

VIRGINIA DEPARTMENT OF HEALTH

Office of Licensure and Certification

Division of Certificate of Public Need

Staff Analysis

February 8, 2021

COPN Request No. VA-8536

Mary Immaculate Ambulatory Surgery Center, LLC

Newport News, Virginia

Relocate Mary Immaculate Ambulatory Surgery Center within PD 21

Applicant

Mary Immaculate Ambulatory Surgery Center, LLC (MIASC) is a Virginia Limited Liability Company organized in 2003. MIASC is located in Newport News, Virginia, Planning District (PD) 21 and Health Planning Region (HPR) V.

Background

According to Division of Certificate of Public Need (DCOPN) records, there are 58 General Purpose Operating Rooms (GPORs) located in PD 21. Of these 58 GPORS, 32 are located within acute care hospitals and 20 are located within outpatient surgical hospitals (**Table 1**).

Table 1: PD 21 COPN Authorized GPOR Inventory & 2018 Utilization

Acute Care Hospital	Operating Rooms
Bon Secours Mary Immaculate Hospital	8
Riverside Doctors' Hospital Williamsburg	3
Riverside Regional Medical Center	13
Sentara Careplex Hospital	8
Sentara Williamsburg Regional Medical Center	6
Acute Care Hospital Total	38
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Outpatient Surgical Hospital	Operating Rooms
Advanced Vision Surgery Center, LLC ¹	1
Bon Secours Surgery Center	2
Careplex Orthopaedic Ambulatory Surgery Center	1
CHKD Health & Surgery Center (Newport News)	2
Mary Immaculate Ambulatory Surgery Center	3
Riverside Doctors' Surgery Center	2
Riverside Hampton Surgery Center	2
Riverside Peninsula Surgery Center	2
Sentara Port Warwick Surgery Center	2
Sentara Williamsburg Community Ambulatory	3
Outpatient Surgical Hospital Total	20
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Grand Total	58

Source: DCOPN Records

¹ Dedicated to the specialized services of ophthalmological surgery.

Proposed Project

MIASC proposes to relocate its ambulatory surgical center, which operates three GPORs, from its current location at 12720 McManus Boulevard, Suite 103, Newport News, Virginia to a new location at 1301 Loftis Boulevard, Newport News, Virginia. The proposed new location is approximately five miles from the current location of MIASC.

The applicant reports that its current building, located on the Mary Immaculate Hospital (MIH) main campus, suffers ongoing plumbing issues that have caused a sewage backup and a foul smell in the post anesthesia care unit (PACU) and pre-operation area sink. When the plumbing issues cause a backup, all PACU patients must be moved as a precautionary measure due to the smell and potential contamination. According to the applicant, the building also suffers from faucet leaks, drainage issues, HVAC failures, electrical issues, damaged ceilings from water leaks and flooding. The applicant reports that these issues have required cancellations and rescheduling of patient surgeries, limit the efficiencies of MIASC's operations, and have affected patient experience and quality of care.

MIASC reports that it has had trouble obtaining long-term fixes from the building owner and manager. According to the applicant, despite repeatedly discussing the ongoing issues with the property manager, the manager has failed to make any long-term repairs, or purchase updated equipment that could correct the concerns. Instead, the manager has engaged in patchwork fixes that ultimately fail. Therefore, the applicant asserts that a relocation of MIASC is necessary to continue to provide the types of procedures and level of quality care that patients expect from MIASC.

MIASC will lease space in an existing medical office building which will be renovated by a third party property owner – HealthMark, LLC. HealthMark, LLC will incur all real estate and renovation costs, which will be included in the building's lease rates and are built into MIASC's lease payments. The total projected capital cost of the proposed project is \$11,598,769 (**Table 2**). MIASC proposes to fund equipment costs using its accumulated reserves and capital contributions from the owner members. Additionally, the applicant will fund the lease payments using revenue from operations. Accordingly, there are no financing costs associated with this project. The applicant anticipates construction to commence in March 2021 and to be complete by October 2021, with a November 2021 date of opening.

Table 2. MIASC's Projected Capital Costs

Equipment Not Included in Construction Contract	\$350,000
Site Acquisition Costs (Lease Expense for 15 years)	\$11,248,769
Total Capital Costs	\$11,598,769

Source: COPN Request No. VA-8536

Project Definition

Section 32.1-102.1:3 of the Code of Virginia defines a project, in relevant part, as the "establishment of a medical care facility." A medical care facility is defined, in part, as "any facility licensed as a hospital, as defined in § 32.1-123".

12VAC5-230-160 Required Considerations

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 care;**

Geographically, the proposed new location for MIASC, 1301 Loftis Boulevard, Newport News, Virginia, is located off Jefferson Avenue, one of the main throughways in Newport News. The proposed location is also convenient to Interstate 64, Warwick Boulevard and Mercury Boulevard. The facility will be located within Port Warwick, a mixed-use community, which includes homes, restaurants, retail businesses and medical offices. Additionally, the proposed facility is located on the local bus line for public transportation, with three bus stops within approximately ½ mile of the facility.

Table 3 shows projected population growth in PD 21 through 2030. As depicted in **Table 3**, at an average annual growth rate of 0.32%, PD 21’s population growth rate from 2010-2020 is below the state’s average annual growth rate of 0.77%. Overall, the planning district was projected to add an estimated 15,708 people in the 10-year period ending in 2020—an approximate 3% increase with an average increase of 1,571 people annually. In the 10-year period ending in 2030, the planning district is projected to add an estimated 12,385 people – an approximate 2.5% increase, with an average increase of 1,239 people annually.

Regarding the 65+ age group for PD 21, Weldon-Cooper projects a more rapid increase in population growth (an approximate 35% increase from 2010 to 2020 and approximately 29% from 2020 to 2030). This is significant, as this population group typically uses health care resources, including surgical services, at a rate much higher than those individuals under the age of 65. Weldon-Cooper further projects that statewide, the 65+ age cohort population will increase at a rate of approximately 38% from 2010 to 2030 and approximately 27% from 2020 to 2030.

Table 3. Population Projections for PD 21, 2010-2030

Locality	2010	2020	% Change 2010-2020	Avg Ann % Change 2010-2020	2030	% Change 2020-2030	Avg Ann % Change 2020-2030
James City County	67,009	78,016	16.43%	1.49%	92,210	18.19%	1.69%
York County	65,464	69,582	6.29%	0.60%	75,492	8.49%	0.82%
Hampton	137,436	135,530	-1.39%	-0.14%	127,842	-5.67%	-0.58%
Newport News	180,719	181,581	0.48%	0.05%	179,752	-1.01%	-0.10%
Poquoson	12,150	12,382	1.91%	0.18%	12,635	2.04%	0.20%
Williamsburg	14,068	15,463	9.91%	0.93%	17,008	9.99%	0.96%
Total PD 21	476,846	492,554	3.29%	0.32%	504,939	2.51%	0.25%
PD 21 65+	61,649	83,480	35.41%	3.00%	107,401	28.65%	2.55%
Virginia	8,001,024	8,655,021	8.17%	0.77%	9,331,666	7.82%	0.76%
Virginia 65+	976,937	1,352,448	38.44%	3.22%	1,723,382	27.43%	2.45%

Source: U.S. Census, Weldon Cooper Center Projections (June 2019) and DCOPN (interpolations)

Regarding socioeconomic barriers to access to the applicant’s services, according to regional and statewide data regularly collected by VHI, for 2018, the most recent year for which such data is available, the average amount of charity care provided by HPR V facilities was 5.1% of all reported total gross patient revenues (**Table 4**). Recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. DCOPN notes that, if approved, the proposed project should be subject to a charity care condition no less than the 4.0% Bon Secours Hampton Roads Health System (“BSHR”) system-wide condition.

Table 4. HPR V 2018 Charity Care Contributions

Hospital	Gross Patient Revenues	Adjusted Charity Care Contribution	Percent of Gross Patient Revenue:
Bon Secours DePaul Medical Center	\$698,996,618	\$53,230,518	7.62%
Sentara Careplex Hospital	\$889,460,665	\$64,660,889	7.27%
Riverside Tappahannock Hospital	\$162,491,011	\$11,307,825	6.96%
Riverside Regional Medical Center	\$1,861,151,990	\$126,769,911	6.81%
Bon Secours Maryview Medical Center	\$1,273,955,832	\$85,038,667	6.68%
Sentara Obici Hospital	\$825,126,790	\$54,851,619	6.65%
Riverside Walter Reed Hospital	\$252,673,741	\$16,571,599	6.56%
Sentara Virginia Beach General Hospital	\$1,210,282,480	\$67,107,518	5.54%
Riverside Doctors' Hospital Williamsburg	\$124,258,743	\$6,791,596	5.47%
Sentara Norfolk General Hospital	\$3,313,578,465	\$168,093,514	5.07%
Riverside Shore Memorial Hospital	\$235,708,877	\$11,934,270	5.06%
Sentara Leigh Hospital	\$1,182,257,169	\$55,810,160	4.72%
Bon Secours Mary Immaculate Hospital	\$675,071,989	\$29,896,497	4.43%
Sentara Princess Anne Hospital	\$967,617,447	\$38,069,270	3.93%
Sentara Williamsburg Regional Medical Center	\$659,049,590	\$24,789,255	3.76%
Chesapeake Regional Medical Center	\$900,598,911	\$15,330,992	1.70%
Hampton Roads Specialty Hospital	\$25,627,019	\$433,771	1.69%
Southampton Memorial Hospital	\$209,949,572	\$3,282,979	1.56%
Bon Secours Rappahannock General Hospital	\$71,220,177	\$1,107,592	1.56%
Children's Hospital of the King's Daughters	\$1,009,437,096	\$6,094,726	0.60%
Lake Taylor Transitional Care Hospital	\$46,761,019	\$0	0.00%
Hospital For Extended Recovery	\$25,515,975	-\$252,369	-0.99%
Total Facilities Reporting			22
Median			4.9%
Total \$ & Mean %	\$16,620,791,176	\$840,920,799	5.1%

Source: VHI (2018)

DCOPN did not identify any other unique geographic, socioeconomic, cultural, transportation, or other barriers to care in the planning district.

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 four letters of support for the proposed project from local members of the healthcare community. Collectively these letters addressed:

- MIASC provides access to high quality surgical services in an outpatient setting without the inconvenience or higher costs of inpatient hospitals.
- Lackey Clinic, a faith based medical clinic providing medical care to uninsured patients in York County, Newport News, Poquoson, Williamsburg and James City County, partners with providers who perform surgeries at MIASC at no cost. 62% of the Lackey Clinic's patients live in Newport News. MIASC's move would allow its patients to continue to receive care in the community.
- MIASC's current facility is dated and has experienced plumbing problems, which lead to interrupted scheduled surgeries. Attempts to fix the issues have been only temporary.
- The proposed project is necessary to ensure that patients continue to have access to high quality outpatient surgical services.
- MIASC will continue to serve the same service area and the new facility will be conveniently located to its current patients.

DCOPN received a Letter of Concern, dated January 19, 2021, regarding the proposed project from Sentara Hospitals (Sentara Letter), which addressed Sentara's concerns, including:

- Although Sentara recognizes the need for exceptions to the standard review rule, and that MIASC's request appeared to set forth urgent circumstances possibly warranting out-of-cycle review, the passage of time – as well as certain application-specific considerations – call into question the need for, and the appropriateness of, reviewing MIASC's application out of cycle.
- MIASC's documentation of certain facility issues actually undermines – not supports – characterizing MIASC's circumstances as a “documented emergency.” MIASC submitted documentation that the facility issues have actually existed since 2016. MIASC had multiple opportunities to pursue COPN approval in accordance with the traditional review cycle but it chose not to do so.
- Licensure records reveal no documentation of suspension of operations at MIASC or any licensure concerns, and MIASC submitted no official documentation of facility challenges that would bar operations. MIASC's 2021 licensure application indicates the same number of hours its three ORs are in use as reflected in its 2020 and 2019 license applications and successful reaccreditation in April 2019.

- MIASC submitted its request for emergency waiver on August 18, 2020, which was approved on September 4, 2020. It then took MIASC more than 11 weeks to submit its application, more than three times the amount of time between the LOI filing deadline and the corresponding application due date under standard review timeframes.
- Sentara operates Sentara Port Warwick ASC 0.1 miles from the proposed site of MIASC's relocation.
- The Commissioner approved the establishment of a second ASC in the Port Warwick development on December 9, 2019 – the Bon Secours Surgery Center, although its status is unclear. The most recent extension request authorizing the Bon Secours Surgery Center indicates that the space identified in the application is no longer available and the COPN holders are working to identify an alternate location.
- The proposed facility would be only 2.6 miles from the Riverside Peninsula Surgery Center, 6.3 miles from the Riverside Hampton Surgery Center, and 7.2 miles from the CarePlex Orthopaedic Ambulatory Surgery Center. Given this proximity, MIASC would duplicate existing services and adversely impact those other providers.

DCOPN also received a letter of opposition regarding the proposed project, dated January 22, 2021, from Riverside Health System (Riverside Letter), which addressed:

- Approval of the proposed project would lead to an excess supply of ASCs in central Newport News.
- This application, in conjunction with the previously approved COPN Request No. VA-04693, would give MIH five operating rooms across two ambulatory surgery centers within a quarter mile of one another.
- The approved and operating ASCs are well distributed throughout PD 21 and a more suitable location could be found, and a lower cost much closer to the current MIASC location.
- The proposed move would shift MIASC's service area. Moving five miles, or a fifteen-minute drive, across Newport News would place the ASC in a new community already served by two existing ASCs housing five operating rooms. The location is within three miles of each of these facilities and is directly adjacent to the Sentara ASC.
- MIASC's caseload is projected to decline by one percent, according to the pro forma submitted with the application.

On February 1, 2021, MIASC replied to the Sentara and Riverside Letters, stating:

- MIASC's relocation of existing capacity to a new site five miles away and within the same travel corridor of Jefferson Avenue does not represent a seismic shift in the distribution of ASCs within Planning District 21.

- The two sites are also approximately equidistant from the I-64/Jefferson Avenue interchange. Thus, for patients within MIASC’s current service area traveling from the west or east using I-64, the new location will have no meaningful effect on drive time compared with MIASC’s current location. A comparison of average drive times from MIASC’s primary service areas underscores the negligible change—and for some areas of the service area—improvement in drive time.
- MIASC does not anticipate any negative effect on other ASC providers located nearby the proposed site or any negative effect on procedure volume at MIASC by moving five miles away. Patient choice of ASC is generally driven by the patient’s choice of surgeon, and where the patient’s surgeon has privileges. Surgeons who operate at MIASC will continue to see patients at their own offices located throughout the Peninsula.
- MIASC is in the unenviable position of needing to relocate due to physical plant issues that continue to impair safe operations. The present COPN application proposes a reasonable, feasible method to relocate the facility to a suitable building that can be easily updated with limited construction to house the ASC.
- The Commissioner is vested with broad discretion in interpreting and applying applicable regulations, and Sentara has not identified any law or regulation that suggests the decision [to allow the application to proceed off cycle] was inappropriate.
- MIASC requested the waiver of the review cycle requirements in recognition of a present emergency and need to act deliberately to avoid a loss of operations and disruption of patient care. MIASC continues to face the same type of physical plant problems that threaten to disrupt patient care, and still needs to relocate the facility.
- The relocation of a multi-million dollar ASC and obtaining all necessary documentation from the parties involved with such an endeavor takes time. Out of respect for new COPN laws that require the filing of reasonably complete COPN applications without the opportunity to defer additional information to a completeness response process, MIASC filed a complete application on November 23, 2020. Prior to filing the application, MIASC timely acted to draft the application and obtain necessary attachments from third parties.
- MIASC’s proposed relocation to a site five miles away will not substantively change MIASC’s current service area or detrimentally affect other nearby providers, including Sentara.
- Sentara’s concerns regarding the approved Bon Secours Surgery Center and “Coastal Virginia Surgery Center” are interesting but immaterial to MIASC’s project. Without COPN approval, Coastal Virginia Surgery Center likely operates as a physician office-based operator. As such, it serves a distinct patient population tied to its affiliated physicians and cannot provide the full scope of services offered by a licensed and Medicare-certified ASC such as MIASC. Bon Secours is a partner in MIASC and has not expressed any concerns regarding the effect of relocation of MIASC on the potential development of Bon Secours Surgery Center.

- Sentara's questions about the address of MIASC's proposed site are easily remedied. A draft letter of intent to lease the new site included a transposed address number. However, as stated in the application, the proposed site is located at 1030 Loftis Boulevard.

Public Hearing

Section 32.1-102.6 B of the Code of Virginia directs DCOPN to hold one public hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city in the case of competing applications; or in response to a written request by an elected local government representative, a member of the General Assembly, the Commissioner, the applicant, or a member of the public. COPN Request No. VA-8536 is not competing with another project in this batch cycle and DCOPN did not receive a request to conduct a public hearing for the proposed project.

(ii) the availability of reasonable alternatives to the proposed service or facility that would meet the needs of the people in the area to be served in a less costly, more efficient, or more effective manner;

Neither DCOPN nor the applicant identified a reasonable alternative to the proposed project that would meet the needs of the people in the area to be served in a less costly, more efficient, or more effective manner. As previously discussed, MIASC reports that its current building suffers from ongoing plumbing issues that have caused a sewage backup and a foul smell in the PACU, faucet leaks, drainage issues, HVAC failures, electrical issues, damaged ceilings from water leaks and flooding. MIASC asserts that it has attempted to resolve the issues by working with the building owner, but has had trouble obtaining long-term fixes. MIASC has provided work order requests from as recently as January 28, 2021 showing that the issues persist. The applicant asserts that the ongoing issues have caused rescheduling of patient surgeries and have affected patient experience and quality of care. Therefore, the applicant asserts that a relocation of MIASC's three GPORs is necessary. DCOPN concurs and concludes that maintaining the status quo is not a viable alternative to the proposed project.

(iii) any recommendation or report of the regional health planning agency regarding an application for a certificate of public need that is required to be submitted to the Commissioner pursuant to subsection B of 32.1-102.6;

Currently there is no organization in HPR V designated by the Virginia Department of Health to serve as the Health Planning Agency for PD 21. Therefore, this consideration is not applicable to the review of the proposed project.

(iv) any costs and benefits of the proposed project;

As demonstrated by **Table 2**, the projected capital costs of the proposed project are \$11,598,769. MIASC proposes to fund equipment costs using its accumulated reserves and capital contributions from the owner members. Additionally, the applicant will fund the lease payments using revenue from operations. Accordingly, there are no financing costs associated with this project. DCOPN concludes that when compared to similar projects, these costs are reasonable. For example, COPN

No. VA-04689 issued to VHI Edison, LLC to establish an outpatient surgical hospital with four GPORs is anticipated to cost approximately \$13,371,786.

The applicant identified numerous benefits of the proposed project, including:

- The relocation of the facility is consistent with MIASC's mission and goals to provide high-quality, timely, and accessible care to its patients.
- The relocation will allow MIASC to move from a physical plant that has experienced leaks, sewage backups, and other problems that have continuously disrupted patient care and limited MIASC surgeons in their ability to deliver care to patients to a new, updated facility that is much better suited to delivering patient care.
- The new facility offers 108 parking spaces conveniently located to the main entrance for easy patient access.
- The new location is merely five miles from the current facility and will be easily accessible by current MIASC patients.
- Because the new facility is an existing building, it can be renovated at a lower cost and in a shorter timeframe than development of an entirely new building.
- Patients will continue to benefit from the lower costs of procedures provided at MIASC compared to inpatient institutions.
- The additional space available at a more modern facility will allow MIASC to offer a broader scope of services on an outpatient basis.
- Dedicated outpatient surgical facilities are generally less congested and more easily accessed than hospital facilities.
- The relocation of MIASC is necessary to meet the future demand for outpatient surgical service, and the project is inventory neutral.

(v) the financial accessibility of the proposed project to the people in the area to be served, including indigent residents; and

The applicant asserts that it has and will continue to serve any patient requiring services, regardless of ability to pay or payment source. Additionally, the Pro Forma Income Statement provided by the applicant includes the provision of charity care in the amount of 1.8% (**Table 5**). DCOPN notes that, according to VHI data from 2018, the most recent year for which such data is available, the average amount of charity care provided by HPR V facilities was 5.1% of all reported total gross patient revenues (**Table 4**). As previously discussed, recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. DCOPN notes that, if approved, the proposed project should

be subject to a charity care condition no less than the 4.0% Bon Secours Hampton Roads Health System (“BSHR”) system-wide condition.

Table 5. MIASC’s Pro Forma Income Statement

	Year 1	Year 2
Gross Revenue	\$27,448,769	\$28,546,719
Contractual Adjustments	(\$19,214,138)	(\$19,982,703)
Bad Debt	(\$165,000)	(\$165,000)
Charity Care	(\$494,077)	(\$513,840)
Net Revenue	\$7,575,554	\$7,885,176
Total Expenses	(\$7,069,101)	(\$7,219,588)
Net Operating Income	\$506,453	\$665,588

Source: COPN Request No. VA-8536

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

The proposed project is the result of an August 15, 2020 request from the applicant to receive an emergency waiver to the schedule requirements of 12VAC5-220-200. The applicant made the case that, due to the immediate concerns regarding the safety and conditions within the existing building, the proposed project review should be expedited. The Commissioner approved this emergency waiver request on August 31, 2020.

DCOPN did not identify any other factors, not previously discussed in this staff report, to bring to the Commissioner’s attention with respect to determining a public need for the proposed project.

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

Section 32.1-102.2:1 of the Code of Virginia calls for the State Health Services Plan Task Force to develop, by November 1, 2022, recommendations for a comprehensive State Health Services Plan (“SHSP”). In the interim, DCOPN will consider the consistency of the proposed project with the predecessor of the SHSP, the State Medical Facilities Plan (“SMFP”).

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

**Part V
 General Surgical Services**

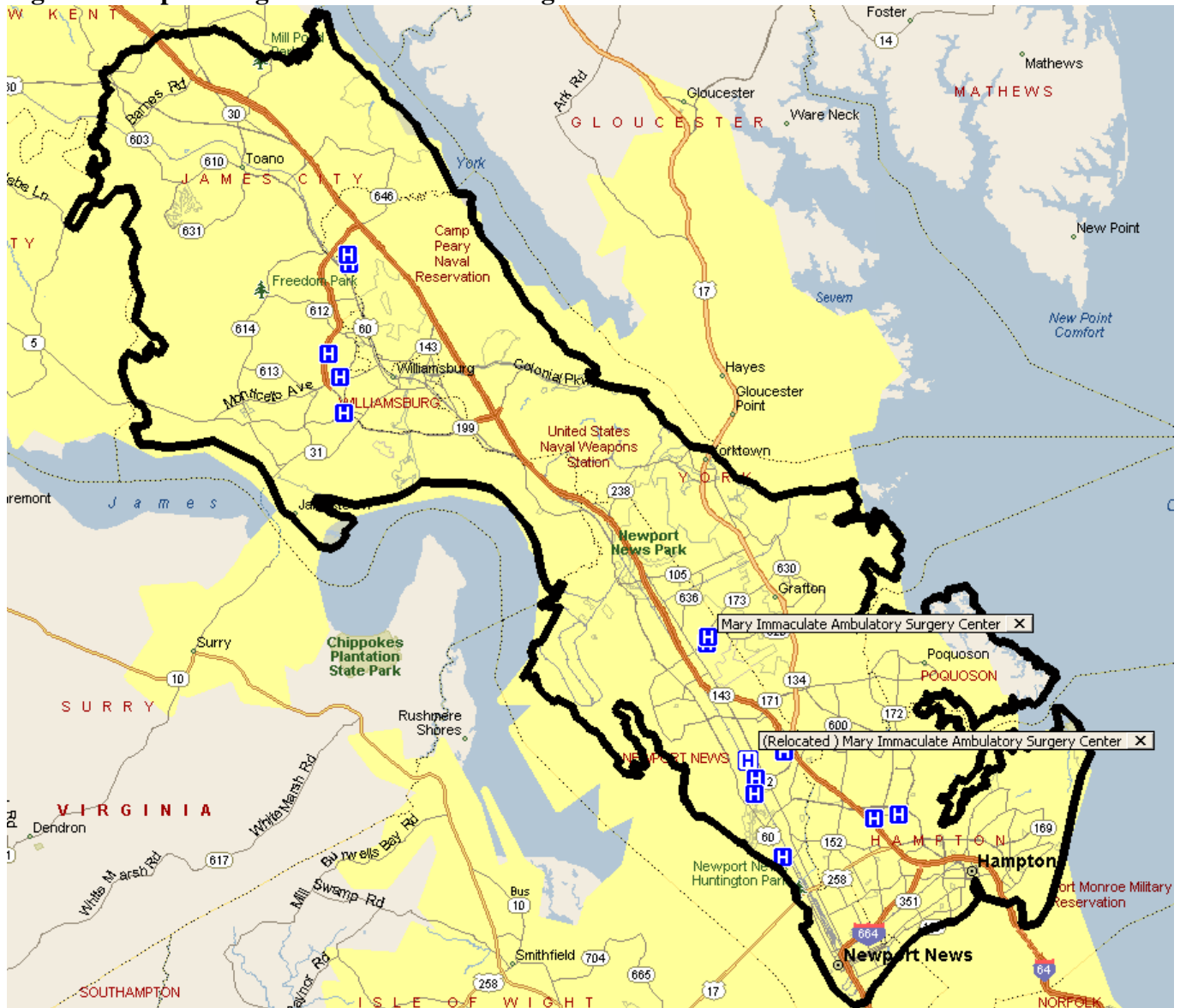
12VAC5-230-490. Travel time.

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 heavy black line in **Figure 1** identifies the boundary of PD 21. The white “H” sign marks the location of the proposed project. The blue “H” signs mark the locations of all other COPN approved

GPORs located within PD 21. The yellow shaded area in **Figure 1** illustrates the area of PD 21 and the surrounding area that is within a 30-minute drive of existing surgical services. Given the amount of shaded area, it is reasonable to conclude that surgical services are currently available within 30-minutes normal driving time one way under normal conditions of 95% of the population of PD 21. DCOPN concludes that approval of the proposed project would not significantly improve geographic access to surgical services in PD 21.

Figure 1: Map of Surgical Services in Planning District 21



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:

$$\text{FOR} = \frac{((\text{ORV}/\text{POP}) \times (\text{PROPOP})) \times \text{AHORV}}{1,600}$$

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 [i.e., for the years 2006 through 2010, inclusive]; 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.

1,600 = 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.

This standard is used in assessing whether there is currently a need or excess of GPORs in PD 21. MIASC is not seeking approval to establish a new service, but rather is seeking approval to relocate an existing service within the PD. The relocation is inventory neutral and the calculation below is provided for informational purposes only.

The preceding formula can also be used to determine the overall need for ORs within PD 21 five years from the current year, i.e., in the year 2026. Based on operating room utilization submitted to, and compiled by VHI, for the five-year period from 2014 to 2018, which is the most recent five-year period for which relevant data is available, the total number of reported inpatient and outpatient GPOR visits to hospital-based and ambulatory surgical centers are shown in **Table 6**.

Table 6. Inpatient & Outpatient GPOR Visits in PD 21: 2014-2018

Year	Total Inpatient & Outpatient Operating Room Visits
2014	42,794
2015	46,919
2016	45,753
2017	48,395
2018	47,286
Total	231,147
Average	46,229

Source: VHI (2014-2018)

Based on actual population counts derived as a result of the U.S. Census and population projections as compiled by Weldon Cooper, **Table 7** presents the population estimates for PD 21 for the five years from 2014 to 2018 and the projected population estimate for 2026.

Table 7. PD 21 Population 2014-2018 & 2026

Year	Population
2014	483,129
2015	484,700
2016	486,271
2017	487,841
2018	489,412
Total	2,431,353
Average	486,271
2026	499,985

Source: Weldon Cooper

Note: Straight Line Extrapolation

Based on the above population estimates from Weldon Cooper, and using a straight-line, average annual increase of 1,570.78 from 2010 to 2020, and 1,238.51 from 2020 to 2030, the cumulative total population of PD 21 for the same historical five-year period as referenced above, i.e., 2014-2018, was **2,431,353**, while Weldon Cooper projects the population of PD 21 in the year 2026 (PROPOP-five years from the current year) to be **499,985**. These figures are necessary for the application of the preceding formula, as follows:

ORV	÷	POP	=	CSUR
Total PD 21 GPOR Visits 2014 to 2018		PD 21 Historical Population 2014 to 2018:		Calculated GPOR Use Rate 2014 to 2018:
231,147		2,431,353		0.09506

CSUR	X	PROPOP	=	PORV
Calculated GPOR Use Rate 2014 to 2018		PD 21 Projected Population 2026		Projected GPOR Visits 2026:
0.09506		499,985		47,529

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.

According to VHI data from 2018, the most recent year for which such data is available, there were 84,729 inpatient and outpatient operating room hours for that year (**Table 8**). AHORV = 84,729 total inpatient and outpatient operating room hours reported to VHI for 2018, divided by 47,286 total inpatient and outpatient operating room visits reported to VHI for that same year

AHORV = 1.79184

Table 8. 2018 PD 21 General Purpose Operating Rooms Utilization

Acute Care Hospital	Operating Rooms	Total Hours	Use Per OR	Utilization Rate
Bon Secours Mary Immaculate Hospital	10	16,791	1,679	104.94%
Riverside Doctors' Hospital Williamsburg	2	2,917	1,459	91.16%
Riverside Regional Medical Center	12	21,618	1,802	112.59%
Sentara Careplex Hospital	8	11,638	1,455	90.92%
Sentara Williamsburg Regional Medical Center	5	9,865	1,973	123.31%
Total and Average	37	62,829	1,698	106.13%
Outpatient Surgical Hospital				
Advanced Vision Surgery Center, LLC	1	2,700	2,700	168.75%
Careplex Orthopaedic Ambulatory Surgery Center	1	4,110	4,110	256.88%
CHKD Health & Surgery Center (Newport News)	2	1,924	962	60.13%
Mary Immaculate Ambulatory Surgery Center	3	2,504	835	52.17%
Riverside Doctors' Surgery Center	2	2,288	1,144	71.50%
Riverside Hampton Surgery Center	2	3,182	1,591	99.44%
Riverside Peninsula Surgery Center	2	2,761	1,381	86.28%
Sentara Port Warwick Surgery Center	2	815	408	25.47%
Sentara Williamsburg Community Ambulatory	3	1,616	539	33.67%
TOTAL and Average	18	21,900	1,217	76.04%
Grand Total and Average	55	84,729	1,541	96.28%

Source: VHI (2018)

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

$$\text{FOR } 0.09507 \times 499,985 \times 1.79184$$

$$1600$$

$$\text{FOR} = 85,172 \div 1,600$$

FOR = 53.23 (54) General Purpose Operating Rooms Needed in PD 21 in 2026

Current PD 21 GPOR inventory: 55

Net Surplus: 1 GPORs for 2026 planning year

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 the 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.

Approval of the relocation of MIASC's three GPORs is unlikely to improve the geographic distribution of surgical services in PD 21 because the location of the proposed new facility is only five miles from the existing facility.

12VAC5-230-510. Staffing.

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

The applicant is an existing provider of surgical services, and has provided assurances that surgical services will remain under the direction or supervision of one or more qualified physicians. The applicant meets this standard.

Required Considerations Continued

4. The extent to which the proposed project fosters institutional competition that benefits the area to be served while improving access to essential health care services for all people in the area to be served;

As previously discussed, MIASC seeks approval to relocate its three GPORs from a facility that is in disrepair to a new facility, which is approximately five miles away from the existing service. The new site, located at 1301 Loftis Boulevard, Newport News, Virginia and the existing site, located at 12720 McManus Boulevard, Newport News, Virginia are approximately equidistant (10 minute drive time) from Interstate 64. The new location will have no meaningful effect on geographic access to surgical services.

The proposed project is not anticipated to foster institutional competition, but rather is intended to provide a safer space for MIASC to service its current patients. MIASC does not expect that its primary service area or patient base will materially change. Regarding the effect on other providers of surgical services, MIASC states:

[T]he surgeons who operate at MIASC will continue to see patients at their own offices located throughout the Peninsula. As stated in its application, MIASC does not anticipate any substantive changes to its current service area, and thus patients who rely on the current MIASC facility will continue to be well-served.... Patient choice of ASC is generally driven by the patient's choice of surgeon and where the patient's surgeon has privileges.

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

As previously discussed, the applicant seeks approval to relocate its existing surgical services approximately five miles away to a new location, which it will renovate to its specifications. The applicant explains that its patients are referred from surgeons who have privileges to operate at MIASC and who see patients at their own offices, located throughout the PD. Therefore, MIASC's patient base is unlikely to change. For these reasons, DCOPN concludes that approval is not likely to have a significant negative impact upon the utilization of existing area providers of surgical services.

6. The feasibility of the proposed 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;

The Pro Forma Income Statement (**Table 5**) provided by the applicant projects a net profit of \$506,453 by the end of the first year of operation and a net profit of \$665,588 by the end of year two, indicating that the proposed project is financially feasible both in the immediate and in the long-term. As previously discussed, and as demonstrated by **Table 2**, the total projected capital cost of the proposed project is \$11,598,769, which will be funded through the accumulated reserves, capital contributions and revenue from operations of the applicant. Accordingly, there are no financing costs associated with the proposed project.

MIASC anticipates the need to hire three full time equivalent employees (FTE) to staff the proposed project. These FTEs are as follows:

- 1 Administration – Business Office
- 1 Registered Nurses
- 1 Certified Surgical Technician

The applicant is an established provider of surgical services, and intends to primarily rely on relocating the current staff to the new location. For any new staff that is needed, the applicant intends to hire using Quadrant (a recruiter), online recruiting with Silkroads and word of mouth. Because MIASC is an established provider and requires very limited additional staff, DCOPN concludes that the applicant will not have difficulty filling the required positions.

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; and

The proposed project does not offer the introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services. The applicant is already an existing provider of 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, and (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.

The applicant is not a teaching hospital or affiliated with a public institution of higher education or medical school in the area to be served. Approval of the proposed project would not

contribute to the unique research, training or clinical mission of a teaching hospital or medical school.

DCOPN Staff Findings and Conclusions

DCOPN finds that the proposed project to relocate Mary Immaculate Ambulatory Surgery Center's outpatient surgery center, which operates three GPORs 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. The proposed project is an inventory neutral relocation approximately five miles from the current location of MIASC. Furthermore, the proposed project is more advantageous than maintaining the status quo, as the current location of MIASC is in disrepair and the applicant has been unable to maintain long-term fixes from the building owner.

The projected capital costs of the proposed project total \$11,598,769, of which equipment costs will be funded using the accumulated reserves of the applicant and real estate and renovation costs will be built into MIASC's lease payments. Accordingly, there are no financing costs associated with this project. DCOPN concludes that these costs are reasonable when compared to previously approved projects similar in scope. Finally, DCOPN finds that the proposed project will prove financially feasible both in the immediate and in the long-term.

DCOPN Staff Recommendation

The Division of Certificate of Public Need recommends **conditional approval** of Mary Immaculate Ambulatory Surgery Center, LLC's request to relocate its outpatient surgery center with three general-purpose operating rooms 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. The project is inventory neutral and a reasonable, less costly, more efficient alternative to the proposed project does not exist.
3. The capital costs are reasonable.
4. The proposed project appears economically viable in the immediate and in the long-term.

DCOPN's recommendation is contingent upon Mary Immaculate Ambulatory Surgery Center, LLC's agreement to the following charity care condition:

Mary Immaculate Ambulatory Surgery Center, LLC, will provide charity care consistent with the 4.0% Bon Secours Hampton Roads Health System ("BSHR") system-wide condition placed on the previously conditioned COPN No. VA-04237 issued on December 30, 2009 (the "BSHR System-Wide Condition"). 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. Mary Immaculate Ambulatory Surgery Center, LLC will accept a revised percentage consistent with any

modification to the BSHR System-Wide Condition accepted by BSHR and 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 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. Mary Immaculate Ambulatory Surgery Center, LLC will provide surgical services care to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq.

Additionally, Mary Immaculate Ambulatory Surgery Center, LLC will facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area. To the extent Mary Immaculate Ambulatory Surgery Center, LLC expects its ability to meet this condition 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. or any revised percentage to be impacted in material part by the expansion of Medicaid in the Commonwealth of Virginia or changes in reimbursement stemming from the response to the COVID-19 pandemic, it may petition the Commissioner for a modification to this condition.