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

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**Memorandum**

**TO:** Interested Parties

**FROM:** Lara Szent-Gyorgyi, Director, Determination of Need Program

**DATE:** November 24, 2020

**RE:** Updated Guidance: **Requesting Determination of Need (DoN) Approval for projects related to COVID-19 during the State of Emergency**

The Massachusetts Department of Public Health (DPH) continues to work with state, federal and local partners on the outbreak of Coronavirus Disease 2019 (COVID-19), caused by the virus SARS-CoV-2, and we continue to appreciate the essential role all Health Care Facilities have in responding to this evolving situation.

Pursuant to an Order issued by the Commissioner of Public Health, a Notice of Determination of Need shall not be required for any person seeking approval for a Substantial Capital Expenditure, Substantial Change in Service, or Transfer of Site necessary to address COVID-19, provided the person seeking approval complies with the guidance.

Prior to commencing a Substantial Capital Expenditure, Substantial Change in Service, or Transfer of Site necessary to address COVID-19, a person seeking approval mustprovide a notification to the Department, signed under the pains and penalties of perjury by either the Chief Executive Officer or board chair, which must include:

1. The identity of the Applicant and/or Health Care Facility;
2. A description of the Proposed Project and why it is needed to address the COVID-19 emergency;
3. The rationale for such service(s) or construction and how without issuance of a Notice of Determination of Need, the public health will be measurably harmed;
4. An attestation that the facility, service or equipment is intended to be used or the management and treatment of the COVID-19 virus; and
5. The location and projected costs of the Proposed Project

The Department has determined that projects to add in-patient psychiatric beds are necessary to manage and treat the COVID-19 virus, and that the public health of the Commonwealth would be immeasurably harmed without these projects. As a result of the COVID-19 pandemic, the Department has determined the following:

* Individuals with pre-existing psychiatric or substance use disorders are likely at higher risk for negative outcomes related to the COVID-19**[[1]](#endnote-2) [[2]](#endnote-3) [[3]](#endnote-4) [[4]](#endnote-5) [[5]](#endnote-6);**
* Emergency Department boarding has increased exponentially for both adult and pediatric patients needing psychiatric care; and
* Acute care hospitals have faced challenges providing care simultaneously for COVID-19 patients, other patients with acute needs, and adult and pediatric psychiatric patients.

A Health Care Facility that is intending to add psychiatric beds at an acute care hospital facility is not required to provide:

* The rationale for such service(s) or construction and how without issuance of a Notice of Determination of Need, the public health will be measurably harmed; or
* An attestation that the facility, service or equipment is intended to be used for the management and treatment of the COVID-19 virus.

After receiving the appropriate notification, DPH will review to determine whether the need for the Proposed Project relates to the state of emergency. If it does, DPH will confirm the person seeking approval may commence the Substantial Capital Expenditure, Substantial Change in Service, or Transfer of Site necessary to address COVID-19. Note that for construction or changes in service that are not temporary in nature and will remain in place after the termination of the State of Emergency, DPH may, in its discretion, direct the facility to apply for a full Notice of Determination of Need, including all applicable Factors, upon termination of the State of Emergency.

Please direct any questions or comments about this memorandum to the Determination of Need Program at dph.don@state.ma.us.

Additionally, please visit DPH’s website that provides up-to-date information on COVID-19 in Massachusetts:  <https://www.mass.gov/2019coronavirus>.

1. [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(20)30462-4/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366%2820%2930462-4/fulltext)​ [↑](#endnote-ref-2)
2. <https://www.npr.org/sections/coronavirus-live-updates/2020/11/11/933964994/after-covid-diagnosis-nearly-1-in-5-are-diagnosed-with-mental-disorder?utm_term=nprnews&utm_source=twitter.com&utm_campaign=npr&utm_medium=social> [↑](#endnote-ref-3)
3. <https://www.kff.org/health-reform/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/> [↑](#endnote-ref-4)
4. <https://www.drugabuse.gov/about-nida/noras-blog/2020/04/covid-19-potential-implications-individuals-substance-use-disorders> [↑](#endnote-ref-5)
5. <https://www.nature.com/articles/s41380-020-00880-7> [↑](#endnote-ref-6)