

**VIRGINIA DEPARTMENT OF HEALTH**  
**Office of Licensure and Certification**

**Division of Certificate of Public Need**

**Staff Analysis**

November 19, 2019

**COPN Request Number VA-8463**

Virginia Commonwealth University Health System Authority  
Richmond, Virginia

Establish an Outpatient Surgical Hospital with Six Operating Rooms at the VCU Health Neuroscience, Orthopedic and Wellness Center

**Applicant**

The Virginia Commonwealth University Health Systems Authority (“VCUHS”) is a public body corporate and political subdivision of the Commonwealth of Virginia governed by the Virginia Commonwealth University Health System Authority Act of 1996-Title 23, Chapter 6.2, 23-50.16:1 of the Code of Virginia. VCUHS owns and operates the VCU Health Neuroscience, Orthopedic, and Wellness Center (“NOW Center”). The NOW Center is located in the county of Henrico, Planning District (“PD”) 15, Health Planning Region (“HPR”) IV.

**Background**

The NOW Center opened on May 2, 2016 in response by VCUHS to a growing patient demand for more accessible subspecialty outpatient care. The applicant reports that the NOW Center had 57,000 patient encounters in the first full year of operations and 69,000 patient encounters in the second full year of operations. On July 25, 2018, the Commissioner issued COPN No. VA-04613 to VCUHS authorizing the NOW Center to establish MRI and CT services at the NOW Center. These imaging services became operational on July 31, 2019.

**Proposed Project**

There are currently 19 authorized inpatient and outpatient surgery programs in PD 15. Collectively, there are 171 certificate of public need (“COPN”) recognized general-purpose operating rooms (“GPOR”) located in PD 15. Of these 171 operational GPORs in PD 15, 143 of which are located in acute care hospitals, with the remaining 28 located in outpatient surgical hospitals (Table 1). VCUHS proposes establish an outpatient surgical hospital at the NOW Center. The applicant cites an institutional need at the Medical College of Virginia Hospitals (“MCV”), located in the city of Richmond. The applicant asserts that expansion at the existing location is not possible in their current footprint because of the space requirements for modern

GPORs. The total capital cost of this proposed project is estimated to be \$21,672,898 (Table 2) and would be funded entirely through the accumulated reserves of VCUHS.

**Table 1: General Purpose Operating Rooms in PD 15**

Acute Care Hospital	Operating Rooms
Bon Secours Memorial Regional Medical Center	13
Bon Secours Richmond Community Hospital	3
Bon Secours St. Francis Medical Center <sup>1</sup>	13
Bon Secours St. Mary's Hospital	21
Chippenham Hospital	9
Henrico Doctors' Hospital - Forest	21
Henrico Doctor's Hospital - Parham Doctors' Hospital	11
Henrico Doctor's Hospital - Retreat	5
Johnston-Willis Hospital	16
VCU Health System	31
<b>TOTAL</b>	<b>143</b>
Outpatient Surgical Hospital	
American Access Care of Richmond <sup>2</sup>	2
Boulders Ambulatory Surgery Center	3
Cataract and Refractive Surgery Center	1
Skin Surgery Center of Virginia	2
St. Mary's Ambulatory Surgery Center	4
Stony Point Surgery Center	6
Urosurgical Center of Richmond	3
Virginia Eye Institute	5
VSA Vascular Center <sup>3</sup>	2
<b>TOTAL</b>	<b>28</b>
<b>Grand Total</b>	<b>171</b>

Source: VHI and COPN data

**Table 2. Capital and Financing Costs**

Direct Construction	\$14,737,848
Equipment	\$5,470,050
Architectural and Engineering Fees	\$905,000
Other Consultant Fees	\$560,000
<b>TOTAL Capital and Financing Costs</b>	<b>\$21,672,898</b>

Source: COPN Request 8463

### Project Definition

Section 32.1-102.1 of the Code of Virginia defines a project, in part, as “an increase in the total number of...operating rooms...in an existing medical care facility”. A medical care facility is

<sup>1</sup> The Commissioner issued COPN No. VA-04517 to Bon Secours St. Francis Medical Center on July 17, 2016, which authorized the addition of two GPORs. The project is expected to become operational on June 30, 2021.

<sup>2</sup> The Commissioner issued COPN No. VA-04570 to American Access Care of Richmond, LLC on July 10, 2017, which authorized the establishment of an outpatient surgical hospital with two operating rooms dedicated to vascular access surgical services. The project became operational on July 1, 2018.

<sup>3</sup> The Commissioner issued COPN No. VA-04605 to Vascular Surgery Associates of Richmond, PC on July 9, 2018, which authorized the establishment of an outpatient surgical hospital with two operating rooms dedicated to vascular access surgical services. The project is expected to become operational on December 1, 2019.

defined, in part, as “[s]pecialized centers...developed for the provision of outpatient ...surgery... computed tomographic (CT) scanning,...[and] magnetic resonance imaging (MRI).”

**Required Considerations -- § 32.1-102.3, of the Code of Virginia**

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable.

- 1. The extent to which the proposed service or facility will provide or increase access to needed services for residents of the area to be served, and the effects that the proposed service or facility will have on access to needed services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.**

As discussed in greater detail in the application, MCV has an institutional need to expand its general purpose surgical services. The current footprint at MCV makes the addition of modern GPORs impossible. The applicant asserts, as an urban academic medical center, outpatient procedures are frequently bumped or rescheduled to accommodate more urgent and complex procedures, which is burdensome to outpatients who need to take time off from work, arrange childcare, secure transportation, and make other arrangements to be able to return for the rescheduled service. As such, approval of this project would allow MCV to decompress its GPORs by scheduling outpatient surgical procedures at the NOW Center and reduce the incidence of rescheduling outpatient procedures to free up GPOR space at MCV for more complex and urgent cases, which would increase the access to needed services for their patients.

The NOW Center is located approximately 15.4 miles away from the MCV, just outside of Short Pump Town Center in Henrico. Geographically, The NOW Center is located on West Broad Street within close proximity to access to Route 288, Interstate 64, Interstate 295, and Interstate 95. Additionally, public transport to the NOW Center is available by a public bus stop located approximately 0.4 miles from the facility at the Broad and Short Pump Town Center bus stop.

DCOPN is not aware of any geographic, socioeconomic, cultural, or transportation barriers to access to care.

- 2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following:**
  - (i) The level of community support for the project demonstrated by citizens, businesses, and governmental leaders representing the area to be served.**

DCOPN received over 140 letters of support for the proposed project from physicians associated with VCUHS. Collectively, these letters articulated the need to decompress the over utilized GPORs at MCV.

DCOPN received one letter of opposition from the CEO of MEDARVA outpatient surgical hospitals at Stony Point and West Creek. Their seven-page letter focused on several issues that they asserted should necessitate the denial of the project. Firstly, MEDARVA states that the use of institutional need to support this project is inappropriate and inconsistent with the SMFP. In support of this argument, MEDARVA cites an application they submitted, COPN Request No. VA-8146, to establish an outpatient surgical hospital based on institutional need at Stony Point, which was denied by the Commissioner. As discussed in greater detail below, DCOPN agrees that the proposed project cannot be established via institutional need.

Secondly, MEDARVA states that there is unused capacity in PD 15. The representative states that MEDARVA has a facility, West Creek, less than two miles from the NOW Center. West Creek currently operates at 87% of the SMFP threshold. MEDARVA states that VCU could book time at West Creek to reduce the overutilization at MCV. Given that West Creek has two operating rooms with 13% of the SMFP threshold, or 416 hours, in excess capacity, DCOPN finds it highly unlikely that VCUHS booking excess surgeries at West Creek would, on its own, reduce sufficiently the overutilization at MCV's 31 GPORs. Moreover, use of MEDARVA's GPORs by VCU will not provide the same benefit that is offered by the proposed project. The Commissioner, in approving diagnostic imaging at the NOW Center, based his decision largely on the educational benefit of enhancing services at a subspecialty location associated with an academic institution<sup>4</sup>.

Third, MEDARVA states that should the NOW Center operate at anything close to capacity, the six GPORs at the NOW Center would adversely impact the economic viability of West Creek. DCOPN finds that it is unlikely that approval of the project would adversely affect MEDARVA's utilization. Given the degree to which MCV's GPORs are over-utilized, approval of the project is unlikely to pull any patients away from MEDARVA's West Creek location.

Finally, MEDARVA states that the proposed project does not meet community need because the 15-mile distance puts the NOW Center outside of MCV's service area. DCOPN disagrees with this assertion as the data provided by VCUHS regarding their primary service area clearly shows the facility within this area. MEDARVA additionally asserts that there is a lower cost alternative in their West Creek location that would better meet patient need. As discussed above, the available capacity at West Creek is insufficient to reduce meaningfully the burden on MCV's GPORs.

#### Public Hearing

DCOPN conducted the required public hearing on October 29, 2019. A total of ten individuals were in attendance. Nine individuals in attendance indicated that they were in support of the proposed project and one individual indicated that they were opposed to the proposed project. The project was presented by four individuals representing

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<sup>4</sup> COPN No. VA-04613

VCUHS. The sole member of the public to speak, a representative of Stony Point Surgery Center, asserted that the proposed project was inconsistent with the SMFP and should be denied.

**(ii) The availability of reasonable alternatives to the proposed service or facility that would meet the needs of the population in a less costly, more efficient, or more effective manner.**

DCOPN is not aware of any reasonable alternatives to the proposed project. The status quo is not a viable alternative to the proposed project. Under the status quo, MCV would continue to experience volumes in excess of the SMFP, leading to extended hours, overworked staff, and the frequent rescheduling of outpatient procedures to free up GPOR space for more complex and urgent cases. Additionally, as previously discussed, expansion on the MCV campus is not possible because of the lack of available room within their current footprint.

**(iii) Any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6.**

Not applicable. Currently there is no organization in HPR IV designated by the Virginia Department of Health to serve as the regional health-planning agency for the central Virginia region.

**(iv) Any costs and benefits of the project.**

As demonstrated by Table 2, the total capital cost of this proposed project is estimated to be \$21,672,898, and will be funded through VCUHS' accumulated reserves. The costs for the project are reasonable and consistent with previously approved projects to add GPORs to existing medical facilities. For example, COPN No. VA- 04304 issued to Reston Hospital Center, LLC to add 4 operating rooms, which cost approximately \$21,996,175. The NOW Center was originally designed and constructed to accommodate surgical services on the fifth floor, where the project proposes to place them, with space already shelled in to reduce construction costs when surgical services were approved, which has lessened the costs of construction on the current project.

**(v) The financial accessibility of the project to the residents of the area to be served, including indigent residents.**

VCUHS, through its history of providing charity care, has demonstrated established policies and procedures for screening and qualifying patients for charity care. As Table 3 below demonstrates, VCUHS leads the HPR in charity care contributions, providing 6.21%, 0.59 percentage points less than double the regional average, of its gross patient revenue in the form of charity care in 2017. DCOPN is unable to determine the level of charity care provided at the NOW Center specifically, as VHI does not separate charity

care provided at MCV and the NOW Center. Accordingly, should the State Health Commissioner approve the proposed project, the NOW Center is expected to provide a level of charity care for total gross patient revenues that is no less than the equivalent average for charity care contributions in HPR IV.

**Table 3: HPR IV 2017 Charity Care Contributions**

<b>Health Planning Region IV</b>			
<b>2017 Charity Care Contributions at or below 200% of Federal Poverty Level</b>			
<b>Hospital</b>	<b>Gross Patient Revenues</b>	<b>Adjusted Charity Care Contribution</b>	<b>Percent of Gross Patient Revenue:</b>
VCU Health System	\$5,182,375,367	\$322,284,174	6.21%
Southside Community Hospital	\$257,047,631	\$14,429,266	5.61%
Bon Secours Richmond Community Hospital	\$577,616,055	\$30,684,343	5.31%
Bon Secours St. Francis Medical Center	\$973,310,390	\$34,454,112	3.54%
Sentara Halifax Regional Hospital	\$303,494,363	\$9,737,402	3.21%
Southside Regional Medical Center	\$1,900,049,463	\$58,117,097	3.06%
Bon Secours St. Mary's Hospital	\$2,074,522,768	\$61,730,583	2.98%
Bon Secours Memorial Regional Medical Center	\$1,503,933,665	\$42,798,127	2.85%
John Randolph Medical Center	\$723,021,861	\$20,487,222	2.83%
CJW Medical Center	\$6,012,794,978	\$140,056,797	2.33%
Southern Virginia Regional Medical Center	\$205,873,254	\$3,932,396	1.91%
Henrico Doctors' Hospital	\$3,955,699,186	\$72,072,803	1.82%
VCU Community Memorial Hospital	\$249,364,690	\$4,372,749	1.75%
Vibra Hospital of Richmond LLC	\$120,132,610	\$0	0.00%
Cumberland Hospital for Children and Adolescents	\$52,430,436	\$0	0.00%
<b>Total \$ &amp; Mean %</b>	<b>\$24,091,666,717</b>	<b>\$815,157,071</b>	<b>3.4%</b>

Source: 2017 VHI Data

(vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a project.

The applicant cites, in their application, the decision by the Commissioner for COPN No. VA-04588 (UVA Medical Center). DCOPN issued their staff report for COPN Request No. VA-8305, the application that led to COPN No. VA-04588, on November 20, 2017 recommending that the Commissioner deny the project. An Informal Fact Finding Conference ("IFFC") was convened on December 4, 2017. Following the IFFC, the Commissioner issued COPN No. VA-04588 on January 26, 2018 finding that it was "...consistent with the SMFP, or is in harmony or general agreement with the SMFP" and that "[n]o reasonable alternatives to the...project, offering its benefits exist."

The applicant makes the argument that a previous decision by the Commissioner, COPN No. VA-04588, allows for hospitals associated with academic institutions located in the downtown area of a city to establish outpatient surgical services at a new location on the outskirts of the city to decompress the over utilized GPORs at the downtown hospital. As

discussed in greater detail below, DCOPN disagrees with this interpretation of the Commissioners decision.

DCOPN does, however, recognize that the circumstances and facts surrounding the current application and COPN No. VA-04588 are incredibly similar. Both projects involve the need by a hospital associated with an academic institution located in the crowded downtown area of a city to decompress their GPORs. Additionally, both projects propose to solve this issue by beginning to offer surgical services at a location on the outskirts of the city at an outpatient facility.

**3. The extent to which the application is consistent with the State Medical Facilities Plan.**

The State Medical Facilities Plan (SMFP) contains criteria/standards for the addition of general-purpose operating rooms and the addition of cardiac catheterization equipment. They are as follows:

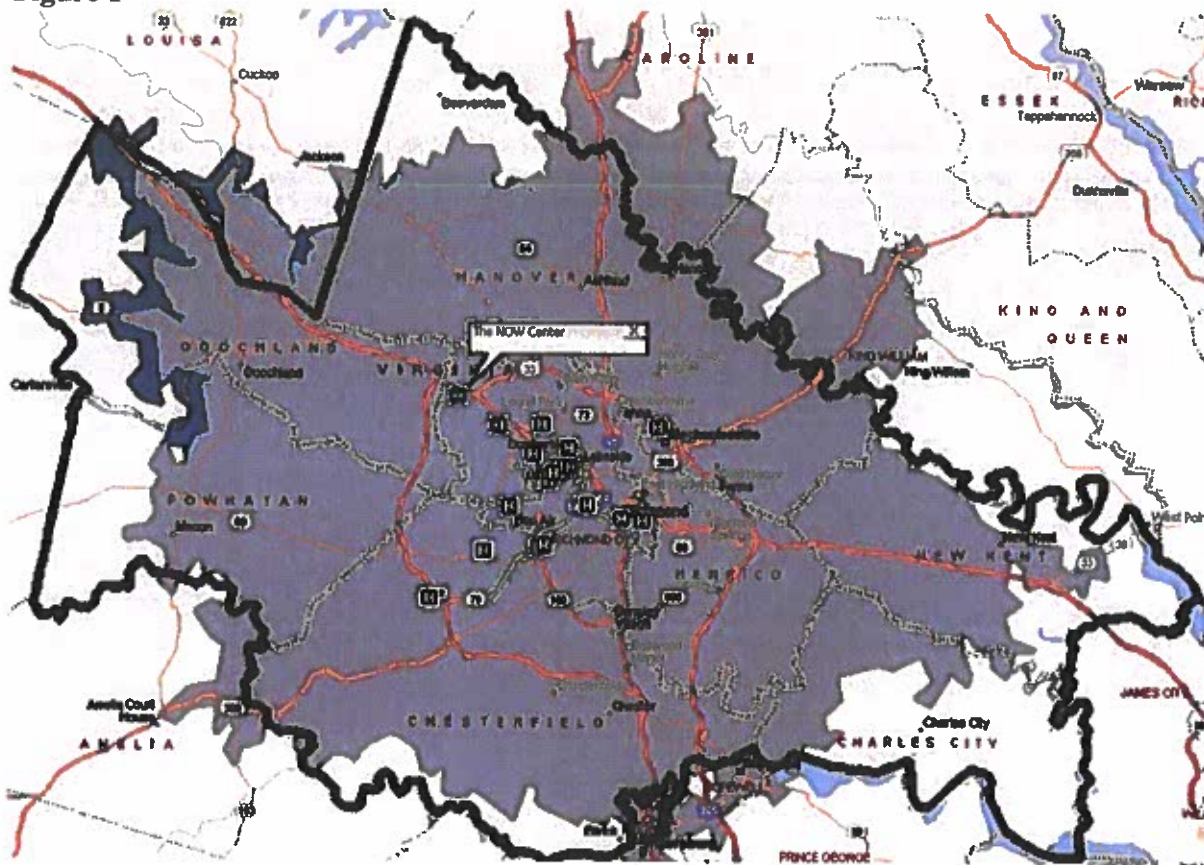
**Part V  
General Surgical Services  
Criteria and Standards for General Surgical Services**

**12VAC5-230-490. Travel Time.**

**Surgical services should be available within 30 minutes driving time one way under normal conditions for 95% of the population of the health planning district using mapping software as determined by the commissioner.**

The black line in Figure 1 identifies the boundary of PD 15. The dark "H" signs in Figure 1 mark the locations of COPN recognized GPORs that are within 30 minutes of portions of PD 15. The grey shading illustrates the area that is within a thirty-minute drive under normal driving conditions of all approved GPOR service providers with the exception of the NOW Center. The light blue shading shows the area that would be solely within a thirty-minute drive under normal driving conditions of the NOW Center. From the shading, it does appear that services are available within thirty-minutes driving time one way under normal conditions of more than 95% of the population of PD 15.

Figure 1



12VAC5-230-500. Need for New Service.

A. The combined number of inpatient and outpatient general purpose surgical operating rooms needed in a health planning district, exclusive of procedure rooms, dedicated cesarean section rooms, operating rooms designated exclusively for cardiac surgery, procedures rooms or VDH-designated trauma services, shall be determined as follows:

$$\text{FOR} = \frac{((\text{ORV}/\text{POP}) \times (\text{PROPOP})) \times \text{AHORV}}{1600}$$

Where:

ORV = the sum of total inpatient and outpatient general purpose operating room visits in the health planning district in the most recent five years for which general purpose operating room utilization data has been reported by VHI; and

POP = the sum of total population in the health planning district as reported by a demographic entity as determined by the commissioner, for the same five-year period as used in determining ORV.



**PROPOP = the projected population of the health planning district five years from the current year as reported by a demographic program as determined by the commissioner.**

**AHORV = the average hours per general purpose operating room visit in the health planning district for the most recent year for which average hours per general purpose operating room visits have been calculated as reported by VHI.**

**FOR = future general purpose operating rooms needed in the health planning district five years from the current year.**

**1600 = available service hours per operating room per year based on 80% utilization of an operating room available 40 hours per week, 50 weeks per year.**

The preceding formula can be used to affirm whether there is currently an excess of GPORs in PD 15. The preceding formula can also determine the overall need for operating rooms within PD 15 five years from the current year, i.e., in the year 2024. The current GPOR inventory for PD 15 is broken down by facility, category, and utilization rate as shown in Table 4.

**Table 4: COPN Authorized GPOR Inventory for PD 15: 2017**

Acute Care Hospital	Operating Rooms	Total Hours	Use Per OR	Utilization Rate
Bon Secours Memorial Regional Medical Center	13	22,064	1,697.2	106.1%
Bon Secours Richmond Community Hospital	3	496	165.3	10.3%
Bon Secours St. Francis Medical Center	11	17,452	1,586.5	99.2%
Bon Secours St. Mary's Hospital	21	37,325	1,777.4	111.1%
Chippenham Hospital	9	12,015	1,335.0	83.4%
Henrico Doctors' Hospital - Forest	21	19,272	917.7	57.4%
Henrico Doctor's Hospital - Parham Doctors' Hospital	11	8,552	777.5	48.6%
Henrico Doctor's Hospital - Retreat	5	4,118	823.6	51.5%
Johnston-Willis Hospital	16	19,515	1,219.7	76.2%
VCU Health System	31	65,540	2,114.2	132.1%
<b>TOTAL and Average</b>	<b>141</b>	<b>206,349</b>	<b>1,463.5</b>	<b>91.5%</b>
<b>Outpatient Surgical Hospital</b>				
Boulders Ambulatory Surgery Center	3	3,595	1,198.3	74.9%
Cataract and Refractive Surgery Center	1	800	800.0	50.0%
Skin Surgery Center of Virginia	2	5,204	2,602.0	162.6%
St. Mary's Ambulatory Surgery Center	4	4,608	1,152.0	72.0%
Stony Point Surgery Center	6	15,292	2,548.7	159.3%
Urosurgical Center of Richmond	3	6,331	2,110.3	131.9%
Virginia Eye Institute	5	21,950	4,390.0	274.4%
<b>TOTAL and Average</b>	<b>24</b>	<b>57,780</b>	<b>2,407.5</b>	<b>150.5%</b>
<b>Grand Total</b>	<b>165</b>	<b>264,129</b>	<b>1,600.8</b>	<b>100.0%</b>

Source: 2017 VHI Data

Based on operating room utilization submitted to and compiled by VHI, for the five year period 2013 through 2017, which is the most recent five-year time span for which relevant data is available, the total numbers of reported inpatient and outpatient operating room visits to hospital-based and freestanding (i.e., to outpatient surgical hospitals/ambulatory surgical centers) are shown in Table 5.

**Table 5: Inpatient & Outpatient GPOR  
 Utilization in PD 15: 2013-2017**

Year	Total Inpatient & Outpatient Operating Room Visits
2013	125,926
2014	137,143
2015	137,134
2016	133,411
2017	136,449
<b>Total</b>	<b>670,063</b>
<b>Average</b>	<b>134,013</b>

Source: 2013-2017 VHI Data and COPN Records

The applicant in their application references several different previous DCOPN reports<sup>5</sup> that alter the numbers on the various years to reach a conclusion that the ORV should be 668,885. However, in review of these calculations associated with these projects, DCOPN notes the calculations are inconsistent between these two projects, with certain facilities being added or omitted incorrectly. As such, DCOPN has updated those numbers that can be shown in its records to have been updated by the facility, but will otherwise rely on the numbers provided by VHI.

Based on actual population counts derived as a result of the 2010 U.S. census, and population projections as compiled by Weldon Cooper, Table 6 presents the U.S. Census' baseline population estimates for Planning District 8 for the five years 2013-2017 as follows:

**Table 6: PD 15 Population:  
 2013-2017 & 2024**

Year	Population
2013	1,030,375
2014	1,040,315
2015	1,050,634
2016	1,061,347
2017	1,072,468
<b>Total</b>	<b>5,255,138</b>
<b>Average</b>	<b>1,051,028</b>
<b>2024</b>	<b>1,140,755</b>

Source: Weldon Cooper

Note: Straight Line Extrapolation

Again, the applicant's calculations provided in the application differ from those used in DCOPN's calculations. This is due to the applicant utilizing the data provided by Weldon Cooper on January 28, 2019. Since the application was submitted, Weldon Cooper has issued updated population projections for Virginia, which DCOPN has used to its calculations.

<sup>5</sup> COPN Request Nos. VA-8282, 8284, and 8362.

Based on the above population estimates from the 2010 U.S. Census, and using a straight-line, average annual increase of 10,894 from 2010 to 2020 and 10,830 from 2020 to 2030, the cumulative total population of PD 15 for the same historical five-year period as referenced above, 2013-2017, was 5,255,138, while the population of PD 15 in the year 2024 (PROPOP – five years from the current year) is projected to be 1,140,755. These figures are necessary for the application of the preceding formula, as follows:

ORV	÷	POP	=	CSUR
Total PD 15 GPOR Visits 2013 to 2017:		PD 15 Historical Population 2013 to 2017:		Calculated GPOR Use Rate 2013 to 2017:
666,277		5,255,138		0.1268

CSUR	*	PROPOP	=	PORV
Calculated GPOR Use Rate 2013 to 2017:		PD 15 Projected Population 2024:		Projected GPOR Visits 2024:
0.1268		1,140,755		144,632

**AHORV is the average hours per operating room visit in the planning district for the most recent year for which average hours per operating room visit has been calculated from information collected by the Virginia Department of Health.**

AHORV = 264,129 total inpatient and outpatient operating room hours (Table 7) reported to VHI for 2017, divided by 136,449 total inpatient and outpatient operating room visits reported to VHI for that same year (Table 5);

Table 7: PD 15 Total OR Room Hours: 2017

Acute Care Hospital	Inpatient OR Hours	Outpatient OR Hours	Total Hours
Bon Secours Memorial Regional Medical Center	8,674	13,390	22,064
Bon Secours Richmond Community Hospital	89	407	496
Bon Secours St. Francis Medical Center	7,280	10,172	17,452
Bon Secours St. Mary's Hospital	18,941	18,384	37,325
Chippenham Hospital	7,317	4,698	12,015
Henrico Doctors' Hospital - Forest	9,353	9,919	19,272
Henrico Doctor's Hospital - Parham Doctors' Hospital	5,058	3,494	8,552
Henrico Doctor's Hospital - Retreat	2,179	1,939	4,118
Johnston-Willis Hospital	9,113	10,402	19,515
VCU Health System	37,276	28,264	65,540
<b>TOTAL</b>	<b>105,280</b>	<b>101,069</b>	<b>206,349</b>
<b>Outpatient Surgical Hospital</b>			
Boulders Ambulatory Surgery Center	0	3,595	3,595
Cataract and Refractive Surgery Center	0	800	800
Skin Surgery Center of Virginia	0	5,204	5,204
St. Mary's Ambulatory Surgery Center	0	4,608	4,608
Stony Point Surgery Center	0	15,292	15,292
Urosurgical Center of Richmond	0	6,331	6,331
Virginia Eye Institute	0	21,950	21,950
<b>TOTAL</b>	<b>0</b>	<b>57,780</b>	<b>57,780</b>
<b>Grand Total</b>	<b>105,280</b>	<b>158,849</b>	<b>264,129</b>

Source: VHI 2017 Data

$$\text{AHORV} = 1.9357$$

$$\text{FOR} = \frac{((\text{ORV}/\text{POP}) \times (\text{PROPOP})) \times \text{AHORV}}{1600}$$

$$\text{FOR} = \frac{0.1275 \times 1,140,755 \times 1.9357}{1600}$$

$$\text{FOR} = 281,559.27 \div 1,600$$

**FOR = 176 General Purpose Operating Rooms Needed In PD 15 in 2024**

Using the above methodologies, the conclusion would be logically reached there will be a need for five additional ORs in the planning district by the year 2024. However, because the applicant is requesting six ORs, approval of the project would result in a surplus of one operating room in the planning district should the project be approved.

As previously discussed within this staff report, DCOPN discussed the similarities between the current application and COPN Request No. VA-8305. In COPN Request No. VA-8305, DCOPN recommended denial of the project, based, in part, on the fact that it created a small surplus within the planning district. The Commissioner determined that “[r]igid adherence to a marginal...surplus...as a barrier to a deserving, modest project that shows great promise for

increased quality in specialized care is not warranted.”<sup>6</sup> Given the near identical fact pattern between these two applications, we view the Commissioner’s decision as instructive in this particular application.

- B. Projects involving the relocation of existing operating rooms within a health planning district may be authorized when it can be reasonably documented that such relocation will: (i) improve the distribution of surgical services within a health planning district ; (ii) result in the provision of the same surgical services at a lower cost to surgical patients in the health planning district; or (iii) optimize the number of operations in the health planning district that are performed on an outpatient basis.**

Not applicable. The applicant is not seeking to relocate existing operating rooms.

**12VAC5-230-510. Staffing.**

**Surgical services should be under the direction or supervision of one or more qualified physicians.**

The applicant has provided assurances that the proposed surgical services will be under the direction of an appropriately qualified physician serving as Medical Director.

**12VAC5-230-80. When Institutional Expansion Needed.**

- A. Notwithstanding any other provisions of this chapter, the commissioner may grant approval for the expansion of services at an existing medical care facility in a health planning district with an excess supply of such services when the proposed expansion can be justified on the basis of a facility's need having exceeded its current service capacity to provide such service or on the geographic remoteness of the facility.**

In addition to the NOW Center, VCUHS operates MCV. In 2017, the most recent year for which DCOPN has data, MCV operated at 132.1% of the SMFP threshold (Table 4). As discussed above, the applicant asserts that expansion at MCV is not possible in their current footprint because of the space requirements for modern GPORs.

While section D below clearly states that this section may not be used to justify a new service, the applicant asserts that a special exemption for academic medical centers needing to decompress high volumes has been made in a recent decision by the Commissioner<sup>7</sup>. DCOPN disagrees with this interpretation. While it is true that the applicant in COPN No. VA-04588 did cite institutional need as part of their application, the decision by the Commissioner does not rely on this single fact. In his analysis of the SMFP, the Adjudication Officer clearly notes that the applicant in COPN No. VA-04588 had a utilization rate of 86.2%<sup>8</sup>. Furthermore, the Adjudication Officer makes no mention of

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<sup>6</sup> COPN No. VA-04588, Adjudication Officer’s Report p.7

<sup>7</sup> COPN No. VA-04588.

<sup>8</sup> *Id.*, Adjudication Officer’s Report p.7.

institutional need in his recommendation<sup>9</sup>. As such, it is unreasonable to assume that the approval of COPN No. VA-04588 is based on this section of the SMFP.

- B. If a facility with an institutional need to expand is part of a health system, the underutilized services at other facilities within the health system should be reallocated, when appropriate, to the facility with the institutional need to expand before additional services are approved for the applicant. However, underutilized services located at a health system's geographically remote facility may be disregarded when determining institutional need for the proposed project.**

There are no GPORs within the health system that should be relocated to the NOW Center. The sole source of existing GPORs within VCUHS is MCV, whose GPORs, as discussed above, are already over utilized. As such, relocation of existing GPORs within VCUHS is not feasible.

- C. This section is not applicable to nursing facilities pursuant to § 32.1-102.3:2 of the Code of Virginia.**

Not applicable. The proposed project does not involve nursing facilities.

- D. Applicants shall not use this section to justify a need to establish new services.**

This section clearly prevents VCUHS from using the utilization of MCV to establish GPORs at the NOW Center under 12VAC5-230-80. As discussed above, the decision by the commissioner to issue COPN No. VA-04588 does not rely on the argument of intuitional need. As such, there is no special exemption that would allow academic medical centers needing to decompress high volumes to establish a new service based on intuitional need.

#### **Required Considerations Continued**

- 4. The extent to which the proposed service or facility fosters institutional competition that benefits the area to be served while improving access to essential health care services for all persons in the area to be served.**

The proposed project would somewhat foster institutional competition that benefits the area to be served while improving access to essential health care services for all persons in the area to be served. As discussed above, the NOW Center is a subspecialty outpatient facility specializing in neuroscience and musculoskeletal services, so it will not provide direct competition to outpatient services in the area, such as West Creek. With that said, as the NOW Center has not previously offered surgical services, the proposed project would provide residents of western PD 15 with an alternative means of receiving subspecialty surgical services.

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<sup>9</sup> *Id.*, pp. 10-11

**5. The relationship of the project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities.**

As discussed extensively within the staff report, the applicant is part of the VCUHS, which currently provides a variety of surgical services at MCV. The GPORs at MCV are currently significantly over utilized. Approval of the project would lessen the burden of MCV's GPORs by allowing doctors at MCV to schedule outpatient procedures at the NOW Center.

MEDARVA, in their letter of opposition, alleges that approval of the project will have a detrimental effect on their utilization. As discussed in greater detail above, DCOPN does not accept this assertion. The extent to which VCU's downtown operating rooms are over-utilized clearly shows that they could easily schedule procedures at the NOW Center to reach capacity at the proposed GPORs without lessening the utilization at West Creek.

**6. The feasibility of the project, including the financial benefits of the project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital.**

As demonstrated by Table 2, the total capital cost of this proposed project is estimated to be \$21,672,898, and will be funded through VCUHS' accumulated reserves. The costs for the project are reasonable and consistent with previously approved projects to add GPORs to existing medical facilities. For example, COPN No. VA- 04304 issued to Reston Hospital Center, LLC to add 4 Operating Rooms, which cost approximately \$21,996,175. The proposed project would be beneficial, as it would allow MCV to decompress its GPORs by scheduling outpatient neuroscience and musculoskeletal surgeries at the NOW Center. Moreover, the scheduling of outpatient neuroscience and musculoskeletal surgeries at the NOW Center would reduce the incidence of rescheduling of outpatient procedures to free up GPOR space at MCV for more complex and urgent cases.

**7. The extent to which the project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) The introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services. (ii) The potential for provision of services on an outpatient basis. (iii) Any cooperative efforts to meet regional health care needs. (iv) At the discretion of the Commissioner, any other factors as may be appropriate.**

The proposed project would provide improvements on the delivery of health services by increasing the provision of services on an outpatient basis. As discussed above, more complex and urgent cases have occasionally led to the rescheduling of outpatient procedures at MCV. Should the proposed project be approved, outpatient neuroscience and musculoskeletal procedures would be scheduled at the NOW Center, which would eliminate this issue and increase patient access to reliable neuroscience and musculoskeletal outpatient surgical services.

8. **In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served. (i) The unique research, training, and clinical mission of the teaching hospital or medical school. (ii) Any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.**

VCUHS owns and operates MCV, the teaching hospital associated with Virginia Commonwealth University. The applicant asserts that approval of the project would have great benefit to the training of residents. At the public hearing, one of the speakers for the applicant, a resident at the hospital, highlighted the benefits of training at an outpatient surgical hospital as well as the currently used inpatient hospital at MCV. DCOPN notes that VCUHS has an outpatient surgical hospital in their downtown location, the Ambulatory Care Center. The member of the public who spoke in opposition to the project raised the point that this opportunity already exists with Stony Point Surgical Center, which has a teaching affiliation with VCUHS. The Commissioner, in approving diagnostic imaging services at the NOW Center<sup>10</sup>, based his decision, in part, on the fact that, as a center dedicated to neuroscience and musculoskeletal care, enhancing services at the facility would potentially benefit medical education and training.

#### **DCOPN Findings and Conclusions**

As previously discussed, this project is remarkably similar to a previous application submitted to DCOPN, COPN Request No. VA-8305. Both projects involve the need by a hospital associated with an academic institution located in the crowded downtown area of a city to decompress their GPORs. Additionally, both projects propose to solve this issue by beginning to offer surgical services at a location on the outskirts of the city at an outpatient facility. Finally, DCOPN found that both projects would result in a small surplus of GPORs within the planning district. In COPN Request No. VA-8305, the Commissioner approved the project, stating that “[r]igid adherence to a marginal...surplus...as a barrier to a deserving, modest project that shows great promise for increased quality in specialized care is not warranted” and that the proposed project was “consistent with the SMFP, or is in harmony or general agreement with the SMFP.” While DCOPN does not generally adopt this viewpoint generally, given the near identical fact pattern between these two applications, it must view the Commissioner’s decision as instructive in this particular application.

Furthermore, DCOPN finds that the proposed project is more advantageous than the status quo. Under the status quo, MCV would continue to experience volumes in excess of the SMPF, leading to extended hours, overworked staff, and the frequent rescheduling of outpatient procedures to free up GPOR space for more complex and urgent cases. Additionally, as previously discussed, expansion on the MCV campus is not possible because of the lack of available room within their current footprint.

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<sup>10</sup> COPN No. VA-04613



Finally, DCOPN finds that the total capital costs of the proposed project are \$21,672,898 (Table 2), which would be funded using VCUHS' accumulated reserves, are reasonable and consistent with previously approved projects to add GPORs to existing medical facilities. For example, COPN No. VA- 04304 issued to Reston Hospital Center, LLC to add 4 Operating Rooms, which cost approximately \$21,996,175.

### **DCOPN Staff Recommendation**

The Division of Certificate of Public Need recommends **conditional approval** of the proposed project establish an outpatient surgical hospital with six operating rooms at the NOW Center:

1. Based on a prior decision by the Commissioner with a nearly identical fact pattern to the current application, the proposed project is consistent with the SMFP, or is in harmony or general agreement with the SMFP.
2. The proposed project is more advantageous than the status quo.
3. The capital costs are reasonable and consistent with the projects of this type.

### **Recommended Condition**

Virginia Commonwealth University Health System Authority will provide surgical services to all persons in need of this service, regardless of their ability to pay, and will provide as charity care to all indigent persons free services or rate reductions in services and facilitate the development and operation of primary care services to medically underserved persons in an aggregate amount equal to at least 4.3% of Virginia Commonwealth University Health System Authority's total patient services revenue derived from surgical services provided at the VCU Health Neuroscience, Orthopedic and Wellness Center as valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. Compliance with this condition will be documented to the Division of Certificate of Public Need annually by providing audited or otherwise appropriately certified financial statements documenting compliance with the preceding requirement. Virginia Commonwealth University Health System Authority will accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. is available from Virginia Health Information. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.