x/Yes / /No |
| Gross Square Footage (GSF) meets minimum licensure standards.   | /x/Yes / /No |
| Project will comply with Americans with Disabilities Act (ADA). | /x/Yes / /No |

The Applicant is requesting substantial renovation of 51,660 gross square feet (GSF) of space. Staff notes that the proposed 420 GSF/bed for the renovations of the facility meets the Department's standard of GSF/bed.

Staff finds that the project, with adherence to a certain condition, meets the standards compliance requirements of the Guidelines.

## E. Financial Analysis

### 1. Reasonableness of Capital Expenditure

The requested and recommended maximum capital expenditure (MCE) for the proposed project is \$4,123,991 (January 2003 dollars), itemized as follows:

<u>Construction Costs:</u>	
Depreciable Land Development Cost	\$ 75,000
Construction Contract (including bonding costs)	3,370,092
Pre-filing Planning and Development Costs	53,000
Other: Computer Software	50,000
Laundry and Kitchen Equipment	25,000
Net Interest Expense During Construction	118,927
Major Movable Equipment	<u>391,140</u>
Total Construction Costs:	\$4,083,159
<u>Financing Costs:</u>	
Cost of Securing Finance	<u>40,832</u>
Total Financing Costs:	<u>40,832</u>
Estimated Total Capital Expenditure	\$4,123,991

Staff finds the recommended MCE reasonable compared to similar, previously approved projects.

### 2. Reasonableness of Incremental Operating Costs

The requested incremental and recommended operating costs of \$343,616 (January 2003 dollars) are for the project's first full year of operation (FY 2004), itemized below.

Salaries, Wages, Fringe Benefits	\$ 13,586
Purchase of Services	(278,639)
Supplies and Other Expenses	117,459
Depreciation	231,593
Interest	259,648
Pension	<u>(31)</u>
Total Operating Expenses	\$ 343,616

It is recommended that the Applicant contact the Division of Health Care Finance and Policy to determine the estimated operating costs that will be used in the rate determination process. All operating costs are subject to review by the Division of Health Care Finance and Policy and third party payers according to their policies and procedures.

Staff finds the recommended incremental operating costs reasonable when compared with similar, previously approved projects.

#### F. Financial Feasibility and Capability

In addition to the \$4,123,991 (January 2003 dollars) recommended MCE, the applicant will be refinancing an existing loan of \$1,876,054 for a total of \$6,000,045 loan through a mortgage from an affiliated entity, Lutheran Social Services of New England, Inc., the sole corporate member of the Applicant, at an interest rate of 6.0% for a term of 40 years.

Project Debt Service Coverage is at least 1.5      /Yes / /No

Current Ratio is at least 1.4      //Yes /No

Staff calculated a current ratio of .43 from the facility's FY 2002 Health Care Finance and Policy cost report (HCF-1) which is less than the Department's standard of 1.5. The Applicant states that the current ratio is low because of short term loans to subsidiaries, a senior residence and social services program. Further, the age of the physical plant requires significant capital expenditure to ensure that the facility continues to meet licensure requirements. Moreover, Medicaid reimbursement, which covers over 75% of patients, does not adequately cover the capital or operating costs, thereby resulting in an inadequate cash flow to cover short term debt. The Applicant expects the short-term loans to subsidiaries to be paid down and retired, which will result in an increase in its current ratio. The Applicant states that the proposed project will modernize the facility which will enable it to attract private pay and Medicare patients, thus reducing the significant reliance on Medicaid reimbursement. Actually, assuming project approval, the Applicant anticipates a significant increase in the current ratio and projects a debt service ratio of 1.9 in FY 2004, the project's first full year of operation, which exceeds the Department's standard of 1.4. Consistent with the Determination of Need for Nursing Facility Replacement and Renovation Guidelines, no equity contribution is required since it is assumed that the Applicant already has equity in the existing facility.

Staff calculated the project's capital costs per patient day to be approximately \$10.80. As of October 1, 2003, under DHCFP's standard payment system, MassHealth reimbursement for capital costs is \$20.25 per patient day or an estimated \$9.45 above the project's estimated per diem rate.

Staff finds the project, with adherence to a certain condition, to be financially feasible and within the financial capability of the Applicant.

#### G. Relative Merit

The Applicant considered one alternative to the proposed project. Constructing a replacement facility was rejected as too costly and unnecessary since the existing facility was determined to be structurally sound and suitable for renovation.

Staff finds the proposed project meets the relative merit requirements of the Guidelines.

#### H. Community Health Initiatives

At present, nursing facility applications are exempt from this DoN review factor.

### III. COMMENTS BY THE DIVISION OF HEALTH CARE FINANCE AND POLICY

The Division of Health Care Finance and Policy (DHCFP) originally submitted comments in March 2003 on the financial feasibility of the project (Attachment 1). However, DHCFP has recently revised the capital payment limit. As of October 1, 2003, MassHealth reimbursement for capital costs will be limited to \$20.25 per resident day, and any cost projection in excess of that amount will affect the financial feasibility of the project. DHCFP has indicated that it will not conduct a specific review of each project. Therefore, the applicant and the Department must consider the impact of the standard reimbursement on the feasibility of the project. Because of these changes, DHCFP advises that the Department continue notifying successful applicants that approval of capital and operating costs by the Department does not mean that these amounts are reimbursable under MassHealth.

### IV. STAFF RECOMMENDATION

Based upon the above analysis and findings, Staff recommends approval with conditions of the DoN application filed by The Lutheran Home of Worcester, Inc. for substantial renovation of the existing 123-bed (101 Level II and 22 Level IV beds) The Lutheran Home of Worcester located at 26 Harvard Street in Worcester, Massachusetts. The recommended maximum capital expenditure associated with this project is \$4,123,991 (January 2003 dollars). This approval is subject to the conditions listed below. Failure of the Applicant to comply with these conditions may result in Departmental sanctions including possible fines and/or revocation of the DoN.

1. The applicant shall accept the maximum capital expenditure of \$4,123,991 (January 2003 dollars) as the final cost figure except for those increases allowed pursuant to 105 CMR 100.751 and 752.
2. The approved gross square feet (GSF) for this project shall be 51,660 for the substantial renovation of the 123-bed nursing facility.
3. The applicant shall, prior to construction, sign a formal affiliation agreement with at least one local acute care hospital and one local home care corporation that addresses provision for respite services.
4. The applicant shall establish a plan to protect the privacy, health and safety of the residents during the construction process that takes care to provide that they experience as little disruption as possible to their daily routines.
5. Upon implementation of the project, any assets such as land, building improvements, or equipment which are either destroyed or no longer used for patient care, shall not be claimed for reimbursement for publicly aided patients.
6. The Department shall reserve the right to conduct a review of the financial feasibility of the project based on the Division of Health Care Finance and Policy's established rates of reimbursement for Medicaid patients at the time final maximum capital expenditures or any adjustments to the final maximum capital expenditures are submitted to the Determination of Need Program for approval in the event that such expenditures exceed the approved maximum capital expenditure. The Applicant shall submit a revised Factor Six (Financial Schedules) upon request by the Department. The

Applicant is advised that an increase in equity may be necessary to assure the financial feasibility of the project.

The Applicant has agreed to these conditions.

## **DoN Amendments**





# The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

Determination of Need Program

2 Boylston Street, Boston, MA 02116

(617) 753-7340

FAX (617) 753-7349

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

PAUL J. COTE, JR.  
COMMISSIONER

May 5, 2006

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Andrew S. Levine  
Donoghue Barrett and Singal  
One Beacon Street, Suite 1320  
Boston, MA 02108

PREVIOUSLY APPROVED DoN No. 2-1456  
Lutheran Home of Worcester, Inc.  
Request for Significant Changes  
(reissued March 9, 2007)

Dear Mr. Levine:

This is in response to your letter dated October 6, 2005, requesting significant changes to approved but not yet implemented Project No. 2-1456 at Lutheran Home of Worcester, Inc., a 123-bed (101 Level II and 22 Level IV) facility, located at 26 Harvard Street on Worcester. The changes include: a) increasing the gross square footage ("GSF") of the project from 51,660 for substantial renovation of the facility to 66,332 GSF including 8,661 GSF of new construction, 52,633 GSF of renovation and 5,038 GSF for seven (7) DoN-exempt beds; and b) increasing the combined maximum capital expenditure ("MCE") from \$4,123,991 (January 2003 dollars) to \$6,375,716 (October 2005 dollars). The holder has also requested an extension of time to implement its DoN, but action on that request is no longer necessary since, in keeping with the change in the Determination of Need ("DoN") regulations effective January 27, 2006, unimplemented DoNs for the renovation and replacement of nursing homes do not expire.

On July 9, 2003, a Notice of Determination of Need was issued to Lutheran Home of Worcester, Inc. (Lutheran Home) for substantial renovation of the 123-bed facility. The gross square footage approved for the renovation project was 51,660 GSF and the MCE associated with the project was \$4,123,991 (July 2003 dollars).

On October 6, 2005, Lutheran Home filed a request for a significant change to Project No. 2-1456 to increase the MCE from \$4,123,991 (July 2003 dollars) to \$6,375,716 (October 2005 dollars) and to increase the GSF of the project from 51,660 for substantial renovation of the facility to 66,332 GSF.

The requested MCE of \$6,375,716 (October 2005 dollars) is an increase of \$1,374,182 (October 2005 dollars) or 27% over the allowable inflation-adjusted MCE of \$5,001,534

(October 2005 dollars). The cost of the seven DoN-exempt beds, which are to be constructed at the applicant's risk is \$450,000, well below the DoN-expenditure minimum. The significant change request includes construction of an additional 8,661 GSF that previously were not contemplated in the project. New construction to the Oleander Building will consist of two sixteen (16) bed additions to the existing nursing floors at floor levels two and three as well as day room space. The sixteen (16) bed addition will be replacement beds, as existing triples will become doubles. The second floor existing sixty (60) bed unit will become a fifty-four (54) bed unit. The third floor existing forty-one (41) bed unit will become a fifty-four (54) bed unit. Both these fifty-four (54) bed units will be served by a main nursing station with a nursing substation.

Staff has examined whether the requested significant changes to the project were reasonable in light of past decisions, were unforeseen at the time the application was filed and were not reasonably within the control of the holder. The holder has stated that the increases were due to structural issues that could not be foreseen prior to the more detailed planning of the project that made the two sixty (60) bed units less efficient than desired.

Consistent with Council's past decisions, Staff finds that the proposed significant changes to the project could not have been reasonably foreseen at the time the application was filed and were not reasonably within the control of the holder.

Pursuant to 105 CMR 100.753(A) of the Determination of Need Regulations, approval is hereby granted for the significant changes as requested based on the following:

1. The amendment request has been filed pursuant to 105 CMR 100.756 of the DoN Regulations.
2. No comments were submitted objecting to the amendment.

The conditions accompanying this approval are as follows:

1. The total GSF approved for this project shall be 66,332; 8,661 GSF for new construction, 52,633 GSF for renovation and 5,038 GSF for the seven (7) DoN-exempt beds. Construction costs for the seven (7) DoN-exempt beds shall be at the owner's own risk.
2. All conditions attached to the original project shall remain in effect.

The approved inflation-adjusted MCB of \$6,375,716 (October 2005 dollars) is itemized as follows:

	<u>New</u> <u>Construction</u>	<u>Renovation</u>
	\$	\$
Land Costs:		
Site Survey and Soil Investigation	25,000	
Total Land Costs	25,000	
Construction Costs:		
Depreciable Land Development Cost	250,000	75,000
Construction Contract (including bonding contract)	1,367,293	4,010,077
Pre-filing Planning and Development Costs	10,000	40,000
Other: Computer		50,000
Other: Laundry and Kitchen		75,000
Major Movable Equipment	<u>22,260</u>	<u>387,960</u>
Total Construction Costs	1,649,553	4,638,037
Financing Costs:		
Cost of Securing Financing	<u>16,396</u>	<u>46,730</u>
Total Financing Costs	<u>16,396</u>	<u>46,730</u>
Sub-total	\$ 1,690,949	\$ 4,684,767
Estimated Total MCE	\$ 6,375,716	

Sincerely,



Paul J. Cote, Jr.  
Commissioner

PJC/jmg

cc: Michael Grenier, DHCFP  
 Sherman Lohnes, Division of Health Care Quality  
 Jill Mazzola, Division of Health Care Facility  
 Public File  
 Compliance File  
 MIS File



DEVAL L. PATRICK  
GOVERNOR  
TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR  
JUDYANN BIGBY, MD  
SECRETARY  
JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Determination of Need Program  
99 Chauncy Street, 2<sup>nd</sup> Floor, Boston, MA 02111  
(617) 753-7340  
FAX (617) 753-7349

February 8, 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Andrew S. Levins  
Donoghue Barrett and Singal  
One Beacon Street, Suite 1320  
Boston, MA 02108

PREVIOUSLY APPROVED DoN No. 2-1456  
Lutheran Home of Worcester, Inc.  
Request for Significant Changes  
*returned February 8, 2010*

Dear Mr. Levins:

This is in response to your letter dated December 29, 2009, requesting significant changes to approved but not yet implemented Project No. 2-1456 at Lutheran Home of Worcester, Inc., a 123-bed (101 Level II/III and 22 Level IV) facility, located at 26 Harvard Street on Worcester. The changes include: a) increasing the gross square footage ("GSF") of the project for renovation from 52,633 to 61,696 GSF and decreasing the GSF for new construction from 8,661 GSF to 5,381 GSF for a total of 67,077 GSF; b) eliminating the request for seven (7) DoN-exempt beds and the 5,038 GSF for their implementation; c) decreasing by nine (9) the number of licensed Level III beds in the Olander Building; d) remediating multiple latent existing conditions; and e) increasing the combined maximum capital expenditure ("MCE") from \$6,375,716 (October 2005 dollars) to \$9,601,750 (November 2009 dollars).

On July 9, 2003, a Notice of Determination of Need was issued to Lutheran Home of Worcester, Inc. ("Lutheran Home") or ("the Applicant") for substantial renovation of the 123-bed facility. The gross square footage approved for the renovation project was 51,660 GSF and the MCE associated with the project was \$4,123,991 (January 2003 dollars).

On May 5, 2006, the Applicant received DoN approval for a significant change to Project No. 2-1456 to increase the MCE from \$4,123,991 (January 2003 dollars) to \$6,375,716 (October 2005 dollars) and to increase the GSF of the project from 51,660 for substantial renovation of the facility to 66,332 GSF which included 52,633 GSF of renovation, 8,661 GSF of new construction and 5,038 GSF for seven (7) DoN-exempt beds.

The Applicant now requests changes to the approved MCE and the related construction and renovation GSF for the Project. The changes are for two reasons. As a result of various

changes in economic and related factors, the Applicant has determined that the bed capacity requires changes to more effectively implement improvements to the physical facility. In addition, latent existing conditions were discovered as the required architectural plans, surveys and inspections were implemented. The Applicant proposes to eliminate the seven (7) DoN-exempt beds planned and decrease by nine (9) the 41 Level II and the 60 Level III beds leaving a total of 92 beds consisting of 41 Level II and 51 Level III beds. The Level IV beds will remain unchanged. This change will result in more private rooms, the reduction of three-bedded rooms and smaller nursing unit sizes all of which will result in improved ability to care for more acutely ill patients. The Project redesign to achieve these goals results in a decrease in new construction from 8,661 GSF to 5,381 GSF and an increase in renovation from 52,633 to 61,696 GSF for a total of 67,077 GSF.

The applicant has also made plans to address existing conditions which were discovered in the process of developing specific plans for the Project and are in addition to repairs and improvements as discussed in the original DoN. These include replacement of the Olander Building roof, replacement and repair of the Jepson Building roof, waterproofing of the existing balcony of the Olander Building, repairs of the exterior walls of the Olander and the Jepson Buildings, a new emergency generator system, upgrading of the electrical main service distribution system, upgrading of the elevators, replacement of HVAC equipment in addition to that identified in the original DoN, asbestos remediation and replacement of windows in the Olander Building which are causing significant energy loss. Also, the Applicant will make electrical, plumbing and sprinkler system repairs.

The Applicant is requesting approval of a significant change in the approved MCE. The current approved MCE is \$6,375,716 (October 2005 dollars) which adjusted for inflation through November 2009 is \$ 7,583,030 (November 2009 dollars). The applicant requests \$9,601,750 (November 2009 dollars), an increase of 27%, which is primarily a result of correcting the facility's latent existing conditions. The Applicant states that the ability to address its physical plant needs will create the potential to achieve lower overall operating costs.

Consistent with Council's past decisions, Staff finds that the proposed significant changes to the project could not have been reasonably foreseen at the time the application was filed and were not reasonably within the control of the holder.

Pursuant to 105 CMR 100.753(A) of the Determination of Need Regulations, approval is hereby granted for the significant changes as requested based on the following:

1. The amendment request has been filed pursuant to 105 CMR 100.756 of the DoN Regulations.
2. No comments were submitted objecting to the amendment.

The conditions accompanying this approval are as follows:

1. The total GSF approved for this project shall be 67,077: 5,381 GSF for new construction,

and 61,696 GSF for renovation.

2. All conditions attached to the original project shall remain in effect.

The approved inflation-adjusted MCE of \$9,601,750 (November 2009 dollars) is itemized as follows:

	New Construction \$	Renovation \$
<b>Land Costs:</b>		
Site Survey and Soil Improvements	20,050	
<b>Total Land Costs</b>	20,050	
<b>Construction Costs:</b>		
Depreciable Land Development		184,000
Construction Contract (including bonding contract)	1,504,752	6,091,216
Pre and Post Filing Planning and Development	79,951	323,641
Other: Laundry and Kitchen		279,390
Net Interest Expense During Construction	57,201	231,549
Major Movable Equipment		530,000
<b>Total Construction Costs</b>	1,641,904	7,639,796
<b>Financing Costs:</b>		
Costs of Securing Financing	53,601	246,399
<b>Total Financing Costs</b>	53,601	246,399
<b>Total Estimated MCE</b>	\$ 1,715,555	\$ 7,886,195
<b>Total MCE</b>	\$ 9,601,750	

Sincerely,



John Auerbach  
Commissioner

JA:jg

cc: Sherman Lohnes, Division of Health Care Quality  
Jill Mazzola, Division of Health Care Quality  
Michael Grenier, Division of Health Care Finance and Policy  
Decision Letter File  
Compliance File  
Public File



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Bureau of Health Care Safety and Quality  
Determination of Need Program  
99 Chauncy Street, Boston, MA 02111  
617-753-7340

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

LAUREN A. SMITH, MD, MPH  
INTERIM COMMISSIONER

January 10, 2013

Re: Approved DoN Project No. 2-1456  
Lutheran Home of Worcester, Inc.  
(Immaterial change request)

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

Dear Mr. Levine:

This letter will respond to your request on behalf of Worcester Health Group, LLC, d/b/a Lutheran Rehabilitation and Skilled Care Facility ("Lutheran" or "the Holder") and dated December 12, 2012 for an immaterial change to the approved Determination of Need ("DoN") project referenced above.

Your letter noted that the Holder is in the process of completing components of the DoN scope that were begun by the previous owner and seeks to amend the project with the addition of twelve (12) DoN-exempt beds. The Holder has determined that there is an opportunity to add the beds within the approved square footage of the project.

On June 18, 2012, the DoN Program approved a request on behalf of the Holder to transfer the ownership of partially implemented DoN Project #2-1456. Originally approved on July 9, 2003, the DoN for substantial renovation of the existing 123-bed facility located at 26 Harvard Street in Worcester was amended twice resulting in a total of 67,077 approved gross square feet (61,696 renovation and 5,381 new construction) and a maximum capital expenditure of \$9,601,750 (November 2009 dollars). The request to transfer the partially implemented DoN stated that the previous owner of the facility had expended approximately \$3,000,000 and that the Holder intends to complete the remaining phases of the project.

Pursuant to 105 CMR 100.751(D), approval is hereby granted to your request for an immaterial change to Project #2-1456 to permit the addition of twelve (12) DoN-exempt beds subject to the following conditions:

1. The Holder shall obtain a waiver from the Division of Health Care Quality for a change in bed complement that would result in a Level II unit size in excess of 41 beds or a Level III unit size in excess of 60 beds.
2. All conditions attached to the original and amended project approvals shall remain in effect.

Sincerely,



Bernard A. Plovnick  
Director, Determination of Need Program

cc: Patty McCusker, CHIA  
Sherman Lohnes, HCQ  
Paul DiNatale, HCQ  
Daniel Gent, HCQ





The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
99 Chauncy Street, Boston, MA 02111

CHARLES D. BAKER  
Governor

KARYNE E. POLITO  
Lieutenant Governor

MARYLOU SUDDERS  
Secretary

MONICA SHAREL, MD, MPH  
Commissioner

November 25, 2015

VIA EMAIL

Andrew S. Levine, Esq.  
Donoghue, Barrett & Singal, P.C.  
One Beacon Street, Suite 1320  
Boston, MA 02108  
[alevine@dbslawfirm.com](mailto:alevine@dbslawfirm.com)

Re: Worcester Health Group, LLC  
DoN Project No. 2-1456  
(Significant change)

Dear Mr. Levine:

This letter is in response to your letter dated August 7, 2015, and submitted on behalf of Worcester Health Group, LLC d/b/a Lutheran Rehabilitation and Skilled Care Center ("Lutheran" or "Holder") requesting, pursuant to 105 CMR 100.753 and 100.756, a significant change amendment to approved and not completely implemented Determination of Need ("DoN") Project Number 2-1456. As proposed, the Holder seeks approval of an increase in maximum capital expenditure ("MCE") from \$9,601,750 (November 2009 dollars) to \$12,241,150 (August 2015 dollars) and a corresponding increase in total approved gross square footage ("GSF") from 67,077 (5,381 new construction, 61,696 renovation) to 72,177 GSF (1,396 new construction, 70,781 renovation).

Background

On July 9, 2003, the Department approved with conditions DoN Project Number 2-1456 for Lutheran to undertake substantial renovation of the existing 123-bed nursing facility located at 26 Harvard Street in Worcester. The total approved MCE for the project was \$4,123,991 (January 2003 dollars) for a project scope encompassing 51,660 gross square feet ("GSF").

On May 5, 2006, the Department approved a significant change amendment authorizing an increase in the scope to 52,633 GSF of renovations, 8,661 GSF of new construction, and 5,038 GSF for 7 DoN-exempt beds with an associated increase in MCE to \$6,375,716 (October 2005 dollars).

On March 27, 2008, the Department approved a transfer of ownership of the approved but not yet implemented DoN #2-1456 associated with a change in more than 50% of the sole corporate membership of the nursing facility.

On February 8, 2010, a second amendment was approved that eliminated the 7 DoN-exempt beds, decreased the scope of new construction to 5,381 GSF, and increased the scope of renovations to 61,696 GSF. The amendment also provided for a decrease of 9 Level III beds in the Olander Building. The MCE was revised to \$9,601,750 (November 2009 dollars).

On January 10, 2013, the Department approved an immaterial change to permit the addition of 12 DoN-exempt beds to the scope of the project. The approval was subject to a condition that the Holder shall obtain a waiver for a Level II unit in excess of 41 beds.

On September 24, 2014, the Department approved a transfer of site request permitting the Holder to relocate 15 out-of-service Level IV beds formerly operated at the Dana Home of Lexington, Inc. to its 26 Harvard Street, Worcester facility.

Analysis

According to your letter, the current request for significant change is the result of design modifications adopted to address present day facility requirements in a more comprehensive and cost effective manner. In addition, the amendment seeks to incorporate renovation of the Lily Building for Level IV beds, which had previously been planned as a stand-alone project. The requested amendment seeks to make the following changes to the approved project scope:

- Incorporation of 15 out-of-service beds transferred from the former Dana Home of Lexington which, in addition to the 12 DoN exempt beds previously added to the project scope, will result in a total increase of 27 beds (7 Level II, 20 Level IV) to the facility's licensed bed complement.
- Renovation of space in the Lily Building to accommodate 11 Level IV beds;
- Establishment of outpatient rehabilitation services; and,
- More extensive renovation to bathing and toilet facilities, day rooms, and nurse stations

As proposed, the bed complement of the facility will increase from 123 to 150 beds, operating as follows:

Location	Current				Proposed			
	L. II	L. III	L. IV	All	L. II	L. III	L. IV	All
Olander 2nd Floor		60				60		
Olander 3rd Floor	41				48			
Jepson 1st Floor			10				16	
Jepson 2nd Floor			12				15	
Lily 2nd Floor			0				11	
Total Beds	41	60	22	123	48	60	42	150
					(+7)		+20)	(+27)

The following information was submitted in support of the amendment request:

- Over the past four years (2012-2015), occupancy of Level IV beds has ranged between 96%-98% each year. Average occupancy of all existing beds has ranged between 94% and 97% during this same period;

- A request for waiver of the maximum of 41 beds in a Level II unit was approved by the Department on July 18, 2013, subject to compliance with patient care and staffing requirements upon survey; and
- Project funds totaling \$3,240,446 have been expended to date and submitted to the Center for Health Information and Analysis for rate relief.

Pursuant to 105 CMR 100.756(f), approval is hereby granted to your request for a significant change to Project #2-1456 based upon the following findings:

1. The request has been filed pursuant to 105 CMR 100.756 of the DoN regulation.
2. The scope and cost of the requested changes are reasonable and could not reasonably have been foreseen at the time of filing the original DoN application.
3. The proposed construction costs (\$212.79 per GSF for new construction and \$136.01 per GSF for renovation) are reasonable when compared to Marshall & Swift August 2015 estimated construction costs for the Worcester area (\$229.21 per GSF for new construction and \$137.53 for renovation).
4. No comments were submitted by other parties objecting to this significant change request.

The conditions accompanying this approval are as follows:

1. The amended MCE of the project shall be increased to \$12,241,150 (August 2015 dollars), itemized as follows:

	<u>New Construction</u>	<u>Renovation</u>	<u>Total</u>
Land Acquisition	\$0	\$0	\$0
Site Survey and Soil Investigation	5,050	0	5,050
Other Non-Depreciable Land Development	<u>0</u>	<u>286,000</u>	<u>286,000</u>
Total Land Costs	\$5,050	\$286,000	\$291,050
Depreciable Land Development Cost	0		0
Building Acquisition Cost	0		0
Construction Contract	280,000	8,690,000	8,970,000
Fixed Equipment Not In Contract	0	0	0
Architectural Cost	12,000	315,000	327,000
Pre-Filing Planning & Development Costs	20,000	395,000	415,000
Other: Laundry and Kitchen equip, asbestos	0	180,000	180,000
Other: IT and Telephone	0	122,000	122,000
Other: Common and Dining Areas	0	622,000	622,000
Net Interest Expense During Construction	14,000	524,000	538,000
Major Movable Equipment	<u>0</u>	<u>732,000</u>	<u>732,000</u>
Total Construction Costs	\$326,000	\$11,580,000	\$11,906,000
Cost of securing Financing	<u>1,100</u>	<u>43,000</u>	<u>44,100</u>
Total Financing Costs	<u>1,100</u>	<u>43,000</u>	<u>44,100</u>
Total Estimated Maximum Capital Expenditure	\$332,150	\$11,909,000	\$12,241,150

2. The approved square footage of the project shall be 72,177 GSF (1,396 new construction, 70,781 renovation).
3. The outpatient rehabilitation service shall comply with the provisions for outpatient restorative services in the long term facility licensure and constructions standards regulations (105 CMR 150.000 and 105 CMR 151.000).
4. All other conditions attached to the original project shall remain in effect.

Sincerely,



Darrell Villaruz, Interim Manager  
Determination of Need Program

cc: Sherman Lohnes, HCFLC  
Patty McCusker, CHIA  
Kate Mills, HPC  
Daniel Gent, HCFLC  
Ron Pawelski, EOE  
Paul DiNatale, HCFLC

**Exhibit A**  
**MCE Comparison Chart**

## Exhibit A

### MCE Comparison Chart

Category of Expenditure	Amendment New Const (08/15 \$)	Amendment Renovation (08/15 \$)	Inflation Adj. New Const (03/18 \$)	Inflation Adj. Renovation (03/18 \$)	Requested New Const (08/15 \$)	Requested Renovation (08/15 \$)
Land Acquisition	0	0	0	0	0	0
Non-Depreciable Land Dev.	0	0	0	0	0	0
Site Survey and Soil Invest.	5,050	0	5,214	0	0	0
<b>Total Land Costs</b>	<b>5,050</b>	<b>0</b>	<b>5,214</b>	<b>0</b>	<b>0</b>	<b>0</b>
Depreciable Land Dev. Costs	0	286,000	0	295,266	0	286,000
Construction Contract	280,000	8,690,000	289,072	6,972,566	108,926	10,282,062
Fixed Equipment Not in Contract	0	0	0	0	0	0
Architect. & Engineering Costs	12,000	315,000	12,389	325,206	10,000	459,765
Pre-filing Planning and Dev.	combined	combined	combined	combined	combined	combined
Post-filing Planning and Dev.	20,000	395,000	20,624	407,798	10,000	221,496
Other: Laundry and Kitchen Equip., Asbestos	0	180,000	0	185,832	0	201,934
Other: IT and Telephone	0	122,000	0	125,953	0	158,967
Other: Common & Dining areas	0	622,000	0	642,153	0	750,176
Net Int Exp During Const	14,000	524,000	14,454	540,978	5,508	562,686
Major Movable Equipment	0	732,000	0	755,717	0	820,789
<b>Total Construction Costs</b>	<b>326,000</b>	<b>11,866,000</b>	<b>336,563</b>	<b>12,250,459</b>	<b>124,434</b>	<b>13,693,919</b>
Costs of Securing Financing	1,100	43,000	1,136	294,053	559	61,560
<b>Total Financing Costs</b>	<b>1,100</b>	<b>43,000</b>	<b>1,136</b>	<b>294,053</b>	<b>559</b>	<b>61,560</b>
<b>Total Capital Expenditure</b>	<b>332,150</b>	<b>11,909,000</b>	<b>342,913</b>	<b>9,411,386</b>	<b>124,993</b>	<b>13,755,479</b>
<b>TOTAL MCE</b>	<b>\$12,241,150</b>		<b>\$12,637,764</b>		<b>\$13,880,472</b>	