



Massachusetts Department of Public Health

Final Proposed Revisions to Determination of Need Regulation 105 CMR 100.000

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Determination of Need Program**

Overview of Pre-Comment Changes

- Transfers of Ownership – now subject to factor 2 100.210(A)(2)
- Consolidation
- Additional Standard Condition 100.310
- Only requests for Significant Change or Amendment require a DoN 100.635
- Definition of Filing Date and Submission Date
- Organizational Changes

Consolidated Projects

Initial Draft Regulation

Eliminate the definition of disaggregation and re-frame the effort to prevent

Applicants from dividing up projects to keep them below the minimum cost triggers to avoid DoN.

Summary of Proposed Final Amendment

Regulation as proposed allows for separate consolidated applications for In- and Out-patient expenditures.

Applicants may also separately consolidate Capital Expenditures concerned solely with construction defined as Conservation Project.

Changed so that the Effective Date of the entire Consolidation Requirement is October 1, 2019.

Amendments to Approved Projects 100.635

Initial Draft Regulation

Removes Immaterial and Minor Changes from DPH review and approval.

Significant Changes would still require DPH review and Commissioner or PHC approval.

Summary of Proposed Final Amendment

Changes in spatial allocation and gross square footage will NOT require a DoN unless those changes result in greater than 10% change in the approved capital expenditure.

Determination of Need Factor 4: 100.210(A)(4)

Initial Draft Regulation

Proposed language changes to conform to practice relative to the requirements for the CPA review to be certified.

Summary of Proposed Final Amendment

Language adjusted to align with the standards of practice for CPAs while still providing the valuable information relative to financial feasibility.

DoNs Issued Prior to 2017 Revision

Initial Draft Regulation

The regulation does not specifically speak to this issue;

No intent for the 2017 revision to impact on previously issued DoNs.

Summary of Proposed Final Amendment

A DoN issued prior to the 2017 revision may be implemented as is.

Changes to DoN as approved must go through significant change or Amendment process or, If change is outside scope of approved DoN, Holder must file a new DoN.

Next Steps

Based on a comprehensive review of 105 CMR 100.000, and the incorporation of comments from stakeholders, DPH recommends Public Health Council approval of these amendments for promulgation.

Questions/Further Information

For more information regarding the Determination of Need Program, please find the relevant statutory language and the full current regulation here:

[MGL c. 111, § § 25B through 25G](#)

[MGL c. 111, § § 51 through 53](#)

[MGL c. 111, § 71](#)

<https://www.mass.gov/law-library/105-cmr>

Please direct any questions to:
Determination of Need Program

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