



# COMMONWEALTH of VIRGINIA

*Department of Health*

PO BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

M. Norman Oliver, MD, MA  
State Health Commissioner

December 16, 2019

Mr. Peter Mellette  
Mellette, P.C.  
428 McLaws Circle, Suite 200  
Williamsburg, Virginia 23185

RE: **COPN No. VA-04687**

**Rockingham Eye Surgery Center, LLC, Harrisonburg, Virginia  
Establish an Ophthalmic Ambulatory Surgery Center with One Operating Room**

Dear Mr. Mellette:

In accordance with Chapter 4, Article 1.1 of Title 32.1 of the Code of Virginia of 1950 (the Code), as amended, I reviewed the application and all supporting documents submitted by Rockingham Eye Surgery Center, LLC to establish an ophthalmic ambulatory surgery center with one operating room.

As required by Section 32.1-102.3B of the Code, I have considered all factors that must be taken into account in a determination of public need, and I have concluded that **conditional approval** of the request is warranted based on the following findings:

1. The proposed project is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan and the eight Required Considerations of the Code of Virginia.
2. As the first ophthalmic ambulatory surgical center in PD 6, approval of the project will offer a lower cost option for residents seeking ophthalmic surgery.
3. The project will increase access to retinal surgery for residents of PD 6.
4. The project is more favorable than the alternative of the status quo.

This certificate is valid for the period December 16, 2019 through December 15, 2020. The total authorized capital cost of the project is \$2,629,413.

Mr. Peter Mellette  
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Please file two copies of the application for a certificate extension with the Department no later than 30 days before the expiration date of the certificate. Part VIII of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations identifies the filing requirements and review procedure for certificate extension requests.

Sincerely,

A handwritten signature in blue ink that reads "M. Norman Oliver MD". The signature is fluid and cursive, with the "MD" at the end being more distinct.

M. Norman Oliver, MD, MA  
State Health Commissioner

Enclosures

cc: Allyson Tysinger, Senior Assistant Attorney General, Commonwealth of Virginia  
Erik Bodin, Director, Division of Certificate of Public Need  
Deborah K. Waite, Operations Manager, Virginia Health Information  
Laura P. Kornegay, MD, MPH, District Director, Central Shenandoah Health District

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF HEALTH**  
**MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED**

**THIS CERTIFIES THAT Rockingham Eye Surgery Center, LLC is authorized to initiate the proposal as described below.**

**NAME OF FACILITY: Rockingham Eye Surgery Center**

**LOCATION: Unaddressed site (Lots 19, 20, and a portion of Lot 17) in the northwest quadrant of the intersection of Spring Port Drive and Rock Port Drive, in the Stoneleigh/Stone Port I development area on the south side of Harrisonburg**

**OWNERSHIP AND CONTROL: Rockingham Eye Surgery Center, LLC**

**SCOPE OF PROJECT: Establish an ophthalmic ambulatory surgery center with one operating room. The authorized Capital costs associated with this project total \$2,629,413. The project is expected to be completed by January 1, 2022. This certificate is issued with the condition that appears on its reverse.**



Pursuant to Chapter 4, Article 1-1 of Title 32.1, Sections 32.1-102.1 through 32.1-102.12 of the Code of Virginia (1950), as amended and the policies and procedures promulgated thereunder, this Medical Care Facilities Certificate of Public Need is issued contingent upon substantial and continuing progress towards implementation of the proposal within twelve (12) months from the date of issuance. A progress report shall be submitted to the State Health Commissioner within twelve (12) months from the date of issuance along with adequate assurance of completion within a reasonable time period. The Commissioner reserves the right not to renew this Certificate in the event the applicant fails to fulfill these conditions. This Certificate is non-transferable and is limited to the location, ownership, control and scope of the project shown herein.

**Certificate Number: VA-04687**

**Date of Issuance: December 16, 2019**

**Expiration Date: December 15, 2020**

  
**M. Norman Oliver, MD, MA, State Health Commissioner**

Rockingham Eye Surgery Center, LLC 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 4.4% of Rockingham Eye Surgery Center, LLC's total patient services revenue derived from surgical services provided at Rockingham Eye Surgery 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. Rockingham Eye Surgery Center, LLC 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.

# **VIRGINIA DEPARTMENT OF HEALTH**

## **Office of Licensure and Certification**

### **Division of Certificate of Public Need**

#### **Staff Analysis**

November 19, 2019

#### **COPN Request No. VA-8464**

Rockingham Eye Surgery Center, LLC

Harrisonburg, Virginia

Establish an Ophthalmic Ambulatory Surgery Center with One Operating Room

#### **Applicant**

Rockingham Eye Surgery Center, LLC (RESC) is a Virginia Limited Liability Corporation formed on June 14, 2019. RESC has three equal owners, Dr. Kenlyn Miller, Dr. Andrew Seefried, and Dr. Christopher Eller. All three owners are ophthalmologists in Rockingham Eye Physicians and Associates, PLC, which would share the building with RESC should this application be approved. RESC would be located in Planning District (PD) 6, Health Planning Region (HPR) I.

#### **Background**

Currently, ophthalmic surgery performed by the members of Rockingham Eye Physicians and Associates, PLC occurs at Sentara RMH Medical Center (RMH). RMH has twelve general purpose operating rooms (GPOR). Ophthalmic procedures are performed at RMH three days per week in two exclusive use procedure rooms.

#### **Proposed Project**

There are currently four authorized surgery programs in PD 6. Collectively, there are twenty-seven certificate of public need (COPN) recognized general-purpose operating rooms (GPOR) located in PD 6. As of 2017, there were twenty-five operational GPORs in PD 6, all of which were located in acute care hospitals (Table 1). RESC proposes to establish an ambulatory surgery center with one limited use operating room for ophthalmic surgery. The total capital cost of this proposed project is estimated to be \$3,138,909 (Table 2). The proposed project would be funded with \$842,503 provided by owner members and commercial loans.

**Table 1: General Purpose Operating Rooms in PD 6**

Acute Care Hospital	Operating Rooms
Augusta Health	11
Bath County Community Hospital	1
Carilion Stonewall Jackson Hospital	3
Sentara RMH Medical Center <sup>1</sup>	12
<b>TOTAL</b>	<b>27</b>

Source: VHI

**Table 2. Capital and Financing Costs**

Equipment	\$1,162,010
Site Acquisition Costs	\$1,337,265
Other Consultant Fees	\$90,000
Conventional Loan Financing	\$40,138
Conventional Loan Financing Interest	\$509,496
<b>TOTAL Capital and Financing Costs</b>	<b>\$3,138,909</b>

Source: COPN Request 8464

### **Project Definition**

Section 32.1-102.1 of the Code of Virginia defines a project, in part, as the “[e]stablishment of a medical care facility”. A medical care facility is defined, in part, as “Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery...”

### **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.**

RESC is seeking to establish an outpatient surgical hospital with one limited use operating room for ophthalmic surgery. RESC would be located in the metro area of Harrisonburg, in central Rockingham County, just south of the boundary of the City of Harrisonburg. As mentioned briefly above, there are currently no ambulatory surgery centers located in PD 6. As such, approval of the project would increase geographic access to these ophthalmic services to lower income members of the community.

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<sup>1</sup> The Commissioner issued COPN No. VA-04607 to Sentra RMH Medical Center on July 9, 2018, which authorized the addition of two GPORs. The project became operational on July 1, 2019.

Geographically, the proposed project is located just south of the city limits of the city of Harrisonburg at the intersection of Spring Port Drive and Rock Port Drive. Public transportation via Harrisonburg Transit's number six bus line, which has four stops within 1.5 miles of the proposed location. No closer stops are available via public transportation. The applicant notes, however, that patients that receive ophthalmic surgery generally should not be expected to utilize public transportation due to the need for physical assistance from a companion following their surgery.

DCOPN is not aware of any geographic or cultural 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 seventeen letters of support for the proposed project. Collectively, these letters articulated the benefits of ambulatory surgery centers, such as the relatively lower costs compared to hospital-based procedures. Additionally, these letters articulated the lack of outpatient surgery services within PD 6.

Additionally, DCOPN received one letter of opposition to the proposed project from RMH. In this letter, RMH articulated the lack of need for additional operating rooms in PD 6. RMH additionally asserted that ophthalmic procedures, with the exception of retinal surgery, are better suited to a procedure room than an operating room. For those retinal cases, RMH stated that they now have capacity to handle these cases with their addition of two new GPORs. Finally, RMH asserted that approval of the project would have a negative impact on the hospital by removing the ophthalmic cases currently performed at RMH.

The applicant submitted a letter of response to Sentara's letter of opposition. In it, the applicant asserts that the surplus of GPORs is not relevant as the proposed project is a limited use operating room used solely for ophthalmic surgery. The applicant further states that past behavior towards the surgeons associated with the applicant leads them to question the assertions regarding the use of GPORs at RMH. Lastly, the applicant asserts that RMH will not be harmed by the surgeons at RESC no longer performing surgeries at RMH because of the relatively low revenue that is generated by ophthalmic surgery.

Finally, DCOPN received a letter from Augusta Health. In this letter, Augusta Health asserted that their GPORs are equipped and staffed for the provision of ophthalmic surgery, including retinal surgery. Augusta Health states that they do not oppose the proposed project provided that the location does not change and that the operating room at the proposed location remains limited to solely ophthalmic surgery.



Public Hearing

DCOPN conducted the required public hearing on November 1, 2019. A total of sixty-eight individuals were in attendance. Sixty-four individuals in attendance indicated that they were in support of the proposed project and three individuals indicated that they were opposed to the proposed project. The project was presented by one individual representing RESC. Eight individuals of the public spoke in support of the proposed project. Collectively, they asserted the need for ambulatory surgery centers and discussed the difficulties the physicians experienced with the procedure rooms at RMH. No individuals spoke in opposition of the proposed project.

**(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.**

RMH argues that the status quo is a viable alternative to the proposed project. In their letter of opposition, RMH asserts that the majority of the procedures that would be performed at RESC would be better suited to the exclusive use procedure rooms at RMH. For those surgeries that would not be suitable to RMH's procedure rooms, specifically retinal surgery, RMH states that the physicians at RESC would have access to their two new operating rooms to perform these surgeries.

RMH's letter neglects to address several issues with the status quo that would be solved by the current project. Firstly, at the public hearing, Dr. Daryl Kurz, the doctor that would perform retinal surgery at RESC spoke on behalf on the project. In his public comment, the doctor explained issues with RMH that led to him ceasing to perform retinal surgery there. The doctor stated that he currently performs retinal surgeries in Charlottesville, but would like to perform them at RESC, should the project be approved. DCOPN notes that Augusta Health, located in a little under 30 miles from RMH in PD 6, currently offers retinal surgery. As both locations are outside of the 30 minute driving time one way contemplated in the SMFP, approval of the project would bring an important service back to the area. Secondly, as noted above and discussed in greater detail below, there are currently no ophthalmic ambulatory surgery centers located in PD 6. Approval of this project would provide residents of the area with a lower cost option for ophthalmic surgery and introduce beneficial competition in the area. Based on these factors, DCOPN concludes that the proposed project is more advantageous than the status quo.

**(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 I designated by the Virginia Department of Health to serve as the regional health-planning agency for the northwestern 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 \$3,138,909, and would be funded with \$842,503 provided by owner members and commercial loans. The costs for the project are considerable, but consistent with previously approved projects to establish outpatient surgical services. For example, COPN Request No. VA-04576 issued to Center for Visual Surgical Excellence, LLC to establish an outpatient surgical hospital with one OR, which cost approximately \$3,730,482. As discussed above, approval of the project would return retinal surgery to the area and eliminate the current long drive between the Harrisonburg area and either Charlottesville or Fishersville for residents that need retinal surgery. Additionally, approval of the project would introduce the first ophthalmic ambulatory surgery center to residents of PD 6, which would offer a lower price option and increase beneficial competition in the area.

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

As a new facility, the applicant has no history of established policies or procedures for screening and qualifying patients for charity care. The applicant asserts in their application that they have pledged a charitable effort of 4%, which is below the regional average for charity care. Accordingly, should the State Health Commissioner approve the proposed project, RESC would be 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 I.

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

<b>Health Planning Region I</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>
Culpeper Regional Hospital	\$326,754,520	\$19,522,658	5.97%
University of Virginia Medical Center	\$5,141,653,217	\$304,197,370	5.92%
Carilion Stonewall Jackson Hospital	\$96,358,635	\$5,473,867	5.68%
Sentara RMH Medical Center	\$1,014,051,000	\$49,773,121	4.91%
UVA Transitional Care Hospital	\$62,369,925	\$3,005,245	4.82%
Warren Memorial Hospital	\$144,246,474	\$6,405,166	4.44%
Page Memorial Hospital	\$58,283,437	\$2,445,865	4.20%
Shenandoah Memorial Hospital	\$128,682,411	\$4,994,173	3.88%
Augusta Medical Center	\$924,833,705	\$34,150,068	3.69%
Fauquier Hospital	\$422,733,260	\$12,746,593	3.02%
Bath Community Hospital	\$20,726,757	\$621,872	3.00%
Martha Jefferson Hospital	\$725,138,396	\$21,125,916	2.91%
Winchester Medical Center	\$1,514,273,733	\$38,163,061	2.52%
Mary Washington Hospital	\$1,359,103,041	\$34,065,384	2.51%
Stafford Hospital Center	\$294,330,711	\$6,878,052	2.34%
Spotsylvania Regional Medical Center	\$462,884,953	\$10,301,963	2.23%
<b>Total \$ &amp; Mean %</b>	<b>\$12,696,424,175</b>	<b>\$553,870,374</b>	<b>4.4%</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.

DCOPN did not identify any other discretionary factors, not discussed elsewhere in this staff analysis report, to bring to the attention of the Commissioner as may be relevant to determining a public need for any of the proposed projects.

### **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:

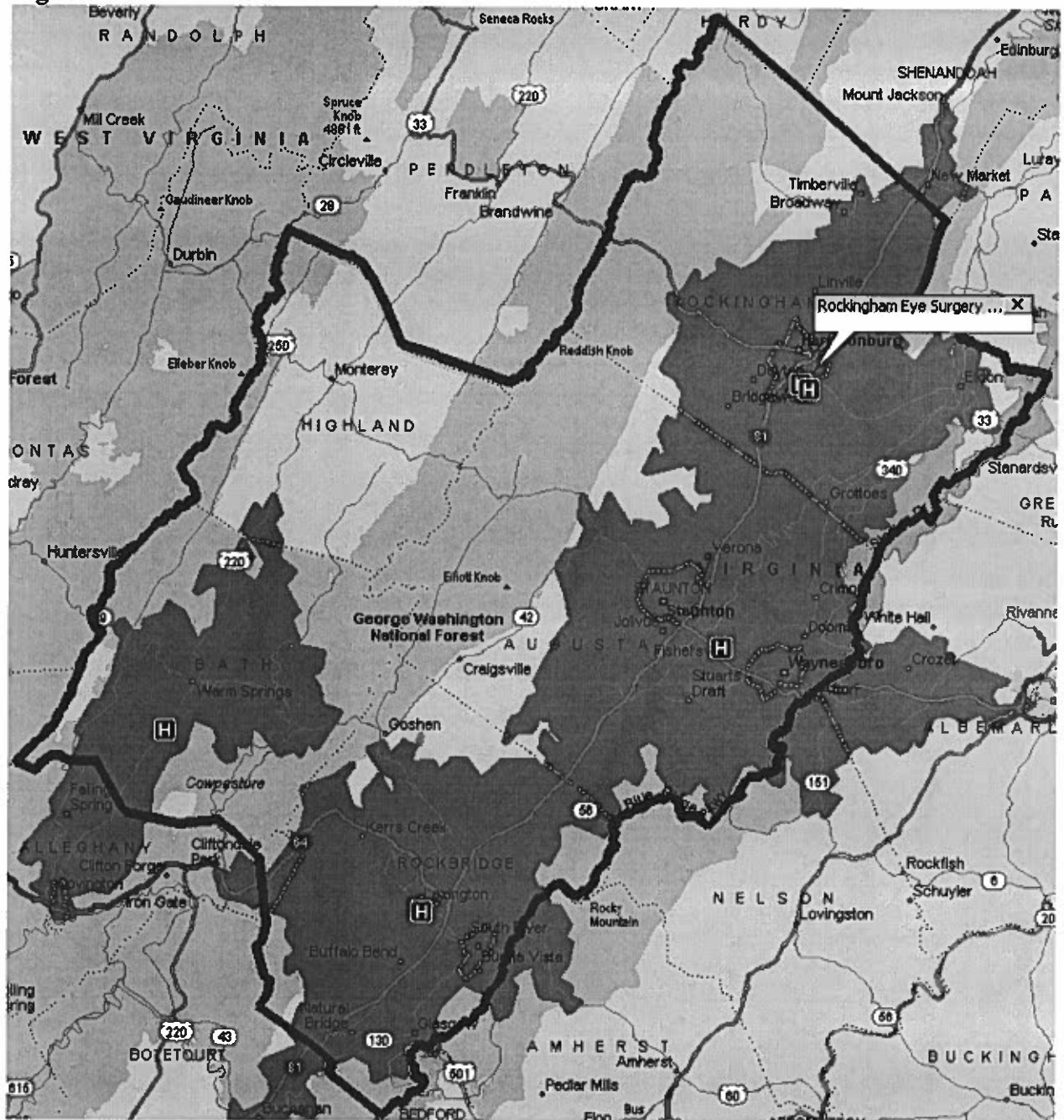
#### **Part V** **General Surgical Services** **Criteria and Standards for General Surgical Services**

##### **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 6. The dark “H” signs in Figure 1 mark the locations of the COPN approved GPORs that are within 30 minutes of portions of PD 6. The shading illustrates the area that is within a 30-minute drive time in normal driving conditions of a COPN approved GPORs. From the shading, it does not appear that services are available within 30 minutes driving time one way under normal conditions of more than 95% of the population of PD 6. As this project is located in proximal to RMH, where ophthalmic procedures are currently performed by the members of RESC, approval of the project will not materially affect the drive time of residents of PD 6.

**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 6. The preceding formula can also determine the overall need for operating rooms within PD 6 five years from the current year, i.e., in the year 2024. The current GPOR inventory for PD 6 is broken down by facility, category, and utilization rate as shown in Table 4. As discussed above, DCOPN notes that there are currently no ophthalmic ambulatory surgery centers in PD 6.

**Table 4: COPN Authorized GPOR Inventory for PD 6: 2017**

<b>Acute Care Hospital</b>	<b>Operating Rooms</b>	<b>Total Hours</b>	<b>Use Per OR</b>	<b>Utilization Rate</b>
Augusta Health	11	16,550	1,504.5	94.0%
Bath County Community Hospital	1	2	2.0	0.1%
Carilion Stonewall Jackson Hospital	3	1,323	441.0	27.6%
Sentara RMH Medical Center	10	15,984	1,598.4	99.9%
<b>TOTAL and Average</b>	<b>25</b>	<b>33,859</b>	<b>3,546</b>	<b>93.5%</b>
<b>Outpatient Surgical Hospital</b>				
<b>TOTAL and Average</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Grand Total</b>	<b>25</b>	<b>33,859</b>	<b>3,546</b>	<b>93.5%</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 6: 2013-2017**

<b>Year</b>	<b>Total Inpatient &amp; Outpatient Operating Room Visits</b>
2013	18,821
2014	19,233
2015	19,521
2016	19,982
2017	18,723
<b>Total</b>	<b>96,280</b>
<b>Average</b>	<b>19,256</b>

Source: 2013-2017 VHI Data

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 6 for the five years 2013-2017 as follows:

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

<b>Year</b>	<b>Population</b>
2013	291,589
2014	293,305
2015	295,079
2016	296,912
2017	298,806
<b>Total</b>	<b>1,475,691</b>
<b>Average</b>	<b>295,138</b>
<b>2024</b>	<b>310,715</b>

Source: Weldon Cooper

Note: Straight Line Extrapolation

Based on the above population estimates from the 2010 U.S. Census, and using a straight-line, average annual increase of 1,861 from 2010 to 2020 and 1,944 from 2020 to 2030, the cumulative total population of PD 6 for the same historical five-year period as referenced above, 2013-2017, was 1,475,691, while the population of PD 6 in the year 2024 (PROPOP – five years from the current year) is projected to be 310,715. These figures are necessary for the application of the preceding formula, as follows:

ORV	+	POP	=	CSUR
Total PD 6 GPOR Visits 2013 to 2017:		PD 6 Historical Population 2013 to 2017:		Calculated GPOR Use Rate 2013 to 2017:
96,280		1,475,691		.06524

CSUR	*	PROPOP	=	PORV
Calculated GPOR Use Rate 2013 to 2017:		PD 6 Projected Population 2024:		Projected GPOR Visits 2024:
.06524		310,715		20,272

**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 = 33,859 total inpatient and outpatient operating room hours (Table 7) reported to VHI for 2017, divided by 18,723 total inpatient and outpatient operating room visits reported to VHI for that same year (Table 5);

**Table 7: PD 6 Total OR Room Hours: 2017**

Acute Care Hospital	Inpatient OR Hours	Outpatient OR Hours	Total Hours
Augusta Health	7,405	9,145	16,550
Bath County Community Hospital	0	2	2
Carilion Stonewall Jackson Hospital	302	1,021	1,323
Sentara RMH Medical Center	6,259	9,725	15,984
<b>TOTAL</b>	<b>13,966</b>	<b>19,893</b>	<b>33,859</b>
Outpatient Surgical Hospital			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Grand Total</b>	<b>13,966</b>	<b>19,893</b>	<b>33,859</b>

Source: VHI 2017 Data

$$\text{AHORV} = 1.8084$$

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

$$\text{FOR} = \frac{.06524 \times 310,715 \times 1.8084}{1600}$$

$$\text{FOR} = 36,658.16 \div 1,600$$

**FOR = 22.9 (23) General Purpose Operating Rooms Needed In PD 6 in 2024**

Using the above methodologies, the conclusion could be logically reached that there will not be a need to increase the number of general purpose operating rooms in PD 6, as the current inventory of 27 GPOR's exceeds this amount. DCOPN notes, however, that the operating room associated with this project will be a limited use operating room utilized exclusively for ophthalmic surgical procedures. Additionally, the proposed project would represent the sole ophthalmic ambulatory surgery center for residents of PD 6. Therefore, while an excess of GPORs may exist in PD 6, approval of this project, despite the excess of ORs, would be consistent with recent similar decisions by the Commissioner<sup>2</sup>.

- 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.**

As a new entity that is seeking to establish the first freestanding ambulatory surgery center in PD 6, RESC does not have any operating rooms within the health planning district that could be relocated.

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

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

The applicant asserts that medical supervision of the facility will be provided by board-certified ophthalmologists on the medical staff. The preliminary choice for this role is Dr. Kenlyn Miller.

**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 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 in greater detail above, there are currently no ophthalmic ambulatory surgery centers in PD 6. As an outpatient surgical facility, the proposed project would provide residents of PD 6 with an alternative means of receiving ophthalmic surgical services and increase beneficial competition.

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<sup>2</sup> COPN Nos. VA-04576 and VA-04635



- 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.**

RMH asserts that approval of the proposed project would have a detrimental effect on the utilization of the procedure rooms at RMH. As the physicians that would perform surgeries at RESC are the sole group performing ophthalmic surgery at RMH, DCOPN agrees that the proposed project has a high probability of drastically reducing ophthalmic procedures at RMH. The applicant, in their response to RMH's letter of opposition, asserts that RMH would be able to use the procedure rooms for more profitable surgeries were the physicians at RESC to begin performing their surgeries at the proposed location. DCOPN finds this assertion too speculative to adopt, particularly in light of RMH's assertions in their letter and the investment RMH made in equipping the procedure rooms with ophthalmic equipment. DCOPN does note that, based on the testimony of several doctors provided at the public hearing, that ophthalmic surgery does not appear to be a large revenue stream or high priority for RMH. As such, DCOPN can conclude that, while approval of the project would greatly reduce the frequency of ophthalmic surgery at RMH, it would not have a particularly detrimental effect on RMH.

- 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 \$3,138,909, and would be funded with \$842,503 provided by owner members and commercial loans. The costs for the project are considerable, but consistent with previously approved projects to establish outpatient surgical services. For example, COPN Request No. VA-04576 issued to Center for Visual Surgical Excellence, LLC to establish an outpatient surgical hospital with one OR, which cost approximately \$3,730,482. The Pro Forma income statement provided in the application illustrates that the proposed project is projected to experience financial gains in years one and two of approximately \$640,000. Based on the information provided to DCOPN in the application, the proposed project appears financially feasible in the immediate and the long-term.

- 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.**

As the first ophthalmic ambulatory surgery center in PD 6, which would represent a lower cost option to patients than an acute care hospital setting, the proposed project would offer improvements in the financing of health care services for residents of PD 6. Additionally, approval of the project would offer an improvement in the delivery of health care services by bringing retinal surgery back to the Harrisonburg area. Residents of PD 6 must currently

travel to Charlottesville or Fishersville, both more than a 30 minute drive time one way from RMH, to receive retinal surgery since the split between RESC's retinal surgeon and RMH.

- 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.**

Not applicable. The applicant is not a teaching hospital associated with a public institution of higher education or a medical school in the area to be served.

### **DCOPN Findings and Conclusions**

DCOPN finds that the proposed project to establish an ambulatory surgery center with one limited use operating room for ophthalmic surgery is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan and the eight Required Considerations of the Code of Virginia. Although there is a projected surplus of four GPORs in PD 6 by the year 2024, the Commissioner, in several recent decisions, has determined that approval of a limited use operating room where a clear need exists within the area is consistent with the applicable criteria and standards of the State Medical Facilities Plan

Furthermore, the proposed project is more advantageous than the status quo. The proposed project, which represents the first ophthalmic ambulatory surgery center for members of PD 6, would offer a lower cost option for residents of the area seeking ophthalmic surgery. Additionally, approval of the project will return retinal surgery to the area and eliminate the need for residents to have to make the more than thirty minute drive one way to Charlottesville or Fishersville.

Finally, DCOPN finds that the total capital costs of the proposed project are \$3,138,909 (Table 2), which would be funded with \$842,503 provided by owner members and commercial loans, are reasonable and consistent with previously approved projects to establish outpatient surgical services. For example, COPN Request No. VA-04576 issued to Center for Visual Surgical Excellence, LLC to establish an outpatient surgical hospital with one OR, which cost approximately \$3,730,482.

### **DCOPN Staff Recommendation**

The Division of Certificate of Public Need recommends **conditional approval** of the proposed project to establish an outpatient surgical hospital with one limited use ophthalmic operating room at Rockingham Eye Surgery Center for the following reasons:

1. The project is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan and the eight Required Considerations of the Code of Virginia.
2. As the first ophthalmic ambulatory surgical center in PD 6, approval of the project will offer a lower cost option for residents seeking ophthalmic surgery.
3. The project will increase access to retinal surgery for residents of PD 6.
4. The project is more favorable than the alternative of the status quo.

### **Recommended Condition**

Rockingham Eye Surgery Center, LLC 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 4.4% of Rockingham Eye Surgery Center, LLC's total patient services revenue derived from surgical services provided at Rockingham Eye Surgery 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. Rockingham Eye Surgery Center, LLC 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.

# Mellette PC

Attorneys at Law  
Serving Health Care Providers

Law Office:  
428 McLaws Circle, Suite 200  
Williamsburg VA 23185

Voice 757.259.9200  
Fax 757.259.9201  
Toll free 877.635.5388 (Mellette)  
Peter M. Mellette, Esq.  
E-Mail: [peter@mellettepc.com](mailto:peter@mellettepc.com)

Mailing Address:  
P.O. Box 6133  
Williamsburg VA 23188

November 22, 2019

**Via Email: [Erik.Bodin@vdh.virginia.gov](mailto:Erik.Bodin@vdh.virginia.gov)**

Erik Bodin, Director  
Division of Certificate of Public Need  
Office of Licensure and Certification  
9960 Mayland Drive, Suite 401  
Richmond, VA 23233

**RECEIVED**

**NOV 25 2019**

**VDH/OLC**

**Re: COPN Request No. VA-8464  
Rockingham Eye Surgery Center, LLC  
Establish an Ophthalmic Ambulatory Surgery Center with One Operating Room**

Dear Erik:

Rockingham Eye Surgery Center, LLC ("RESC") is in receipt of the Division of Certificate of Public Need's ("DCOPN") Staff Report and recommendation of conditional approval to the Commissioner for COPN Request No. VA-8464. RESC appreciates the favorable analysis and DCOPN's recommendation. I write to confirm that RESC accepts the recommended charity care condition of 4.4% of total patient services revenue derived from surgical services at RESC as valued under the Medicare provider reimbursement methodology, as may be later revised in accordance with the terms of the recommended condition and governing law.

RESC appreciates your office's assistance with this project. RESC looks forward to establishing this project upon the Commissioner's final approval. If you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,



Peter M. Mellette

PMM

Cc: Piero Mannino, Supervisor, Division of Certificate of Public Need (via email)  
Nicholas Megibow, Project Analyst, DCOPN (via email)  
Kenlyn Miller, MD  
John Wellborn