

BY EMAIL TO hfllicenseaction@mass.com
AND REGULAR MAIL

August 28, 2023

Stephen Davis
Director, Division of Health Care Facility Licensure and Certification
Department of Public Health
67 Forest Street
Marlborough, MA 01752

Re: UMass Memorial Health Alliance- Clinton Hospital in Leominster (the “Hospital”) – 90 Day Notice of Closure of Maternity Inpatient Services (“Notice”)

Dear Director Davis:

This firm represents the City of Leominster (the “City”) in connection with the Notice described above. I write to offer the City’s comments on the submission made by the Hospital to you on August 22, 2023 (the “Submission”). This Submission was made after you concluded on behalf of the Department that the services proposed to be closed by the Hospital are essential. The City is grateful for your and the Department’s work on this Notice and we strongly agree with your designation.

The Hospital plans to close its birthing center twenty-six days from today. But it has still offered nothing to satisfy the Department’s requirements of a plan to preserve access and health status in North Worcester County. The Hospital’s Submission utterly fails to comply with the Department’s applicable regulation, 105 CMR 130.122. For instance, the Submission lacks any assurance that a transportation assessment, or a plan, will be completed and submitted to the Department by September 23, 2023, the scheduled date of the closure. In fact, the Hospital refers on several occasions to assessing the needs “post closure”. To any expectant persons who are currently patients at the Hospital with due dates within two weeks of September 23, of which the City is aware of several, the Hospital appears to shrug its shoulders and say, “call 911.” Massachusetts hospitals are better than that.

As stated in your letter to the Hospital, “pursuant to 105 CMR 130.122 (F), the Hospital is required to prepare a plan assuring access to maternity inpatient services for residents of the service area. The plan must be submitted to the Department no later than 15 calendar days after receipt of this letter”. The Hospital has instead submitted a “plan to complete the plan,” without any “assessment of critical infrastructure such as transportation and access to prenatal and postpartum care after the closure”.

The following details our specific concerns over the lack of a plan. But the Department must also confront what to do with a submission that falls so short of the Department’s regulatory requirements.

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Under 105 CMR 130.130, the Department has broad authority to revoke or refuse to renew a hospital's license. *See, e.g.*, 105 CMR 130.130(B) and (E). The Submission, and the Hospital's failure to honor commitments made in its prior service closures, show that it lacks "responsibility and suitability to operate a hospital." If its closure plans proceed, the Hospital will also have violated "any applicable provision of 105 CMR 130.000" by closing without submitting in advance a plan that complies with 105 CMR 130.122. In short, the City believes that the Department has the statutory and regulatory power to suspend or revoke the Hospital's license.

Alternatively, the City believes that the Department can require the Hospital, as a condition of licensure, to withdraw its plans to close the birthing center until the Hospital is able to submit a plan for doing so in compliance with the Department's regulations. The Department could either require the Hospital to withdraw its Notice, and re-start the entire 90-day clock contemplated in clause (4) of M.G.L. ch. 111, sec. 51G, or require the Hospital to delay its planned closing date until a date that is after the Hospital submits a compliant plan to the Department, and affords the Department an opportunity to offer comments and improvements.

In the City's view, any such regulatory action would be appropriate. It is not an exaggeration to say that if the Department cannot stand behind its own regulations on hospital closures, then the Department can expect other hospitals to follow suit and similarly ignore the Department's requirements. The citizens of the Commonwealth would be swept along in a race to the bottom, subject to the whims of unelected boards of purported charities, who can make any decisions they want and take any actions they want without the slightest oversight from state government. That is not what our health care statutes and regulations say. The Department has the power to stand behind its own regulations and demand compliance from a Hospital the Department licenses.

The following points highlight what we feel are the most egregious and most significant shortcomings of the plan submitted by the Hospital:

DPH Plan Requirement: Travel times to alternative service delivery sites, for both peak and non-peak travel times, and an explanation of the source of this information or what these estimates are based on.

- If the Hospital intends to use the travel time data contained in the Submission to the Department as part of its yet-to-be completed assessment, the Hospital's "plan" will endanger both mothers in labor and their babies. The Submission recites purported travel times drawn from Mapquest.com. Submission, at 3-4. Simply on visual inspection, these travel times are suspect. For instance, there is no difference in the travel times between peak and non-peak hours from either Fitchburg or Clinton to *any* of the alternative facilities. Travel time from Leominster to Emerson is only one minute shorter for non-peak travel than for peak travel, even though peak travel involves a trip that is one mile longer. For Athol, Gardner, Westminster, and Sterling, the only trip times that would be longer is the trip to Emerson Hospital.
- The travel time data is based on peak time (8:00am and 5:00pm). Non-peak time simply says 12:00pm. The assessment fails to take into account real time drive times. With respect to the

Leominster/Emerson drive time, residents of North Worcester County know all too well that weekdays from 5:30am-8:30am it can easily take 45 minutes or more to get from Leominster through the Concord Rotary, which sits between Leominster and Emerson Hospital. Daily Facebook posts strive to help their fellow drivers. As just one recent example illustrates, “If you are heading up Route 2 East anytime soon might want to leave now or find another route. Bumper to bumper traffic from Leominster all the way past the 495 exit. It took 17 minutes to get from Devens to the following exit.” (Thursday, August 25, 2023, 7:03am). Yet 7:00am is not even included in the Hospital’s peak hour chart.

- An analysis from MapQuest is the least reliable process to determine travel times. Reality is that MassDOT currently has a Route 2 Corridor study underway in Districts 3 and 4 (Leominster area through Concord area). The draft reports the following problems with Route 2: significant bottlenecks are present including the Concord Rotary and I-190 interchange (Leominster), traffic demand exceeds capacity during many hours of the day, significant crash experience in many locations, and limited current multi-modal accommodation. “Route 2 Corridor Study,” VHRB (March 2023) (See attached page of the draft report). In other words, Route 2 has major problems which are certainly not reflected in an analysis by Mapquest.com.

DPH Plan Requirement: An assessment of transportation needs post discontinuance and a plan for meeting those needs.

- The Department’s regulations require a hospital licensee that desires to close services to submit “an assessment of transportation needs post closure and a plan for meeting those needs.” 105 CMR 130.122(F)(4). The Hospital addresses this requirement by saying it “is developing a plan to address transportation needs for its residents after the closure of the Services.” But the Submission does not actually include a completed plan. Nor does the Submission include the required assessment. Instead, the Hospital describes how it is going about developing its assessment by saying they are “taking a multi-pronged approach to assessing the transportation needs of patients after closure.” Submission, at 4. Simply put, the Hospital does not have a transportation assessment, nor does it have a transportation plan. Both are required.
- Pursuant to non-emergency care, the Hospital says that it “intends to contract” with the Montachusett Regional Transit Authority (MART). The letter does not say when that will be finalized and offers no details as to what services MART will provide. Like other agencies, MART has an annual budget based on current services. There is no indication that MART has the capacity, financially or logistically, to undertake these proposed new services. MART’s services focus on the Leominster-Fitchburg area. Trips to Worcester, Gardner, or Concord will add a significant AND unknown burden to the agency. With 27 days before closure of the maternity ward and no agreement with MART, this proposed service cannot be relied upon to be available on September 23, 2023. This statement does not satisfy the Department’s regulations.

DPH Plan Requirement: Information on the location and service capacity of alternative delivery sites.

- The plan provides a chart relative to service capacity. However, numerous nurses have indicated that the charts do not equal reality.
- “There is no way we can take care of the patients from Leominster and Fitchburg,” said Barbara Labuff, RN, a maternity nurse at UMass Memorial in response to the UMass plan. “We don’t have the infrastructure, resources and staff to handle those patients as we are struggling to provide adequate care to those patients we have now. Closing this service will not only harm the patients of North County, but it will degrade our ability to care for patients here in Worcester. This is a bad and dangerous decision.”
- Tara Corey, a Leominster birthing center nurse, recounted a recent time when they attempted to transfer a high-risk pregnancy to UMass-Worcester, only to be told that they could not take the patient because they had 6 mothers in active labor.
- On September 23, it will be too late to find out area hospitals do not have the capacity to accept North County patients.

DPH Plan Requirement: A protocol that details mechanisms to maintain continuity of care for current patients of the discontinued service.

- The Department’s regulations call for two different “protocols” to be submitted as part of a hospital’s submission under 105 CMR 130.122. Merriam-Webster Dictionary defines a “protocol,” when used in this sense, as “a detailed plan of a scientific or medical experiment, treatment, or procedure.” Available at <https://www.merriam-webster.com/>, accessed on August 26, 2023.¹
- The Hospital’s submission contains nothing like a “detailed plan” for maintaining continuity of care (clause (5) of subsection (F) of 105 CMR 130.122) or for how patients can access services at alternative delivery sites (clause (6) of subsection (F) of 105 CMR 130.122). The letter says, in response 1.5, only that:
 - Patients will continue to receive prenatal care from their current OB-GYN providers;
 - The Hospital is working with these practices;
 - Patients can choose to deliver at UMass Memorial Medical Center or an “alternative delivery site”;²
 - The Hospital has drafted (but not attached to the Submission) a letter to be given to patients by community practices;
 - “The Hospital is developing a transportation plan,” which (as explained above) was supposed to be included in the Submission but wasn’t.

This is not a plan of any type, let alone the requisite “detailed plan for continuity of care.”

¹ 105 CMR 130.122 contains neither a definition of a “plan” or a “protocol.”

² In contrast to this statement, a new entry on the Hospital’s webpage for the birthing center says only that patients can choose to deliver at UMass Memorial Medical Center. <https://www.ummhealth.org/healthalliance-clinton-hospital/services-treatments/birthing-center>, access on August 26, 2023.

- Response 1.6, concerning how to access alternative services, repeats the same information, but does at least name some community practices. It then adds a bit of information intended to show that providers can absorb added volume, and explains that high-risk pregnancies and births are mostly already taken care of in Worcester. Characteristically, the Submission says that clinicians at the Hospital “have been offered the opportunity to apply for privileges at the Medical Center,” but gives no indication when those applications will be approved, or how many will be approved. Again, this information does not constitute a “protocol.”
- The Submission states “they have” engaged Health Resources in Action, Inc. (“HRiA”) to assess the current state of prenatal and postpartum care in the Hospital’s service area and identify the priorities going forward, including barriers to access to care. The Hospital says that HRiA is using existing data from public health sources and the Hospital to conduct a scan of current clinical care services and social services for prenatal and postpartum populations in the hospital’s service area, hoping to identify existing services and opportunities for building onto current services and resources. HRiA is also collecting qualitative information through key informant interviews and focus groups. **This stakeholder process and the resulting assessment will be completed and presented to Hospital leaders and community members in the fall of this year.** Submission, at 4. There is no indication that it will be completed within twenty-six days. How many mothers and children will be in limbo while the Hospital study is just getting underway?

DPH Plan Requirement: Based on the concern expressed regarding the effect the closure of inpatient maternity services will have on local ambulance services with a limited number of ambulances available to dispatch, the required plan must include information on steps taken by the Hospital to reach out to those towns whose ambulance services will experience longer transport times to discuss the impact of the closure, and measures the Hospital will take to mitigate transport times to alternative care sites and the return of ambulances to service in their towns of origin, and how the Hospital will monitor and work to mitigate the impact on local ambulance services upon the service being discontinued.

- The Hospital Plan states “a person should always call 911”. This is not a plan, it simply places the burden on city and town emergency services.
- The City of Leominster recently instituted a paramedic program to provide Advanced Life Support to its residents. In March of 2023, the Hospital requested to meet with the City of Leominster to update them on hospital activity. There was no mention of the planned closure of the maternity ward. The Leominster paramedic program was implemented this year based on the maternity ward being open. According to Leominster fire officials, transporting a woman in labor to an outlying hospital could take as much as 2 hours – leaving the city without paramedic coverage. In addition, Leominster’s paramedics often provide ALS service to neighboring Fitchburg and Lunenburg due to the lack of availability of MedStar ambulances. The Hospital’s plan to rely on MedStar is unreliable at best due to their lack of general availability of their BLS and ALS ambulances.
- In addition to MedStar, the Hospital met with Cataldo Ambulance and Coastal Ambulance. We expected the Hospital Plan to have a contract finalized with one of those ambulance services to provide back-up to local services. Since neither ambulance service is mentioned in the plan,

we can assume they were not able to provide the service. This places the full burden on city and town ambulance services.

- Without a plan for additional ambulance services, the estimated burden to put another ALS ambulance in service in the City of Leominster would be approximately \$1,000,000.00 with an estimated 22 month wait for an additional ambulance. It is imperative that back-up ambulance service for the region be in place prior to the closure of the maternity ward.

For a broad spectrum of subjects required by the Department of Public Health in early August, including transportation, addressing the needs of non-English speaking residents, continuum of care, the answer for the Hospital is simple. They have retained a firm to study the issues as they consistently reference in their response:

“The Hospital has retained Health Resources in Action, Inc. (HRiA) to conduct a focused community needs assessment and gap analysis pertaining to access for women and birthing people in the Hospital’s service area. Working with the Hospital staff, HRiA has begun to engage in the following activities: asset mapping of current clinical care and social service for prenatal and postpartum populations in the Hospital’s service area; key informant interviews with stakeholders working in women’s health and social services; and focus group discussions with community residents and other stakeholder groups such as frontline workers in women’s health or social services. In the next fiscal year, the Hospital will begin its new community needs assessment process and is seeking to expand the Hospital’s Patient and Family Advisory Council (PFAC) and Community Benefits Committee memberships”. Submission, at 14.

The Hospital touts actions that have not yet been taken, and will not be completed by September 23. This is not consistent with the purpose of the submission required by the Department. The Department’s regulations ask a hospital to set forth elements that will be in place when the hospital closes said services, to minimize disruption and potential bad medical outcomes from the loss of medical capacity. A submission that describes what the Hospital hopes to work on sometime in the future cannot satisfy the Department’s regulations.

Throughout the purported protocol, the Hospital repeatedly describes initiatives it says it will undertake in the future, without any assurance that they will be in place on September 23 or at any specific time including:

- For the reasons set forth, above, neither a transportation “assessment:” nor a transportation “plan” will be in place by September 23.
- The Hospital also touts that it will “develop a website page and collateral materials” for “existing public transportation services,” but it offers no deadline or other date by which that resource will be available to the public.
- Nor has the Hospital submitted any “protocols” as called for by the Department.
- In responses 2.2 and 2.4, the Hospital says “additional training will be provided” for out-of-hospital deliveries without specifying whether it will be complete by September 23.
- In response 2.7, the Hospital says that integration of the community practices on which the Hospital relies into the system’s Interpreter Services will be completed “by October 2023.” This does nothing for birthing mothers in the weeks immediately after the closure who do not speak English and does not demonstrate what that system will look like when complete.

- In response 2.9, the Hospital's discussion of the work of Health Resources in Action, Inc. ("HRiA") contains no deadline or other commitment to complete its work.

We cannot risk the lives of infants and their mothers on a "plan to be completed in the future". The fact that the Hospital is just now initiating a study to determine the needs of the community means that the Hospital's plan to close the maternity ward is based on speculation and total lack of information. It is against Department of Public Health regulations and, as the Department recognized in its report earlier this summer,³ puts some of our most vulnerable young lives at risk.

Adverse action against the Hospital's license, or a requirement that the Hospital withdraw its Notice or delay the closure of the birthing center, are all warranted administrative actions if the closure proceeds while failing to comply with the Department's regulations. On behalf of the City of Leominster and the North County region, we request that you reject the Hospital's plan. They have simply not put the protocols in place to close the maternity ward at this time. Thank you for considering these comments by the City. I am available to answer any questions you may have.

Sincerely,

Robert C. Ross

Cc: Mayor Dean Mazzarella
Anne V. Dunne
Andrew Levine, Husch Blackwell
Rebecca Rodman, Husch Blackwell
Katherine Eshghi, UMass Memorial Health Care, Inc.
Mary Beckman, Senior Advisor, EOHHS
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Sandra Wolitzky, Assistant Attorney General, Deputy Division Chief, AGO

³ Mass. Dep't of Health, *Data Brief, An Assessment of Severe Maternal Morbidity in Massachusetts: 2011-2020* (2023).

Route 2 Corridor Study

District 3 and District 4

PREPARED FOR



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MARCH 2023

ES.2 Chapter 2: Existing Conditions

Chapter 2 describes the existing (2019) conditions (pre-pandemic) in the study area, including discussions of demographics, environmental resources, land use and economic development, a safety evaluation, and a summary of the transportation infrastructure and operations within the study area. The following summarize the findings of the Existing Conditions for the corridor:

- › Route 2 is a diverse corridor
 - Eastern study area (District 4) is governed by signalized intersections and the Concord Rotary
 - Western study area (District 3) is primarily comprised of limited access interchanges
- › Significant bottlenecks are present, including:
 - Tracey's Corner (Bedford Road);
 - Concord Rotary; and
 - I-190 Interchange.
- › Traffic demand exceeds capacity during many hours of the day
- › Significant crash experience – many locations exceed statewide averages; HSIP locations include Tracey's Corner (Bedford Road), Taylor Road & Piper Road, and Baker Avenue Extension & Elm Street.
- › Significant and notable sensitive environmental and natural resource areas along length of corridor
- › Limited current multi-modal accommodation
- › Traffic conditions in 2022 have reflected some level of rebound as compared to pre-pandemic conditions (approximately 10% lower daily volume). Pre-pandemic conditions were used conservatively in this evaluation.

ES.3 Chapter 3: Future Conditions (Year 2039)

Chapter 3 assesses the 2039 Future Conditions, including land use forecasts, planned infrastructure improvements, future traffic demand forecasts, and future traffic operations within the study area. Issues, opportunities, and constraints that evolved from a thorough review of data are also discussed. The analysis of existing and future transportation conditions and development of issues, opportunities and constraints in the study area identified areas of the transportation network that require improvements and guided the development of study alternatives. The following summarize the findings of the Future Conditions for the corridor:

- › Normal background growth in traffic volumes expected along the corridor
- › Site-specific development is heavily focused around Devens
- › Outside of this study, other operational and safety improvement projects have been implemented along the corridor

ES.4 Chapter 4: Recommended Improvement Alternatives