



COMMONWEALTH of VIRGINIA

Department of Health

M. NORMAN OLIVER, MD, MA
STATE HEALTH COMMISSIONER

PO BOX 2448
RICHMOND, VA 23218

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

May 11, 2021

By Email

Matthew M. Cobb, Esquire
Williams Mullen
200 South Tenth Street, Suite 1600
Richmond, Virginia 23219

RE: Certificate of Public Need (COPN)
Number VA-04746 (Request Number VA-8526)
Annandale VA OPCO, LLC
Annandale
Fairfax County
Planning Region (PD) 8
Health Planning Region (HPR) II
Relocation of 25 Nursing Home Beds
from Accordius Health at Roanoke
(in PD 5) to Leewood Healthcare Center

Dear Mr. Cobb:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the "COPN law"), I have reviewed the application proposing the above-captioned project submitted by Annandale VA OPCO, LLC ("project"). As required by Subsection B of Virginia Code § 32.1-102.3, I have considered all matters, listed therein, that must be taken into account in making a determination of public need under the COPN law.

I have reviewed and adopted the enclosed findings, conclusions and recommended decision of the adjudication officer who convened the informal fact-finding conference to discuss the project, and who reviewed the entire administrative record pertaining to the project.

Based on my review of the project and on the recommended decision of the adjudication officer, I am approving the project. It will meet a public need. The project will receive a Certificate.

Matthew Cobb, Esq.
May 11, 2021
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The reasons for my decision include the following:

- (i) The project is generally consistent with the State Medical Facilities Plan (SMFP), to the extent the SMFP has been interpreted to operate in coordination with the overwhelming operation of Virginia Code § 32.1-102.3:7 (the “Bed Transfer Statute”);
- (ii) The project complies with the Bed Transfer Statute;
- (iii) The project is incremental and its approval would not pose a direct adverse effect on any existing provider of nursing home services in PD 8 or detrimentally affect any provider of such services in PD 5; and
- (iv) No known opposition within the health care industry or nursing home industry exists.

Sincerely,

DocuSigned by:

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M. Norman Oliver, MD, MA
State Health Commissioner

Encl. (2)

cc (via email):
Gloria Addo-Ayensu, MD, MPH
Director, Fairfax Health District
Dr. Cynthia B. Morrow, MD, MPH
Director, Roanoke City
Health District
Vanessa MacLeod, Esq.
Assistant Attorney General
Erik O. Bodin, III
Director, Division of
Certificate of Public Need
Douglas R. Harris, JD
Adjudication Officer

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

THIS CERTIFIES THAT Annandale VA OPCO, LLC, is authorized to initiate the proposal as described herein.

NAME OF FACILITY: Leewood Health Center.

LOCATION: 7120 Braddock Road, Annandale, Virginia 22003.

OWNERSHIP AND CONTROL: The approved resources will be owned by Annandale VA OPCO, LLC, organized by the Portopiccolo Group.

SCOPE OF PROJECT: Addition of 25 nursing home beds, through transfer from Accordius Health at Roanoke pursuant to Virginia Code § 32.1-102.3:7, and in accordance with specifications and representations made during the course of review, including those ensuring (i) a substantial increase in the number of private rooms for beds at the facility, (ii) the continued Medicare and Medicaid certification of the facility's existing 132 beds and (iii) the securing of Medicare and Medicaid certification for the 25 beds to be added. The total authorized capital cost of the project is \$3,431,518, to be defrayed through accumulated reserves. The project is scheduled to be completed by May 15, 2024.



Pursuant to Chapter 4, Article 1:1 of Title 32.1, Sections 32.1-102.1 through 32.1-102.11, 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-04746

Date of Issuance: May 11, 2021

Expiration Date: May 10, 2022

DocuSigned by:

M. Norman Oliver, MD

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M. Norman Oliver, MD, MA
State Health Commissioner

**Recommendation
to the State Health Commissioner
on Certificate of Public Need (COPN)
Request Number VA-8526
Annandale VA OPCO, LLC
Annandale
Fairfax County
Planning Region (PD) 8
Health Planning Region (HPR) II
Relocation of 25 Nursing Home Beds
from Accordius Health at Roanoke
(in PD 5) to Leewood Healthcare Center**

Introduction and Authority

This recommended case decision is submitted to the State Health Commissioner (“Commissioner”) for his consideration and adoption. It follows review of the administrative record relating to the proposed project captioned above and an informal fact-finding conference (IFFC)¹ conducted in accordance with the Virginia Administrative Process Act (APA).²

Article 1 of Chapter 4 of Title 32.1 (§ 32.1 - 102.1 *et seq.*) of the Virginia Code (“COPN law”) addresses medical care facilities and provides that “[n]o person shall undertake a project described in [this article] or regulations of the [State] Board [of Health] at or on behalf of a medical care facility . . . without first obtaining a certificate [of public need] from the Commissioner.”³ The endeavor proposed in the pending application, captioned above, falls within the statutory definition of “project” contained in the COPN law, and, thereby, requires a certificate of public need (COPN, or “certificate”).⁴

Factual and Procedural Background

1. Annandale VA OPCO, LLC (“Annandale VA OPCO”), is a limited liability company organized by Portopiccolo Group, a private equity firm created to acquire and operate Leewood Healthcare Center (“Leewood”). The two partners of Portopiccolo Group are Naftal Zanziper and Simcha Hyman, each of whom owns 50 percent of Leewood. These partners own 16 other nursing homes in Virginia, including Accordius Health at Roanoke (“Accordius”), located in PD 5.

¹ The IFFC was convened and conducted virtually on February 24, 2021. A certified transcript of the IFFC is in the record.

² Va. Code § 2.2-4000 *et seq.*

³ Va. Code § 32.1-102.1:2(A).

⁴ Va. Code § 32.1-102.1.

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2. Annandale VA OPCO proposes to relocate 25 licensed skilled nursing beds, or nursing home beds, from Accordius to Leewood, *i.e.*, to relocate beds from one PD to another – an endeavor governed by Code of Virginia § 32.1-102.3:7 (the “Bed Transfer Statute”). The project proposed by Annandale VA OPCO entails the construction of new space and the conversion and renovation of existing space. Total capital costs of the project are \$3,431,518, to be defrayed using accumulated reserves of Annandale VA OPCO.

3. Leewood is comprised of 132 skilled nursing beds certified for Medicare and Medicaid reimbursement. Eight of these beds are in private rooms; 124 are in semi-private rooms.⁵ Leewood offers short-term rehabilitation services, skilled nursing services, VitalStim Therapy, advanced wound care and other services. Annandale VA OPCO intends to establish dual certification for the 25 beds it proposes to relocate to Leewood. The beds currently at Leewood had an occupancy level of 86.7 percent in 2018.

4. Space that would be vacated at Accordius, if the project were approved, would be used to increase the number of private rooms operated at Accordius. Accordius currently has a low nursing home bed use rate per PD 5 adult.

5. In the most recent state-wide request for applications (RFA) for nursing home beds, required annually by Virginia law,⁶ the Virginia Department of Health, Division of Certificate of Public Need (DCOPN, or “division”) calculated a need for 284 nursing home beds in PD 8, as well as a 2022 surplus of 224 beds in PD 5, for 2022.⁷

6. Annandale VA OPCO submits its proposed project as one that complies with the Bed Transfer Statute.

7. The board of directors of the Health Systems Agency of Northern Virginia (HSANV) voted on January 7, 2021, to recommend that the Commissioner deny the project proposed by Annandale VA OPCO.

8. DCOPN recommends that the Commissioner approve the project proposed by Annandale VA OPCO, with a condition ensuring an appropriate level of charity care.

Relation of the Proposed Project to the Bed Transfer Statute

Before enactment of the Bed Transfer Statute in 2013,⁸ nursing home beds could be transferred from a nursing home located in one PD to a nursing home in another PD only under one of two situations: (i) in response to an RFA that identifies a calculated need for beds in the PD to which beds are proposed to be transferred, *i.e.*, the receiving PD, and the occupancy level

⁵ Leewood also owns and operates 40 assisted living beds, located in an adjacent, connected facility. Assisted living beds in Virginia are regulated by the Virginia Department of Social Services. If the proposed project is approved, Annandale VA OPCO intends to cease operation of the assisted living facility.

⁶ Va. Code § 32.1-102.3:2.

⁷ DCOPN Staff Report at 3, 6. Despite the calculated need for beds in PD 8, DCOPN did not issue a call for beds in PD 8 following the RFA development process due to a prevailing low occupancy level, in accordance with regulation.

⁸ House Bill 2292 [Acts of Assembly, c. 515 (2013)], passed unanimously by the House of Delegates and the Senate.

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of nursing home beds in the receiving PD exceeds the 93-percent level prescribed by regulation,⁹ or (ii) with authorization granted by an act of the General Assembly contemplating a specific transfer.

The patron of the Bed Transfer Statute has stated that the statute is intended to remedy the need for piecemeal legislation.¹⁰ The statute created a means for the Commissioner to accept and, following review, approve applications for the transfer of nursing home beds from one PD to another despite the absence of an effective RFA. Under the statute, the Commissioner may approve such an application if it complies with the subitems of the statute, by showing specifically that:

- (i) A shortage, or need, for beds exists in the receiving PD;
- (ii) A surplus of beds exists in the PD from which beds are proposed to be transferred, *i.e.*, the donating PD;
- (iii) The proposed transfer of beds would not create a need in the donating PD, and
- (iv) After transfer, the beds will be available to individuals without regard to their ability to pay for nursing home services or the source of payment for such services.

So, with authorization and by operation of the Bed Transfer Statute, the Commissioner may approve an application for transfer of beds that complies with these four requirements, enumerated in the paragraph above, even if the prevailing occupancy level in the receiving PD does not exceed the level prescribed by regulation, *i.e.*, 93 percent.¹¹

Following analysis, DCOPN concluded that the project proposed by Annandale VA OPCO complies with the requirements of the Bed Transfer Statute.¹² Specifically, DCOPN concluded that a calculated need for 284 nursing home beds exists in PD 8, that PD 5 has a surplus of 224 beds and that transferring 25 beds out of PD 5 would not create a need there. As well, Annandale VA OPCO represents that the beds it proposes transferring would be available to individuals without regard to source of payment.

HSANV disagrees with DCOPN's conclusion that the project proposed by Annandale VA OPCO complies with the Bed Transfer Statute, based mainly on a supposed failure to comply with the first subitem of the statute, as discussed in detail below. HSANV argues emphatically that the computational methodology by which a shortage of nursing home beds has purportedly been shown in PD 8 is problematic and fraught with substantive and procedural error. HSANV maintains it leads to an incorrect result.

⁹ 12 Virginia Administrative Code (VAC) 5-230-610 A 2.

¹⁰ See Annandale VA OPCO IFFC Exhibit 14 (Letter from Del. R. Orrock to D. Harris, May 21, 2019).

¹¹ Va. Code § 32.1-102.3:7(B); Annandale VA OPCO IFFC Exhibit 14 (Letter from Del. R. Orrock to D. Harris, May 21, 2019). DCOPN has calculated that PD 8 nursing home beds had a prevailing occupancy level of 83.1 percent in 2018.

¹² DCOPN Staff Report at 8-9.

Summary and Incorporation of the DCOPN Staff Report

In a staff report dated January 19, 2021, prepared by DCOPN on the project proposed by Annandale VA OPCO, that division recommended that the Commissioner give conditional approval for the proposed project.

More specifically, DCOPN recommended in this report (the "DCOPN staff report") that the Commissioner approve the project because:

- (i) The project is generally consistent with the State Medical Facilities Plan (SMFP) and the COPN law;
- (ii) The project complies with the Bed Transfer Statute;
- (iii) Approval of the project would be more favorable than maintaining the status quo;
- (iv) Capital costs of the project are reasonable;
- (v) The project appears economically viable; and
- (vi) Approval of the project is not likely to have a significant negative effect on the staffing or utilization of existing nursing homes in PD 8.

By reference, the DCOPN staff report is incorporated into the present recommended decision for the purpose of establishing and corroborating facts and demonstrating analysis that support and help constitute the evidentiary basis on which this recommended decision rests.

Summary of the HSANV Staff Report and HSANV Board Recommendation

The staff of HSANV drafted a report recommending that that agency's board of directors, in turn, recommend that the Commissioner deny the project proposed by Annandale VA OPCO. The HSANV board voted to affirm its staff's report and to so recommend.

The board based its recommendation on the several conclusions, identified in the DCOPN staff report.¹³ HSANV's position in regard to the Annandale VA OPCO is multi-pronged but connected to a basic assertion: PD 8 has "a large number of unused or surplus [nursing home] beds" disguised by erroneous calculations resulting from deployment of a faulty computational methodology contained in the SMFP.¹⁴ This surplus, according to HSANV, includes "more than 1000 nursing home beds – licensed nursing home beds – in [n]orthern Virginia that are not in use." HSANV asserts that this number is "more than between 20 and 25 percent of the licensed [bed] capacity."¹⁵

¹³ DCOPN Staff Report at 13.

¹⁴ IFFC Transcript ("Tr.") at 77. See 12 VAC 5-230-610.

¹⁵ Tr. at 77.

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HSANV argues that the Annandale VA PCO project is

grounded in the 'formula-generated need projection' element of the four pronged test for determining a need for additional beds [*i.e.*, the first subitem contained in the Bed Transfer Statute]. Application of the formula by DCOPN results in a 'calculated' purported need for 284 additional beds in PD 8 ... in 2022.¹⁶

Reminding the Commissioner of his statutorily-granted discretion, HSANV advises that the resulting calculation "is not dispositive and is not represented to be by DCOPN, the Commissioner of Health, or the Virginia Board of Health."¹⁷

Further, HSANV observes that the nursing home bed need calculation "is unreliable and, consequently, subject to misunderstanding and misuse." HSANV maintains that recent application of the SMFP's computational methodology in PD 8 incorporates outdated age-specific nursing home use rates from 2014, inconsistent population projections, and is "not compatible with a rapidly changing market characterized by sustained *use rate decreases*," as prevails in PD 8. This "overstatement [of need] is greater in areas, such as [n]orthern Virginia [*i.e.*, PD 8], where use rate decreases are more substantial and where population growth is high."¹⁸

HSANV maintains that

[i]t is evident that, contrary to the applicant's assertion and purported belief, there will be no need for additional nursing home capacity in [n]orthern Virginia in 2022. Similarly, there is no expectation, or reason to believe, that there will be a need for additional facilities or beds within the next decade and beyond.

Further, HSANV states that

there is no evident public need or justification for relocating beds from PD 5 to PD 8. . . . The applicant's reasons for the project are evident and clearly stated. The application contains multiple referees [sic] to *the desire to serve more private pay and Medicare patients*.¹⁹

Serving such patients, according to HSANV, would be of "economic benefit to [Annandale VA OPCO] and to the Portopiccolo Group, the new owner of the nursing home, Leewood . . . , but would be of little – if any value – to the general public," particularly residents of PD 5, from where the beds would be relocated and which displays a nursing home bed use rate per adult "between five and six times higher" than that of PD 8 – an "area of greater surplus."²⁰

¹⁶ HSANV Staff Report at 9-10.

¹⁷ *Id.*

¹⁸ *Id.*, Italics in original.

¹⁹ *Id.*, Italics added.

²⁰ HSANV Staff Report at 10.

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HSANV emphasizes that Annandale VA OPCO is a private interest, or private equity, group that has limited experience operating nursing homes. HSANV maintains that private equity groups like Annandale VA OPCO are “buying up distressed nursing homes in Virginia,” such as Leewood.²¹ In the opinion of the executive director of HSANV, such groups are “taking advantage of” prevailing legal structures, such as the RFA process and the Bed Transfer Statute to benefit financially from operating in a largely-public funded industry.²²

HSANV states that the \$3.4 million cost of the proposed project would be defrayed “largely by Virginia Medicaid and Medicare payments,” and is “wasteful.”²³ The major public benefit, HSANV adds, is the proposed increase in private rooms at Leewood accomplished by renovation and expansion, which could be effected without increasing the nursing home’s bed complement and, likely, without the necessity of obtaining a COPN authorizing such an endeavor.

Finally, HSANV emphasizes that nursing home utilization in Virginia has plummeted overall and especially with the ongoing COVID-19 pandemic, with Leewood experiencing an inordinate number of COVID-19-related fatalities. HSANV advises that the ultimate implications of the pandemic for nursing home capacity need are not known, and that it is imprudent to make decisions relating to capacity under present circumstances, at least until the effects of the pandemic may be documented and assessed. HSANV adds that, in its opinion, the Annandale VA OPCO project is generally inconsistent with the SMFP and the COPN law. In conclusion, both the staff and board of directors of HSANV recommend that the Commissioner deny the project.

HSANV’s negative recommendation appears to reflect *fundamental and vehement disagreement* with the General Assembly’s policy underlying enactment of the Bed Transfer Statute, as well as the manner in which the Commissioner has deemed appropriate to administer the statute so as to avoid committing reversible error. But the meaning and intent of the law has been explained and clarified by the patron of the bill that codified it.²⁴ Administration of the statute has been tailored to reasonably carry out intent and, in this case, is reflective of administrative precedent. The position of HSANV is misplaced.²⁵

Analysis and Conclusions Relating to the Proposed Project

Salient analysis and conclusions regarding the project proposed by Annandale VA OPCO and relating directly to the eight considerations of public need contained in the COPN law (the “statutory considerations”),²⁶ appearing in bold type, are set forth below in relation to each statutory consideration. (The DCOPN staff report, incorporated herein, contains additional analysis and conclusions.)

²¹ HSANV Staff Report at 10, Tr. at 80-81.

²² Tr. at 81, 86, 88.

²³ *Id.* at 78-79.

²⁴ See Annandale VA OPCO IFFC Exhibit 14 (Letter from Del. R. Orrock to D. Harris, May 21, 2019).

²⁵ Annandale VA OPCO argues that “HSANV would be better served to direct its ire at the General Assembly rather than ask the Commissioner to commit reversible error by arbitrarily disregarding his administrative precedent.” Annandale VA OPCO Rebuttal at 2.

²⁶ See Virginia Code § 32.1-102.3(B).

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1. The extent to which the proposed project will provide or increase access to health care services for people in the area to be served and the effects that the proposed project will have on access to health care services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to health care.

Leewood is centrally located in a predominantly suburban area, and is readily accessible within PD 8 via major roadways and state routes, as well as the Capital Beltway and Interstate highways nearby.

Regarding socioeconomic barriers to access to services, Annandale VA OPCO represents that it currently offers, and would continue to offer, access to all of its services, which are certified for Medicare and Medicaid reimbursement, without regard to source of payment. Recently, Leewood has had a Medicaid occupancy rate of 63 percent. DCOPN recommends that a charity care condition be attached to issuance of any COPN authorizing this project.

Annandale VA OPCO does not agree to imposition of such a condition, citing 2021 action by the General Assembly removing the Commissioner's discretion to place a condition on a COPN for nursing home beds.²⁷ Historically, the Commissioner has not typically attached a charity care to the issuance of a COPN authorizing nursing home beds due to the predominance of Medicare and Medicaid as sources of reimbursement for long term care.

2. The extent to which the proposed project will meet the needs of people in the area to be served, as demonstrated by each of the following: (i) the level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served; (ii) the availability of reasonable alternatives to the proposed project that would meet the needs of people in the area to be served in a less costly, more efficient, or more effective manner; (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; (iv) any costs and benefits of the proposed project; (v) the financial accessibility of the proposed project to people in the area to be served, including indigent people; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project.

In advancing its project, Annandale VA OPCO has provided numerous letters of support, which are summarized in the DCOPN staff report. These letters reference the benefits the proposed project offers, including an increase in the number of private rooms at Leewood, and an increase in area population and in the aging of area residents. No known opposition to the project exists, although HSANV recommends its denial.

HPR II, coterminous with PD 8, is unique in Virginia by being served by a regional health planning agency, HSANV. The board of directors of HSANV acted, by a vote of eight in favor and two opposed, with one abstention, to recommend that the Commissioner deny the

²⁷ Language in the 2021 budget bill [House Bill 1800 (Acts of Assembly c. 552, Item 300)] provides that "[t]he provisions of § 32.1-102.4(B), Code of Virginia, shall not apply to nursing homes."

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application submitted by Annandale VA OPCO, for the reasons discussed above and summarized in the DCOPN staff report.²⁸

Annandale VA OPCO identifies several benefits of the proposed project, including its ability to address a calculated shortage of nursing home beds in PD 8 and a concurrent surplus of beds in PD 5, the improvement of the physical plant constituting the structure of the relocated resources, the relocation of the beds to an area of population growth and the reasonableness of attendant construction and operating costs. Indeed, DCOPN concludes that the costs of the project are reasonable.

Additionally, DCOPN observes that Leewood has received a five-star rating, the highest possible, pursuant to a quality assessment tool developed and used by the U.S. Centers for Medicare and Medicaid Services.²⁹

3. The extent to which the proposed project is consistent with the State Health Services Plan [*i.e.*, the SMFP].³⁰

The COPN law requires that “[a]ny decision to issue . . . a [COPN] shall be consistent with the most recent applicable provisions of the [SMFP]”³¹ The SMFP, contained in the Virginia Administrative Code (VAC), includes several provisions applicable to a project proposing an addition to a nursing home, or facility.³²

The most operative provision in reviewing applications for nursing home beds contains a computational methodology for determining a precise number of nursing home beds in a PD.³³ In an August 16, 2018, letter, the Commissioner determined that the provision containing this methodology is not applicable to a project proposed pursuant to the Bed Transfer Statute, for the purpose of denying such a project.³⁴

I conclude that the project proposed by Annandale VA OPCO is generally consistent with the applicable provisions of the SMFP. Sufficient data and information substantiate a determination that the project proposed by Annandale VA OPCO is generally consistent with the SMFP, or in harmony or in general agreement with the SMFP or with the public policies, interests and purposes to which the SMFP and the COPN law are dedicated.³⁵

²⁸ See DCOPN Staff Report at 13.

²⁹ See *Id.* at 15. Such data are available at [medicare.gov](https://www.medicare.gov).

³⁰ While Senate Bill 763 [Acts of Assembly, c. 1271 (2020)] calls for promulgation and adoption of a State Health Services Plan (SHSP) to replace the SMFP, the process for developing the SHSP has not been completed. The SMFP remains in effect as a set of duly-adopted regulations and guidance in reviewing applications for a COPN.

³¹ Va. Code § 32.1-102.3(B).

³² 12 Virginia Administrative Code (VAC) 5-230-600 *et seq.* For the sake of brevity, the SMFP provisions revealing the most salient features of the project are discussed in the present document. The DCOPN staff report, attached hereto, provides a fully-detailed gauge of the application against the SMFP.

³³ 12 VAC 5-230-610. This is the methodology HSANV finds fundamentally problematic.

³⁴ Letter to M. Donlan, T. Stallings from M. N. Oliver, August 16, 2018.

³⁵ See *Roanoke Mem. Hosp. v. Kenley*, 3 Va. App. 599, 352 S.E.2d 525.

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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.

The project proposed by Annandale VA OPCO, an incremental expansion of an existing facility, is not likely to foster institutional competition significantly; ample competition appears to exist already in PD 8 as 36 authorized nursing facilities operate 4485 beds.

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.

Occupancy rates among nursing homes in PD 8 have been declining in recent years. In 2018, the rate was over 83 percent and the population there is growing and aging. The project proposed by Annandale VA OPCO is incremental, transferring 25 beds from PD 5, where they are routinely vacant, to a 132-bed facility, where they would be introduced as part of an overall endeavor that would increase the number of beds in private rooms and update Leewood generally. The beds would be transferred to a PD that has either a need for nursing home beds (according to deployment of the computational methodology contained in the SMFP), or a surplus of beds (according to HSAHV). Regardless, the proposed transfer would increase the inventory of nursing home beds in PD 8 by less than 0.6 percent.

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

DCOPN has concluded that the project proposed by Annandale VA OPCO would be feasible and that the cost of construction is reasonable. Financial resources are available, as represented by Annandale VA OPCO. Human resources appear available. The cost of capital, as that matter is conventionally understood under this statutory consideration, does not appear to be an operative issue or is one likely to have been explored to the satisfaction of Annandale VA OPCO.

The financial benefits of the project to Annandale VA OPCO would likely be direct and substantial; indeed, private equity firms such as the applicant do not normally embark on ventures that promise little reward. The two individuals responsible for organizing Annandale VA OPCO stand to benefit immensely from continued operation of Leewood and the proposed expansion and modernization of that facility.

7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health care 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 health care services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and (iv) at the discretion of the Commissioner, any other factors as may be appropriate.

The project proposed by Annandale VA OPCO would not provide improvements or innovations as narrowly defined by this statutory consideration.

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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 services for citizens of the Commonwealth, including indigent or underserved populations.

Not applicable.

Conclusion and Recommendation

In relation to all eight statutory considerations and upon analytical review of the administrative record compiled in relation to the project proposed by Annandale VA OPCO, I conclude that the project is approvable, due largely to compliance with the provisions of the Bed Transfer Statute and the manner in which that statute has been interpreted and applied since 2018. I recommend that the application for authorization to initiate the project, as proposed, be approved. Annandale VA OPCO should receive a certificate authorizing the project.

Specific reasons supporting this recommendation include:(i) The project proposed by Annandale VA OPCO is generally consistent with the SMFP, to the extent the SMFP has been interpreted to operate in coordination with the overwhelming operation of the Bed Transfer Statute;

(ii) The project complies with the Bed Transfer Statute;

(iii) The project is incremental and its approval would not pose a direct adverse effect on any existing provider of nursing home services in PD 8 or detrimentally affect any provider of such services in PD 5; and

(iv) No known opposition within the health care industry or nursing home industry exists.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Harris", with a stylized flourish at the end.

May 5, 2021

Douglas R. Harris, JD
Adjudication Officer

VIRGINIA DEPARTMENT OF HEALTH

Office of Licensure and Certification

Division of Certificate of Public Need

Staff Analysis

January 19, 2021

RE: COPN Request No. VA-8526

Annandale VA Opco, LLC d/b/a Leewood Healthcare Center

Annandale, Virginia

Relocate 25 Nursing Home Beds to Leewood Healthcare Center

Applicant

Annandale VA Opco, LLC is a recently formed limited liability company created by a private equity firm, the Portopiccolo Group, to acquire and operate Leewood Healthcare Center (“Leewood”). The two partners of the Portopiccolo Group, Naftal Zanziper and Simcha Hyman (“partners”), each own Leewood on a 50% each basis. The partners also own approximately 16 other nursing homes in Virginia, including Accordius Health at Roanoke (“Accordius”).

Leewood began operations nearly 70 years ago, and is comprised of 132 dually-certified Medicare and Medicaid skilled nursing beds. Eight of these beds are located in private rooms and 124 beds are located in semi-private rooms. Additionally, Leewood currently offers 40 assisted living beds, located in an adjacent assisted living facility, connected to the skilled nursing facility by a covered walkway. In addition to short-term rehabilitation and skilled nursing services, Leewood also offers more personally focused services such as vital stim, ultrasound, diathermy, and advanced wound care. Leewood is located in Annandale, Virginia in Health Planning Region (HPR) II and Planning District (PD) 8.

Background

PD 8 Background

In PD 8, there are 36 facilities authorized to house licensed skilled nursing beds, 12 of which operate as part of a continuing care retirement community (CCRC). Using 2018 VHI data, Division of Certificate of Public Need (DCOPN) records, and information found in the Health Systems Agency of Northern Virginia (HSANV) staff analysis report for this project, DCOPN calculated that for 2018, the then-existing 4,462 licensed nursing home beds (in 35 facilities) in PD 8 operated at a collective utilization of 83.1% (**Table 1**). Specifically, the 132 nursing home beds at Leewood operated at a collective utilization of 86.7% in 2018. DCOPN notes that as of the date of this report, there are 4,485 licensed skilled nursing beds in PD 8.

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Table 1. PD 8 Nursing Home Facilities, Beds, and Occupancy: 2018

Facility	Beds	Occupancy Rate
Annandale Healthcare Center	222	88.4%
<i>Arleigh Burke Pavilion</i>	49	92.3%
<i>Ashby Ponds</i>	44	95.6%
<i>Belvoir Woods Health Care Center</i>	56	85.8%
Birmingham Green	180	94.9%
Burke Health & Rehabilitation Center	120	91.6%
Cherrydale Health & Rehabilitation Center	180	92.9%
Dulles Health & Rehab Center	166	91.7%
Envoy Health Care of Woodbridge	120	85.7%
Envoy Health of Alexandria	111	91.4%
Fairfax Nursing Center, Inc.	200	87.4%
<i>The Fountains at Washington House</i>	68	67.5%
Gainesville Health & Rehabilitation Center	120	91.5%
<i>Goodwin House—Alexandria</i>	80	92.4%
<i>Goodwin House—Baileys Crossroads</i>	73	90.2%
<i>Greenspring Village*</i>	136	96.5%
Heritage Hall—Leesburg	164	89.1%
<i>Hermitage Northern Virginia</i>	121	33.4%
Iliff Nursing & Rehabilitation Center	130	79.3%
<i>The Jefferson</i>	31	85.4%
<i>Johnson Center at Falcon's Landing</i>	60	86.2%
Lake Manassas Health and Rehab	120	81.1%
Leewood Healthcare Center	132	86.7%
Loudoun Nursing & Rehabilitation Center	100	96.4%
Manassas Health & Rehabilitation Center	120	92.3%
Manor Care of Alexandria VA, LLC	96	81.6%
Manor Care of Arlington VA, LLC	161	72.0%
Manor Care—Fair Oaks of Fairfax VA, LLC	155	69.6%
<i>The Mather</i>	42	--
Mount Vernon Nursing and Rehabilitation Center	130	79.5%
Potomac Falls Health and Rehab Center	150	95.3%
Powhatan Nursing Home**	160	30.4%
Regency Care of Arlington LLC	240	59.9%
<i>The Virginian</i>	81	45.8%
<i>Westminster at Lake Ridge***</i>	60	74.4%
Woodbine Nursing & Rehabilitation Center	307	83.9%
TOTAL/Average	4,485¹	83.1%

Source: VHI (2018), DCOPN records, HSNV Staff Analysis Report

Note: Beds at facilities in italics are operated as part of a CCRC.

* Failed to submit the necessary data as mandated by Virginia Code §32.1-276.5. DCOPN has included occupancy found in the HSNV staff analysis report, which was derived using patient days estimated based on 2017 VHI reporting.

¹ Though not included in the total calculations for occupancy, this number reflects additions to the PD 8 inventory made pursuant to COPN No. VA—4485, which authorized the addition of 30 nursing home beds at Heritage Hall—Leesburg. These beds are not yet operational.

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** Failed to submit the necessary data as mandated by Virginia Code §32.1-276.5. DCOPN has included occupancy found in the HSNV staff analysis report, which was derived using patient days estimated based on 2017 VHI reporting.
 *** Failed to submit the necessary data as mandated by Virginia Code §32.1-276.5. DCOPN has included occupancy found in the HSNV staff analysis report, which was derived using patient days estimated based on 2017 VHI reporting.

Collective utilization of the PD 8 skilled nursing bed inventory has decreased from 87.1% in 2008 to 83.1% in 2018 (**Table 2**). While the overall decrease in occupancy is not necessarily a large one, it has been generally consistent despite a sharp increase in the population of individuals aged 75 and older (**Table 3**).

Table 2. Historical PD 8 Utilization (2008-2018)

Year	Beds	Occupancy
2018	4,462	83.1%
2017	4,462	81.1%
2016	4,242	84.2%
2015	4,219	85.0%
2014	4,335	88.2%
2013	4,212	82.2%
2012	3,555	84.8%
2011	3,555	85.8%
2010	3,555	86.5%
2009	3,555	86.5%
2008	3,555	87.1%

Source: VHI (2008-2018) and DCOPN records

Table 3. PD 8 Projected Population

Year	PD 8 Total Population	Age 75+	Age 59 and Under
2030	2,937,128	180,365	2,387,543
2020	2,587,000	112,756	2,155,438
% Change: 2020-2030	14% increase	60% increase	11% increase
2010	2,230,623	77,757	1,928,894
% Change: 2010-2020	16% increase	45% increase	12% increase

Source: Weldon-Cooper Center Projections, August 2019

DCOPN notes that in its most recent Request for Applications (RFA), it calculated a PD 8 projected net bed deficit of 284 beds for the 2022 planning year. The applicant relies upon this calculation as the basis for submitting its application pursuant to § 32.1-102.3:7 of the Code of Virginia (“The Bed Transfer Statute”).

Leewood Background

As demonstrated in **Table 4** below, occupancy at Leewood has remained between 86.7% and 92.0% since 2014, demonstrating no consistent increase or decrease.

Table 4. Historical Leewood Utilization (2014-2019)

Year	Beds	Occupancy
2019	132	87.6%
2018	132	86.7%
2017	132	87.6%
2016	132	91.0%
2015	132	90.1%
2014	132	92.0%

Source: VHI (2014-2018), DCOPN Records, and COPN Request No. VA-8526

PD 5 Background

There are 21 facilities in PD 5 that house licensed skilled nursing beds, three of which operate as part of a CCRC. Using 2018 VHI data and DCOPN records, DCOPN calculated that for 2018, licensed nursing home beds in PD 5 operated at a collective utilization of 87.8% (**Table 5**). DCOPN notes that for 2018, Accordius failed to submit the necessary data as mandated by Virginia Code §32.1-276.5.² However, using patient days reported by the applicant for each month of 2019, DCOPN calculated that Accordius' 130 skilled nursing beds operated at only 50.6% occupancy for 2019³. DCOPN notes that it cannot quantifiably confirm this data.

² This information was requested from the applicant, but due to a recent change in ownership, the applicant states it was unable to be obtained.

³ DCOPN notes that while it cannot quantifiably confirm this data, the applicant is required to release such data to VHI, and therefore DCOPN has included it in the analysis for this project.

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Table 5. PD 5 Nursing Home Facilities, Beds, and Occupancy: 2018

Facility	Beds	Occupancy Rate
Accordius Health at Roanoke*	130	--
Alleghany Health & Rehab	105	79.7%
Berkshire Health & Rehabilitation Center	180	94.0%
<i>Brandon Oaks Nursing and Rehabilitation Center</i>	62	86.2%
Brian Center Health & Rehab—Alleghany	89	92.7%
Brian Center Nursing Care—Fincastle	56	91.1%
Carrington Place at Botetourt Commons	90	91.8%
Friendship Health & Rehab Center—South	120	88.7%
Friendship Health & Rehab Center, Inc.	253	91.4%
<i>Hermitage in Roanoke</i>	24	59.2%
Our Lady of the Valley	70	93.6%
Pheasant Ridge Nursing & Rehab Center	101	88.4%
Raleigh Court Health & Rehabilitation Center	120	91.7%
Richfield Recovery and Care Center	280	75.4%
Salem Health & Rehab Center	240	88.7%
Snyder Nursing Home	45	96.7%
South Roanoke Nursing Home	98	86.8%
Springtree Health & Rehabilitation Center	120	93.8%
<i>The Glebe, Inc.</i>	32	94.8%
Virginia Veterans Care Center**	180	93.9%
Woodlands Health and Rehab	60	90.8%
TOTAL/Average	2,275	87.8%

Source: VHI (2018) and DCOPN records

Note: Beds at facilities in italics are operated as part of a CCRC.

* Failed to submit the necessary data as mandated by Virginia Code §32.1-276.5.

**Excluded from all calculations per regulation.

Collective utilization of the PD 5 nursing bed inventory has decreased from 90.9% in 2008 to 87.8% in 2018 (**Table 6**). While the overall decrease in occupancy is not necessarily a large one, it has been generally consistent despite a sharp increase in the population of individuals aged 75 and older (**Table 7**).

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Table 6. Historical PD 5 Utilization (2008-2018)

Year	Beds	Occupancy
2018	2,275	87.8%
2017	2,448	87.2%
2016	2,455	88.1%
2015	2,455	88.6%
2014	2,465	89.4%
2013	2,463	87.4%
2012	2,347	89.6%
2011	2,347	89.9%
2010	2,347	90.3%
2009	2,347	89.9%
2008	2,347	90.9%

Source: VHI (2008-2018) and DCOPN records

Table 7. PD 5 Projected Population

Year	PD 5 Total Population	Age 75+	Age 59 and Under
2030	284,184	28,642	203,081
2020	280,088	22,198	204,603
% Change: 2020-2030	1.5% increase	29% increase	0.7% decrease
2010	274,759	21,463	211,747
% Change: 2010-2020	1.9% increase	3.4% increase	3.4% decrease

Source: Weldon-Cooper Center Projections, August 2019

DCOPN notes that in its most recent RFA, it calculated a PD 5 projected net bed surplus of 224 beds for the 2022 planning year. The applicant relies upon this calculation as the basis for submitting its application pursuant to § 32.1-102.3:7 of the Code of Virginia.

Proposed Project

The applicant proposes to relocate 25 licensed skilled nursing beds from Accordius, located in PD 5, and owned by the Leewood partners, to Leewood, located in PD 8. The proposed project entails the conversion and renovation of space in Leewood's assisted living facility along with 2,775 square feet of new construction space to serve the 25 additional nursing home beds, all of which will remain dually-certified. The applicant states that the renovation and conversion of space at Leewood will increase operating capacity and improve efficiency by converting old, outdated, obsolete assisted living space to skilled nursing use. Upon completion of the proposed project, Leewood Healthcare will cease operation of the assisted living facility. Approval of the proposed project would more than triple the number of private room accommodations at Leewood, and increase the amount of total facility square footage by approximately 4%.

With regard to Accordius, the applicant states that the vacated space will be used to increase the number of private room beds. The space involved in the bed reduction will be refinished and remodeled to improve the facility's ability to offer improved infection control environments and accommodations that are attractive to short-term and long-term residents.

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The total projected capital cost of the proposed project is \$3,431,518 (**Table 8**), the entirety of which will be funded using the accumulated reserves of the applicant. Accordingly, there are no financing costs associated with this project.

Table 8. Leewood Projected Capital and Financing Costs

Direct Construction	\$2,770,083
Equipment Not Included in Construction Contract	\$375,000
Site Preparation Costs	\$94,557
Architectural and Engineering Fees	\$171,878
Taxes and Government Fees During Construction	\$20,000
TOTAL Capital Costs	\$3,431,518

Source: COPN Request No. VA-8526

The applicant projects that construction on the proposed project will begin within 16 months of COPN issuance and be complete within 36 months of COPN issuance, and that resident service will begin within 36 months of COPN issuance. If approved, schedule allowances may need to be made in order to accommodate the applicant's response to the COVID-19 pandemic.

The proposed project would result in a net increase of 25 skilled nursing beds in PD 8, and a net reduction of 25 beds in PD 5. As already stated, DCOPN has calculated a net deficit of 284 beds in PD 8 for the 2022 planning year. However, DCOPN notes that due to the low occupancy of skilled nursing beds in the planning district, an RFA to add beds was not issued. DCOPN further notes that it calculated a net surplus of 224 in PD 5 for the same planning horizon and accordingly, an RFA to add beds was not issued.

Project Definition

Section 32.1-102.1:3 of the Code of Virginia defines a project, in part, as the "relocation of beds from an existing medical care facility described in subsection A to another existing medical care facility described in subsection A..." or "An increase in the total number of beds...in an existing medical care facility described in subsection A." Medical care facilities are defined, in part, as "Any facility licensed as a nursing home, as defined in § 32.1-123."

This project is further qualified by § 32.1-102.3:7 of the Code of Virginia.

Application for Transfer of Nursing Facility Beds--§ 32.1-102.3:7 of the Code of Virginia

A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve applications for the transfer of nursing facility beds from one planning district to another planning district when no Request for Applications has been issued in cases in which the applicant can demonstrate:

- (i) There is a shortage of nursing facility beds in the planning district to which beds are proposed to be transferred;**

As previously discussed, DCOPN notes that in its most recently published RFA, it calculated a PD 8 projected net bed deficit of 284 beds for the 2022 planning year. DCOPN contends that the applicant has satisfied this standard.

- (ii) The number of nursing facility beds in the planning district from which beds are proposed to be moved exceeds the need for such beds;**

As previously discussed, DCOPN notes that in its most recently published RFA, it calculated a PD 5 projected net bed surplus of 224 beds for the 2022 planning year. DCOPN contends that the applicant has satisfied this standard.

- (iii) The proposed transfer of nursing facility beds would not result in creation of a need for additional beds in the planning district from which the beds are proposed to be transferred; and**

To reiterate, DCOPN has calculated a PD 5 projected net bed surplus of 224 beds for the 2022 planning year. Approval of the proposed project would result in a remaining surplus of 199 skilled nursing home beds in the planning district, while simultaneously partially addressing the calculated deficit of beds in PD 8. Furthermore, DCOPN again notes that utilization of skilled nursing home beds in PD 5 has steadily decreased in recent years, despite a sharp increase in population of individuals aged 75 and older. Accordingly, DCOPN does not anticipate that approval of the proposed project would result in a need for additional beds in PD 5, as sufficient capacity will remain to accommodate any unforeseen surge in utilization.

- (iv) The nursing facility beds proposed to be transferred will be made available to individuals in need of nursing facility services in the planning district to which they are proposed to be transferred without regard to the source of payment for such services.**

The applicant provided assurances that it currently offers, and will continue to offer, access to all of its dually-certified nursing facility beds according to the residents' health care needs and without regard to source of payment. DCOPN contends that the applicant has satisfied this standard.

B. Applications received pursuant to this section shall be subject to the provisions of this article governing review of applications for certificate of public need.

The following section of this staff analysis report includes a discussion of the provisions of Article 1.1, which govern the review of applications for a Certificate of Public Need.

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 project will provide or increase access to health care services for people in the area to be served and the effects that the proposed project will have on access to health care services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to health care;

Leewood is centrally located in Fairfax County, making it readily accessible to residents of PD 8. The surrounding area is predominantly suburban in nature, with adjacent properties comprised of single-family residences, Renaissance of Annandale, an assisted living and memory care residence unaffiliated with Leewood, and Oakwood School. The facility has excellent connectivity to major transportation arteries that traverse PD 8, including Virginia State Routes 620 and 236 and Interstates 495 and 395. Additionally, Fairfax County provides bus services to Annandale area residents.

As will be discussed in more detail later in this staff analysis report, DCOPN concludes that at least 95% of the population of PD 8 is currently within 30 minutes' drive time, one way, under normal driving conditions of existing skilled nursing care services. Furthermore, the applicant is a current provider of this service. Accordingly, DCOPN concludes that the proposed project would not improve geographic access to this service in any meaningful way.

Regarding socioeconomic barriers to access to services, the applicant has provided assurances that it currently offers, and will continue to offer, access to all of its dually-certified nursing facility beds according to patients' health care needs and without regard to the source of payment.

Table 9 below indicates that in 2018, approximately 66% of skilled nursing home utilization was attributed to Medicaid services, with the percentage dropping marginally to approximately 63% in 2019. The applicant projects that by the second year of operation after completion of the proposed project, approximately 64% of skilled nursing home utilization will be attributed to Medicaid/financially underserved, long-term care services. Nonetheless, DCOPN notes that pursuant to the recent change to §32.1-102.4B of the Code of Virginia, DCOPN is now required to place a charity care condition on all applicants seeking a COPN. Accordingly, should the Commissioner approve the proposed project, DCOPN recommends a charity care condition requiring the applicant to maintain and continue the historical Medicaid utilization rate of 63% in addition to providing a benevolent assistance subsidy equivalent to at least the commercial value of one private bed per year. DCOPN also notes that its recommendation includes a provision allowing for the reassessment of the charity care condition when more reliable data becomes available regarding the full impact of Medicaid expansion in the Commonwealth.

Table 9. Leewood Projected Payer Source Utilization

Source of Payment	Actual Patient Days				Projected Patient Days			
	2018	%	2019	%	Year 1	%	Year 2	%
Medicare	5,317	12.7%	7,129	16.9%	8,500	17.8%	9,000	17.3%
Medicaid	27,434	65.6%	26,741	63.3%	30,000	62.8%	33,000	63.5%
Self-Pay	5,285	12.6%	5,858	13.9%	6,200	13.0%	6,500	12.5%
Other	3,755	9.0%	2,509	6.0%	3,100	6.5%	3,500	6.7%
TOTAL	41,791	--	42,237	--	47,800	--	52,000	--

Source: COPN Request No. VA-8526

As demonstrated above in **Table 3**, the most recent Weldon-Cooper data projects a total PD 8 population of 2,937,128 persons by 2030. This represents an approximate 31.7% increase in total population from 2010 to 2030. Comparatively, Weldon-Cooper projects the population of Virginia as a whole to increase by only 16.6% for the same period (**Table 10**). With regard to Fairfax County specifically, Weldon-Cooper projects a total population increase of only 15.0% from 2010-2030. With regard to the 65 and older age cohort, Weldon-Cooper projects a much more rapid increase (**Table 11**). Specifically, Weldon-Cooper projects an increase of approximately 114.6% among PD 8's collective 65 and older age cohort, while an increase of approximately 73.3% is expected among this cohort in Fairfax County. This is important, as this age group uses medical care resources, including skilled nursing beds, at a rate much higher than the rest of the population.

Table 10. Statewide and PD 8 Total Population Projections, 2010-2030

Locality	2010	2020	% Change	2030	% Change	2010-2030 % Change
Virginia	8,001,024	8,655,021	8.17%	9,331,666	7.8%	16.6%
Arlington	207,627	249,298	20.1%	274,339	10.0%	32.1%
Fairfax County	1,081,726	1,162,504	7.5%	1,244,025	7.0%	15.0%
Loudoun	312,311	430,584	37.9%	554,808	28.9%	77.7%
Prince William	402,002	478,134	18.9%	571,844	19.6%	42.3%
Alexandria City	139,966	166,261	18.8%	182,067	9.5%	30.1%
Fairfax City	22,565	25,047	11.0%	26,397	5.4%	17.0%
Falls Church City	12,332	12,332	0.00%	17,032	38.1%	38.1%
Manassas City	37,821	43,099	14.0%	46,332	7.5%	22.5%
Manassas Park City	14,273	17,086	19.7%	20,284	18.7%	42.1%
TOTAL PD 8	2,230,623	2,584,345	15.9%	2,937,128	13.7%	31.7%

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

Table 11. PD 8 Population Projections for 65+ Age Cohort, 2010-2030

Locality	2010	2020	% Change	2030	% Change	2010-2030 % Change
Arlington	18,054	22,515	24.7%	26,951	19.7%	49.3%
Fairfax County	106,290	151,585	42.6%	184,218	21.5%	73.3%
Loudoun	20,425	45,314	121.9%	84,522	86.5%	313.8%
Prince William	27,220	52,698	93.6%	80,830	53.4%	197.0%
Alexandria City	12,806	17,359	35.6%	22,175	27.7%	73.2%
Fairfax City	3,088	3,754	21.6%	4,611	22.8%	49.3%
Falls Church City	1,293	1,908	47.5%	2,317	21.5%	79.2%
Manassas City	2,607	3,930	50.8%	5,387	37.1%	106.7%
Manassas Park City	806	1,426	76.9%	2,258	58.4%	180.2%
TOTAL PD 8	192,589	300,491	56.0%	413,269	37.5%	114.6%

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

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 people in the area to be served, as demonstrated by each of the following:

(i) The level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served;

The applicant provided numerous letters of support for the proposed project. Collectively, these letters addressed the following:

1. The added capacity will include more private rooms, which will help Leewood's ability to more effectively serve patients with infectious disease, as well as provide improved patient privacy and comfort.
2. In the last several years, HPR II has become more populated with an increase in number of aging residents, thus requiring more healthcare services. Leewood has been constantly filled up to maximal capacity most of the time. Expansion will enhance Leewood's ability to serve residents with infectious disease and pulmonary and memory issues.
3. Expansion of capacity and the addition of private rooms will allow for greater comfort of current residents, and expand the delivery of excellent care to prospective residents. If approved, this expansion would also facilitate quarantine, when needed.
4. The plans for expansion provide for a kitchenette, laundry and bathroom devoted solely to ADL (activities of daily living) training, which will more closely simulate a home environment. Additionally, a new rehabilitation gym with updated home-like features will allow residents to work on tasks that are vital to a safe return home.
5. Approval of the proposed project would also result in the addition of private room accommodations at the Accordius facility.

DCOPN is unaware of any opposition to the proposed project.

The Health Systems Agency of Northern Virginia (HSANV) conducted its board meeting via teleconference on January 7, 2021. There was no public comment on the proposal other than the statements submitted with the application. All of this comment, which was distributed to all parties before the meeting, endorsed or otherwise supported the project.

(ii) The availability of reasonable alternatives 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 already discussed, VHI data demonstrates that in 2018, PD 8 skilled nursing beds operated well beneath maximum capacity (**Tables 1 and 2**), indicating that there is ample underutilized inventory, both within the planning district and within Leewood's existing bed complement, to provide adequate skilled nursing care to residents of PD 8 for the foreseeable future. However, DCOPN notes that currently, 124 of Leewood's 132 skilled nursing beds are semi-private, which is typical of older skilled nursing units. The applicant states that due to the lack of private rooms, the facility is currently at a competitive disadvantage to serve the growing market of younger, more active patients who seek short-term rehabilitation services with the intent to return home after completing their rehabilitation regimen. DCOPN contends that the proposed project incorporates elements of culture change design that have been sweeping the long-term care industry over the past decade and will result in added privacy for residents of both PD 8 and PD 5⁴. Furthermore, the addition of private rooms will enhance Leewood's ability to serve residents with infectious disease by adding additional space for quarantine, should such space be necessary. For these reasons, DCOPN contends that approval of the proposed project is more favorable than maintaining 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;

The Health Systems Agency of Northern Virginia (HSANV) Board of Directors reviewed at its January 7, 2021 meeting the COPN application filed by Leewood (COPN Request No. VA-08526) that seeks authorization to add 25 nursing home beds. The Board voted on a motion to recommend denial of the application. The motion passed by a vote of eight in favor and two opposed, with one abstention.

The Board based the recommendation on its review of the application, on the HSANV staff report on the proposal, and on the testimony and evidence presented at the January 7, 2021 Board

⁴ Shield, Renée R., et al. "“Would You Do That in Your Home?” Making Nursing Homes Home-like in Culture Change Implementation." *Journal of Housing for the Elderly*, U.S. National Library of Medicine, 2 Dec. 2014, www.ncbi.nlm.nih.gov/pmc/articles/PMC5363857/.

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of Directors meeting held on the application. The Board also based its recommendation on several basic findings and conclusions, including:

1. Northern Virginia (PD 8) has a large number of unused (surplus) nursing home beds. There is no demonstrated public need for additional nursing home capacity within the nominal planning horizon (next five years) or the next decade.
2. Additional nursing home capacity is not needed to ensure or improve access to care in any part of the planning district.
3. The Leewood argument that there is a demonstrated, quantified need for additional nursing home beds in PD 8 is based on the problematic “calculated need” projection contained in the 2020 nursing home request for applications. The calculation Leewood relies on is based on outdated data and flows from a flawed need determination methodology and thus is deficient, misleading, and subject to abuse.
4. The project would be of economic benefit to Leewood and the Portopiccolo Group, Leewood’s parent corporation, but would be of little, if any, public value or benefit.
5. Recent and projected demand for nursing home services in Virginia Planning District 5 (PD 5) and Virginia Planning District 8 (PD 8) indicate that the beds proposed for transfer from PD 5 to PD 8, should remain in Planning District 5.
6. The proposed capital expenditure of \$3.4 million, which would be defrayed largely from Virginia Medicaid and Medicare payments, is unnecessary and potentially wasteful.
7. The potential increase in private rooms, cited by the applicant as a critical element of the project, can be undertaken outside of the COPN process, without expanding licensed bed capacity unnecessarily. There is no planning or regulatory obstacle hindering the Portopiccolo Group from renovating and modernizing Leewood Healthcare Center and Accordius Health at Roanoke at a time of its choosing.
8. The ongoing COVID-19 pandemic has been catastrophic for nursing homes, in Virginia and elsewhere, with an inordinate number of fatalities at Leewood Healthcare Center. Nursing home demand and use have plummeted, and the ultimate implications for nursing home capacity needs are not known. It is neither prudent nor in the public interest to make capacity decisions under these conditions and circumstances. The application should be withdrawn until the effects of the pandemic can be documented and assessed. If not withdrawn, the application should be denied.
9. The proposal is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan and other COPN program rules and regulations.

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

As illustrated in **Table 8**, the total projected capital cost of the proposed project is \$3,431,518, the entirety of which will be funded using the accumulated reserves of the applicant. Accordingly, there are no financing costs associated with the proposed project. DCOPN concludes that the costs for the proposed project are reasonable and consistent with previously approved projects similar in clinical scope.⁵

The applicant cited the following benefits of the proposed project:

1. According to the SMFP bed need projection formula for planning years 2021-2023, PD 8 has a shortage of beds.
2. According to the SMFP bed need projection formula for planning years 2021-2023, PD 5 has excess bed capacity.
3. The project proposes to transfer 25 beds from PD 5, and relocation of 25 beds will not create a need for more beds in PD 5.
4. The nursing facility beds proposed to be transferred will be made available to individuals in need of nursing facility services in PD 8 without regard to the source of payment for such services.
5. The proposed relocation would move beds out of a nursing home that has had low occupancy for many years and has no current or prospective need for those licensed beds.
6. The beds would be relocated from a fifty plus year old facility which is outdated and has quite limited floor space per bed, to a nursing facility which will offer more private rooms, increased floor space per bed and enable patients to have access to therapy and support spaces which better meet contemporary expectations for nursing home services.
7. The proposed new and converted space will increase space available for resident recreation and socialization, offer more privacy for nursing home residents and their visitors in resident bedrooms, and provide a better environment for infection control.
8. The proposed project will serve an area that has a large and rapidly growing population of age appropriate persons.
9. The projected capital costs and operating expenses are reasonable for a project of this type.

⁵ COPN No. VA-04626 authorized the establishment of a 42-bed nursing facility and had a capital cost of \$22,036,839; COPN No. VA-04080 authorized the transition of 10 skilled nursing beds from MC Arlington to Fair Oaks and had a capital cost of \$12,308,000; COPN No. VA-03854 authorized the addition of 88 skilled nursing beds and had a capital cost of \$9,302,163.

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

To reiterate, the applicant has provided assurances that all skilled nursing beds at Leewood will continue to be dually-certified and that it will continue to offer access to all beds according to patients' health care needs and without regard to payment source. As previously discussed, should the Commissioner approve the proposed project, DCOPN recommends a charity care condition requiring the applicant to maintain and continue the historical Medicaid utilization rate of 63% in addition to providing a benevolent assistance subsidy equivalent to at least the commercial value of one private bed per year. DCOPN also notes that its recommendation includes a provision allowing for the reassessment of the charity care condition when more reliable data becomes available regarding the full impact of Medicaid expansion in the Commonwealth.

(vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project;Leewood's Nursing Home Compare Ratings

The overall rating as well as ratings for three component-rating categories (health inspection, staffing, and quality measures) for Leewood can be found at Nursing Home Compare (medicare.gov) and are illustrated in **Table 12** below. The ratings are based on a five-star system, with an awarded five stars being the best rating possible.

Table 12. HH—Leewood Nursing Home Compare Rating

Overall Rating	Health Inspection	Staffing	Quality Measures
5 stars	3 stars	4 stars	5 stars

Source: Nursing Home Compare (medicare.gov)

Key: 1 star – much below average

2 stars –below average

3 stars –average

4 stars –above average

5 stars –much above average

The “Bed Transfer Statute” and Medicaid Budget Financial Implications

HB 2292, introduced by Delegate Robert D. Orrock, Sr. was passed during the 2013 Virginia General Assembly (Chapter 515 Acts of Assembly). The bill was passed unanimously by the House and Senate, and became law effective July 1, 2013. In the executive summary, the applicant provided an excerpt from the Department of Planning and Budget's 2013 Fiscal Impact Statement concerning the bill. That statement is as follows:

“The bill provides that the Commissioner of Health shall accept and may approve applications for (i) the transfer of nursing facility beds from one planning district to another planning district in the absence of a Request for Applications and (ii) for the extension of the open admissions period for nursing home beds of a continuing care retirement community.”

The fiscal implications of the bill were described as follows:

“The bill is not expected to have any fiscal impact on the state. The bill makes it easier to transfer nursing home beds from one planning district to another. The criteria for approval of the transfer would prevent creating any shortage of nursing home beds in a planning district, which could result in increasing the number of nursing home beds in the state and increasing Medicaid costs. However, since the bill has the appropriate provisions in place, there is no expected fiscal impact.”

However, DCOPN notes that, according to the Price-Based Reimbursement Rates published by the Department of Medical Assistance Services (DMAS), reimbursement rates for Accordius are lower than the rates of Leewood.⁶ For example, Accordius, which is assigned to the Urban4 peer group, has a capital rate of \$15.09 per resident per day, and a total reimbursement rate of \$220.58 per resident per day. In comparison, Leewood is assigned to the Urban3 peer group, has a capital rate of \$16.75 per resident per day, and a total reimbursement rate of \$238.21 per resident per day—approximately 8% higher than that of Accordius. If approved and all 25 of the new beds at Leewood were to be occupied by Medicaid recipients the State would incur an additional cost of \$160,783 per year. At Leewood’s historic occupancy of 86.7%, the additional cost the State would be \$139,398. DCOPN also notes that because the proposed project involves new construction, Leewood’s capital rate will likely increase further. Thus, DCOPN contends that the proposed project will have some negative impact on Virginia’s Medicaid budget because the beds to be relocated to PD 8 will be reimbursed at a higher rate, resulting in an economic benefit for the applicant.

Executive Order 52 and the COVID-19 Pandemic

On March 12, 2020, Governor Ralph Northam declared a state of emergency throughout Virginia in response to the coronavirus pandemic. Subsequent to this declared state of emergency, on March 20, 2020, Governor Northam signed Executive Order 52 (EO 52) providing that notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the Code of Virginia, the State Health Commissioner, at his discretion, may authorize any general hospital or nursing home to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19. Such beds authorized by the Commissioner under EO 52 would, notwithstanding Virginia Code § 32.1-132, constitute licensed beds that do not require further approval or the issuance of a new license. As of the date of this report, Leewood has not requested to temporarily add additional capacity pursuant to EO 52 to respond to the COVID-19 pandemic. However, the applicant provided information regarding the number of COVID-19 outbreaks, cases, hospitalizations and deaths at both Leewood and Accordius up to December 4, 2020 (**Table 13**). As already discussed, the applicant asserts, and DCOPN agrees, that the addition of private rooms within each facility will enable the applicant to better care for patients with infectious diseases in the future.

⁶<https://www.dmas.virginia.gov>. Became effective on July 1, 2020.

Table 13. Leewood and Accordius COVID-19 Data

	Leewood		Accordius
	<u>Skilled Nursing</u>	<u>Assisted Living</u>	<u>Skilled Nursing</u>
Outbreaks	1	1	3
Cases	75	1	52
Hospitalizations	18	1	6
Deaths	31	1*	2

Source: COPN Request No. VA-8526

*Same Person for all categories in assisted living

State Health Services Plan Task Force

Section 32.1-102:1 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 SMFP.

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

Part VII of the State Medical Facilities Plan (SMFP) provides the criteria and standards for nursing facilities. They are as follows:

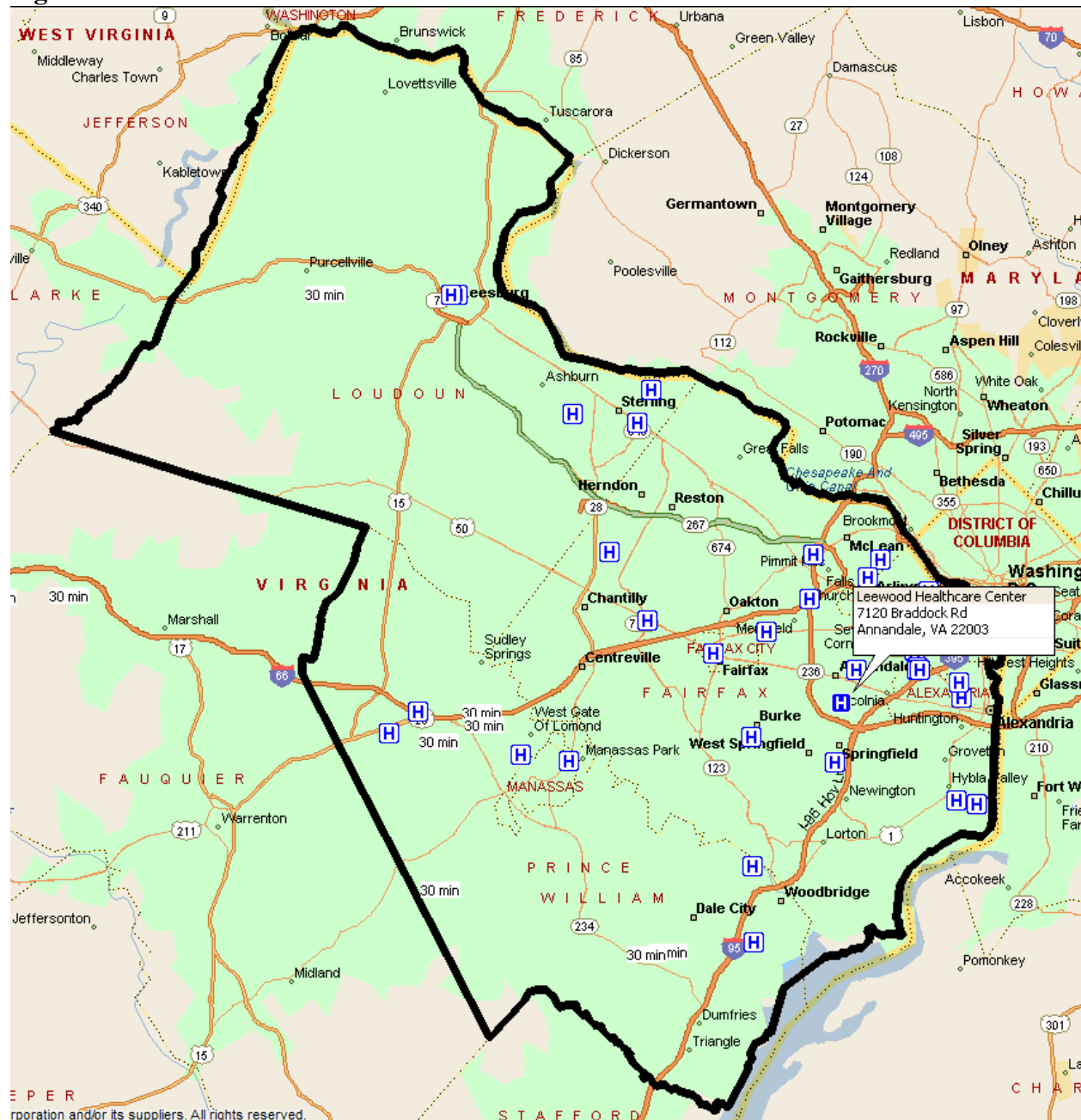
Part VII
Nursing Facilities

12VAC5-230-600. Travel Time.

- A. Nursing facility beds should be accessible within 30 minutes driving time one way under normal conditions of 95% of the population in a health planning district using mapping software as determined by the commissioner.**

The heavy black line in **Figure 1** identifies the boundary of PD 8. The solid blue “H” sign marks the location of the proposed project. The solid white “H” signs mark the locations of all other providers of skilled nursing care in PD 8. The green shaded area illustrates the area of PD 8 and the surrounding area that is currently within the 30-minute drive time of existing skilled nursing services in PD 8. Given the amount of shaded area, and its location, it is reasonable to conclude that the overwhelming majority of the PD 8 population is within 30-minutes drive time, one way, under normal driving conditions, of existing skilled nursing services. Furthermore, because the applicant currently provides this service, DCOPN concludes that the proposed project would not improve geographical access for residents of PD 8 in any meaningful way.

Figure 1.



B. Nursing facilities should be accessible by public transportation when such systems exist in an area.

As previously discussed, Leewood is currently served by public transportation services provided by Fairfax County.

C. Preference may be given to proposals that improve geographic access and reduce travel time to nursing facilities within a health planning district.

Not applicable. The proposed project is not competing with another project.

12VAC5-230-610. Need for New Service.

A. A health planning district should be considered to have a need for additional nursing facility beds when:

- 1. The bed need forecast exceeds the current inventory of beds for the health planning district; and**
- 2. The average annual occupancy of all existing and authorized Medicaid-certified nursing facility beds in the health planning district was at least 93%, excluding the bed inventory and utilization of the Virginia Veterans Care Centers.**

EXCEPTION: When there are facilities that have been in operation less than three years in the health planning district, their occupancy can be excluded from the calculation of average occupancy if the facilities had an annual occupancy of at least 93% in one of its first three years of operation.

B. No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid certified. This presumption of ‘no need’ for additional beds extends for three years from the issuance date of the certificate.

C. The bed need forecast will be computed as follows:

PDBN = (UR64 x PP64) + (UR69 x PP69) + (UR74 + PP74) + UR79 + PP79) + UR84 + PP84) + UR85 + PP85)

Where:

- PDBN = Planning district bed need.**
- UR64 = The nursing home bed use rate of the population aged 0 to 64 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- PP64 = The population aged 0 to 64 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- UR69 = The nursing home bed use rate of the population aged 65 to 69 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- PP69 = The population aged 65 to 69 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- UR74 = The nursing home bed use rate of the population aged 70 to 74 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**

- **PP74** = The population aged 70 to 74 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.
- **UR79** = The nursing home bed use rate of the population aged 75 to 79 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.
- **PP79** = The population aged 75 to 79 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.
- **UR84** = The nursing home bed use rate of the population aged 80 to 84 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.
- **PP84** = The population aged 80 to 84 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.
- **UR85+** = The nursing home bed use rate of the population aged 85 and older in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.
- **PP85+** = The population aged 85 and older projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

Health planning district bed need forecasts will be rounded as follows:

<u>Health Planning District Bed Need</u>	<u>Rounded Bed Need</u>
1-29	0
30-44	30
45-84	60
85-104	90
105-134	120
135-164	150
165-194	180
195-224	210
225+	240

EXCEPTION: When a health planning district has:

1. Two or more nursing facilities;
2. Had an average annual occupancy rate in excess of 93% for the most recent two years for which bed utilization has been reported to VHI; and
3. Has a forecasted bed need of 15 to 29 beds, then the bed need for this health planning district will be rounded to 30.

- D. No new freestanding nursing facilities of less than 90 beds should be authorized. However, consideration may be given to a new freestanding facility with fewer than 90 nursing facility beds when the applicant can demonstrate that such a facility is justified based on a locality's preference for such smaller facility and there is a documented poor distribution of nursing facility beds within the health planning district.**
- E. When evaluating the capital cost of a project, consideration may be given to projects that use the current methodology as determined by the Department of Medical Assistance Services.**
- F. Preference may be given to projects that replace outdated and functionally obsolete facilities with modern facilities that result in the more cost-efficient resident services in a more aesthetically pleasing and comfortable environment.**

In a letter dated August 16, 2018, the Commissioner of Health wrote the following:

"In reconsidering these [COPN Request Nos. VA-8336 and 8337] applications and the record as a whole, I have re-reviewed the Adjudication Officer's recommendation and do not adopt it. More specifically, any portion of the Adjudication Officer's recommended decision that holds the applicants to the standards of 12VAC5-230-610 of the State Medical Facilities Plan is rejected. Instead, the provisions of Virginia Code § 32.1-102.3:7 (The Bed Transfer Statute) are applicable."

Accordingly, this section is not applicable to the proposed project.

12VAC5-230-620. Expansion of Services.

Proposals to increase existing nursing facility bed capacity should not be approved unless the facility has operated for at least two years and the average annual occupancy of the facility's existing beds was at least 93% in the relevant reporting period as reported to VHI.

NOTE: Exceptions will be considered for facilities that have operated at less than 93% average annual occupancy in the most recent year for which bed utilization has been reported when the facility offers short stay services causing an average annual occupancy lower than 93% for the facility.

Although DCOPN is precluded from relying upon the 93% occupancy standard found in 12VAC5-230-610 (610), DCOPN contends that the 93% occupancy standard found within 12VAC5-230-620 may still be considered. Specifically, in the letter referenced above, the Commissioner *explicitly* referenced 12VAC5-230-610, but did not include 12VAC5-230-620 in his discussion. Additionally, DCOPN notes that the 93% occupancy standard found in 12VAC5-230-610 refers to the average annual occupancy of all existing and authorized Medicaid-certified nursing facility beds *in the health planning district*, while the 93% occupancy standard of 12VAC5-230-620 refers to the average annual occupancy *of the individual facility's* existing beds.

As previously discussed, 2018 VHI data indicates that Leewood's existing 132 skilled nursing beds operated at a collective utilization of 86.7%, slightly beneath the 93% expansion threshold found in

this standard (**Table 1**). Furthermore, DCOPN again notes that utilization at Leewood has steadily decreased from 92.0% in 2014 to 86.7% in 2018 (**Table 4**), despite a sharp increase in the population of PD 8 residents aged 75 and older (**Table 3**). Based on these utilization and population trends, DCOPN contends that the existing Leewood complement is capable of adequately serving its existing population, as well as accommodating any increase in PD 8 utilization, should an increase occur in the future.

Nonetheless, as already discussed, DCOPN maintains that the proposed project warrants approval despite the applicant's failure to satisfy this standard, as the proposed project is a better alternative than maintaining the status quo. To reiterate, despite the absence of an RFA for the addition of beds, DCOPN has calculated a net surplus of beds in PD 5 and a net deficit of beds in PD 8. Approval of the proposed project would result in additional private rooms at both Leewood and Accordius, which is more aligned with current industry standards and would allow the applicant to better facilitate future quarantines as well as care for patients with infectious diseases. Additionally, approval of the proposed project would result in 25 skilled nursing beds being moved out of a nearly fifty-year-old building into a more modern facility, resulting in more cost-efficient resident services in a more aesthetically pleasing and comfortable environment.

12VAC5-230-630. Continuing Care Retirement Communities.

Proposals for the development of new nursing facilities or the expansion of existing facilities by continuing care retirement communities (CCRC) will be considered when:

- 1. The facility is registered with the State Corporation Commission as a continuing care provider pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia;**
- 2. The number of nursing facility beds requested in the initial application does not exceed the lesser of 20% of the continuing care retirement community's total number of beds that are not nursing home beds or 60 beds;**
- 3. The number of new nursing facility beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed 20% of its total number of beds that are not nursing facility beds; and**
- 4. The continuing care retirement community has established a qualified resident assistance policy.**

The applicant is not part of a CCRC and as such, this provision of the SMFP is not applicable to the proposed project.

12VAC5-230-640. Staffing.

Nursing facilities shall be under the direction or supervision of a licensed nursing home administrator and staffed by licensed and certified nursing personnel qualified as required by law.

The applicant has provided assurances that the facility is currently, and will continue to be, under the direction and supervision of a licensed Nursing Home Administrator, and will be staffed by licensed and certified nursing personnel as required by law.

Eight 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;**

To reiterate, there are currently 36 COPN authorized nursing facilities operating a total of 4,485 beds in PD 8. Most of these facilities are operated by different owners and operators. DCOPN contends that the proposed project is not likely to significantly foster institutional competition benefiting PD 8, as ample competition already exists among current providers. However, the applicant argues that its current lack of private skilled nursing beds puts it at a competitive disadvantage, as a larger complement of private rooms has become the industry standard over the past decade. DCOPN does note, however, that the proposed project would increase the number of nursing facility beds in a planning district in which there is underutilized existing capacity, potentially harming the utilization, efficiency, and staffing needs of existing providers. DCOPN maintains that because the number of beds requested by the applicant is small, any negative impact on existing facilities is not likely to be destabilizing or even substantial. DCOPN additionally notes that no letters of opposition were received with regard to this project.

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 demonstrated in **Table 2**, utilization rates of nursing facilities in PD 8 have been steadily declining for the past several years. DCOPN contends that the proposed project would further reduce the average occupancy of PD 8. Although DCOPN's bed need projections calculate a projected net deficit for the 2022 planning year, DCOPN contends that ample capacity exists within the PD 8 skilled nursing home bed inventory to provide care for PD 8 residents for the foreseeable future. Nonetheless, for reasons already discussed throughout this report, DCOPN maintains that approval of the proposed project is a better alternative than maintaining the status quo. DCOPN further reiterates that any potential negative impact approval of the proposed project may have on existing providers is not likely to be substantial.

6. The feasibility of the project, 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 14**) provided by the applicant anticipates a net profit of \$518,656 in year one and \$1,495,480 in year two, illustrating that the proposed 25 additional skilled nursing beds would be financially feasible in the immediate and the long-term, assuming the applicant is able to fill them. As already discussed, DCOPN contends that the projected capital costs for the proposed project are reasonable when compared to previously authorized projects similar in scope. The applicant will fund the project entirely using accumulated reserves. Accordingly, there are no financing costs associated with this project.

Table 14. Leewood Pro Forma Income Statement

	2024	2025
Total Gross Patient Care Services Revenue	\$19,054,589	\$20,637,622
Deductions from Revenue	(\$4,190,078)	(\$4,547,852)
Net Patient Care Services Revenue	\$14,864,511	\$16,089,770
Other (Non-Patient Care) Revenue	\$26,697	\$29,043
TOTAL-Net Revenue	\$14,891,208	\$16,118,813
Direct Patient Care Expenses	\$8,036,618	\$8,180,770
Indirect Patient Care Expenses	\$4,415,935	\$4,522,563
Capital-Related Expenses	\$1,920,000	\$1,920,000
Total Expenses	\$14,372,553	\$14,623,333
Per Diem Expenses	\$300.68	\$281.22
Net Income (before income taxes)	\$518,656	\$1,495,480

Source: COPN Request No. VA-8526

With regard to staffing, the applicant anticipates the need to hire 20 additional full-time employees in order to staff the proposed project. The applicant states that it successfully recruits locally to fill open staff positions and expects to be able to follow the same process with filling open positions with the additional capacity. DCOPN notes that the applicant is an established provider of skilled nursing services. Considering PD 8's robust employee pool, DCOPN does not anticipate that the applicant will have difficulty filling the needed positions or that, due to the small number of employees needed, doing so will have a significantly negative impact on neighboring facilities.

DCOPN again notes that the proposed project, if approved, will negatively impact Virginia's Medicaid budget because the beds to be relocated to PD 8 will be reimbursed at a higher rate, resulting in an economic benefit for the applicant.

- 7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health care 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 health care services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and (iv) at the discretion of the Commissioner, any other factors as may be appropriate;**

DCOPN again notes that the proposed project would increase the number of private rooms both at Leewood and at Accordius, implementing designs of culture change sweeping the long-term care industry in recent years. Additionally, while the applicant currently does not offer outpatient services, it anticipates providing outpatient services to discharged-to-home short-term rehabilitation patients in the future. The applicant does not provide, nor has it proposed to provide, improvements or innovations in the financing and delivery of health services as demonstrated by cooperative efforts to meet regional health care needs. DCOPN did not identify any other factors, not addressed elsewhere in this staff analysis report, to bring to the Commissioner's attention regarding the determination of a public need for the proposed project.

- 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 services for citizens of the Commonwealth, including indigent or underserved populations.**

Not applicable. The applicant is not, nor is it affiliated with, a teaching hospital associated with a public institution of higher education or a medical school in the area to be served.

DCOPN Staff Findings and Conclusions

The applicant proposes to relocate 25 dually-certified skilled nursing beds from Accordius, located in PD 5 to Leewood, located in PD 8. Approval of the proposed project would result in the Leewood complement, as well as the total PD 8 inventory, increasing by 25 skilled nursing beds, with the PD 5 inventory decreasing by the same amount. The project involves the conversion and renovation of space in Leewood's assisted living facility, along with 2,775 square feet of new construction space. Upon completion of the proposed project, Leewood will cease operation of the assisted living facility. Approval of the proposed project would more than triple the number of private room accommodations at Leewood. With regard to Accordius, the vacated space will be refinished and remodeled in order to increase the number of private rooms at that facility.

The total projected capital cost of the proposed project is \$3,431,518, the entirety of which will be funded using the accumulated reserves of the applicant. Accordingly, there are no financing costs associated with the proposed project. DCOPN concludes that this cost is reasonable when compared to previously approved projects similar in scope. The applicant projects that construction on the proposed project will begin within 16 months of COPN issuance and be complete and accepting patients within 36 months of COPN issuance.

Based on the Pro Forma profit and loss statement provided by the applicant, the addition of the 25 skilled nursing beds would add to the facility's overall profitability. The applicant projects a net income of \$515,656 in the first year of operation and \$1,495,480 in year two. DCOPN concludes that the project appears to be financially feasible both in the immediate and the long-term. Should the Commissioner approve the proposed project, DCOPN recommends a charity care condition requiring the applicant to maintain and continue the historical Medicaid utilization rate of 63% in addition to providing a benevolent assistance subsidy equivalent to at least the commercial value of one private bed per year. DCOPN also notes that its recommendation includes a provision allowing for the reassessment of the charity care condition when more reliable data becomes available regarding the full impact of Medicaid expansion in the Commonwealth.

Should the proposed project be approved, the applicant anticipates the need to hire an additional 20 FTE personnel to staff the proposed expansion. DCOPN does not anticipate that the applicant will have difficulty securing the needed staff, or that doing so will have a significant negative impact on existing facilities.

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With regard to Chapter 4, Article 1.1, Section 32.1-102.3:7 of the Code of Virginia, DCOPN notes that the applicant satisfies each standard. Specifically, DCOPN notes that there is a calculated surplus of beds in PD 5 and a calculated deficit of beds in PD 8. DCOPN contends that ample capacity exists both within the Leewood complement and the collective PD 8 inventory to provide adequate care for the residents of PD 8. However, even with 25 skilled nursing beds removed from the PD 5 inventory, a large surplus would remain. Furthermore, approval of the proposed project would result in more private rooms at each facility, a design that has become more common in recent years. Accordingly, DCOPN maintains that the proposed project presents a better option than maintaining the status quo.

DCOPN Staff Recommendation

The Division of Certificate of Public Need recommends **conditional approval** of this project for the following reasons:

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. The proposed project is compliant with Chapter 4, Article 1.1, Section 32.1-102.3:7 of the Code of Virginia.
3. The proposed project is more favorable than maintaining the status quo.
4. The capital costs are reasonable.
5. The proposed project appears economically viable both in the immediate and in the long-term.
6. Approval of the proposed project is not likely to have a significant negative impact on the staffing and utilization of existing PD 8 facilities.

DCOPN's recommendation is contingent upon Annandale VA Opco, LLC d/b/a Leewood Healthcare Center's agreement to the following:

Annandale VA Opco, LLC, doing business as Leewood Healthcare Center, will provide skilled nursing services to all persons in need of this service, regardless of their ability to pay, and will maintain and continue a Medicaid utilization rate of at least 63%. Additionally, Annandale VA Opco, LLC, doing business as Leewood Healthcare Center, will provide a benevolent assistance subsidy equivalent to at least the commercial value of one private bed per year. 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.

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December 30, 2020

TO: Board of Directors, Health Systems Agency of Northern Virginia
Project Review Committee, HSA NV

FROM: Dean Montgomery

SUBJECT: Certificate of Public Need Application
Annandale VA Opco, LLC, Add 25 Nursing Home Beds
COPN Request VA-8526

I. Proposal Summary

Annandale VA Opco, LLC, is a recently formed limited liability corporation (LLC) created by a private equity firm, the Portopiccino Group, to acquire and operate the Fairfax County, VA nursing care facility that does business as Leewood Healthcare Center (Leewood or LHC).¹ Leewood is a 132-bed facility with a 40-bed assisted living facility on campus. It is located at 7120 Braddock Road (Route 236) in east-central Fairfax County.

Leewood Healthcare Center proposes to renovate and expand its assisted living facility to house 25 private nursing home beds, increasing its licensed capacity to 157 beds.² This increase in capacity would be offset by reducing the licensed bed capacity of Accordius Health at Roanoke which also was acquired recently by the Portopiccino Group, by 25 beds. Locations of the facilities are shown on Map 1. The projected capital cost is \$3,431,518.

Leewood Healthcare Center justifies the proposal on the grounds that

- The proposal qualifies for submission, and consideration, outside the standard request for applications (RFA) planning process in accordance with the 2013 amendments to the Virginia COPN statute (HB 2292, enacted in 2013).
- The project is consistent with more than a half dozen similar projects that have obtained COPN authorization recently to move nursing home beds from one planning district to another outside the request for applications planning process.

¹Information on the Portopiccino Group is available at <https://theportopiccinogroup.com/>. Information on its nursing home acquisitions and operations is available at <https://www.barrons.com/articles/as-the-pandemic-struck-a-private-equity-firm-went-on-a-nursing-home-buying-spree-51596723053>. The *Barron's* article is enclosed.

² The applicant avers that there is more than adequate assisted living capacity in the region and, consequently, does not plan to continue the assisted living service.

- If authorized and developed on schedule, the additional beds should in service by 2024.



Leewood Healthcare Center, Add 25 Nursing Home Beds
 COPN Request VA-8526
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/II. Discussion

A. Nursing Home Services in Northern Virginia

Northern Virginia has 36 authorized long-term care nursing care facilities, commonly referred to as nursing homes. These facilities are authorized to operate 4,504 beds (Table 1). About two-thirds (24 of 36 facilities) are commercial nursing homes. They contain about 80.5% of the region's authorized beds. The other facilities, 12 of the 36, with 19.5% of the region's licensed capacity, are nursing care units located in continuing care retirement communities. All of the authorized commercial nursing facilities are operational. Eleven of the twelve facilities in continuing care retirement communities (CCRCs) are operational. The most recently authorized CCRC facility, the 42-bed service that will be located in The Mather (Tysons area), is expected to open in 2023.

In 2017, the most recent year for which comparable vetted operational data are available for most facilities, the 35 facilities in service operated 4,462 beds.³ Average occupancy of these facilities was 81.0% in 2017, down from 82.6% in 2016. Based on incomplete reporting for 2018, it is evident that annual occupancy continued to decrease in 2018.⁴ In 2017 the region had, on average, 864 unoccupied licensed nursing home beds daily. The number of unoccupied licensed beds increased to more than 900 in 2018 and undoubtedly is much larger today.

Occupancy of CCRC nursing home beds is lower than that of commercial nursing homes. Average use of nursing home beds located in CCRCs was 70.5% in 2018, down from 77.9% in 2017 (Table 1). Even with direct admissions from the community at many CCRC nursing facilities, there were, on average, more than 200 unoccupied nursing home beds daily in CCRCs in 2018.

Low and decreasing nursing home occupancy reflects the sustained decrease in local nursing home use rates over the last three decades. During this period declining age-specific nursing home use rates have more than offset demand generated by population growth and aging among the adult population at greatest risk of needing nursing home care, those 65 years of age and older (Chart 1). Though long running use rate decreases are inherently asymptotic, there is no indication that this trend is attenuating or likely to change soon. The factors and circumstances that contribute to low and decreasing use rates remain in place, e.g., favorable demography, an array of alternatives to nursing home care, a relatively healthy elderly population, and population growth largely from migration to the region.⁵

³ This count excludes the 30 bed increase authorized at Heritage Hall-Leesburg (HH-L) in 2019. The region will have 4,534 licensed nursing home beds when the additional HH-L beds are opened. Given the ongoing COVID-19 epidemic which has been disastrous for nursing home operations generally, it is likely that the HH-L expansion project will be delayed.

⁴ Reliable service volumes for all Northern Virginia nursing care facilities are not available for 2018. Annual licensing filings that are complete suggest that aggregate demand (total demand at operating facilities) of nursing home care decreased in 2018 and that a number of service providers responded by taking beds out of service, but did not reduce their licensed capacity. These beds may be placed in service at the discretion of the operator.

⁵ It is not clear how the COVID-19 epidemic will affect demand for, and use of, nursing home services in the near term, but all indications are that expressed demand is likely to be constrained for some time.

Leewood Healthcare Center, Add 25 Nursing Home Beds
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Table 1. Northern Virginia Nursing Home Nursing Care Services Capacity and Use, 2017					
Nursing Care Facility	Facility type	Licensed Beds	Available Days	Patient Days	Occupancy (%)
Ashby Ponds	NF-CCRC	44	16,060	14,966	93.2%
Birmingham Green	NF	180	65,700	62,492	95.1%
Burke Health & Rehabilitation Center	NF	120	43,800	40,214	91.8%
Cherrydale Health & Rehabilitation Center	NF	180	78,000	71,254	91.4%
Dulles Health and Rehab Center	NF	166	60,590	56,303	92.9%
Envoy Health Care of Woodbridge	NF	120	43,800	38,577	88.1%
Envoy Health of Alexandria	NF	111	40,515	37,163	91.7%
Fairfax Nursing Center, Inc	NF	200	73,000	61,013	83.6%
Falcon's Landing	NF-CCRC	60	21,900	19,955	91.1%
Fountains at Washington House, The	NF-CCRC	68	24,820	15,570	62.7%
Gainesville Health & Rehabilitation Center	NF	120	43,800	40,232	91.9%
Goodwin House - Alexandria	NF-CCRC	80	29,200	26,636	91.2%
Goodwin House - Baileys Crossroads	NF-CCRC	73	26,645	23,294	87.4%
Greenspring Village ²	NF-CCRC	136	49,640	47,892	96.5%
Heritage Hall - Leesburg	NF	164	59,860	52,394	87.5%
Hermitage Northern Virginia	NF-CCRC	121	44,165	14,408	32.6%
Iliff Nursing & Rehabilitation Center	NF	130	47,450	39,015	82.2%
Jefferson, The	NF	31	11,315	9,828	86.9%
Lake Manassas Health and Rehab	NF	120	9,240	3,214	34.8%
Leewood Healthcare Center	NF	132	48,180	42,213	87.6%
Loudoun Nursing & Rehabilitation Center	NF	100	36,500	34,692	95.0%
Manassas Health and Rehabilitation Center	NF	120	43,800	40,808	93.2%
Manor Care of Alexandria VA	NF	96	35,040	30,912	88.2%
Manor Care of Arlington VA	NF	161	58,765	45,347	77.2%
Manor Care-Fair Oaks of Fairfax VA	NF	155	56,575	44,661	78.9%
Mather, The ¹	NF-CCRC	42			
Mount Vernon Nursing & Rehabilitation Center	NF	130	47,450	30,546	64.4%
Potomac Falls Health and Rehab Center	NF	150	54,750	51,277	93.7%
Powhatan Nursing Home ²	NF	160	58,400	17,778	30.4%
Regency Care of Arlington	NF	240	87,600	50,585	57.7%
Sleepy Hollow Healthcare Center	NF	222	54,390	45,815	84.2%
Sunrise Continuing Care, The Fairfax	NF-CCRC	56	20,440	19,480	95.3%
The Virginian	NF-CCRC	100	36,500	25,972	71.2%
Vinson Hall (Navy-Marine-Coast Guard Residence)	NF-CCRC	49	17,885	16,350	91.4%
Westminster at Lake Ridge ²	NF-CCRC	60	21,900	16,295	74.4%
Woodbine Nursing & Rehabilitation Center	NF	307	112,055	95,663	85.4%
Total, Northern Virginia		4,504	1,579,730	1,282,814	81.2%

Source: VHI, Annual Survey Licensing Reports, 2017

¹Authorized in 2018. Expected opening in 2023.

²Patient days estimated based on previous year report.

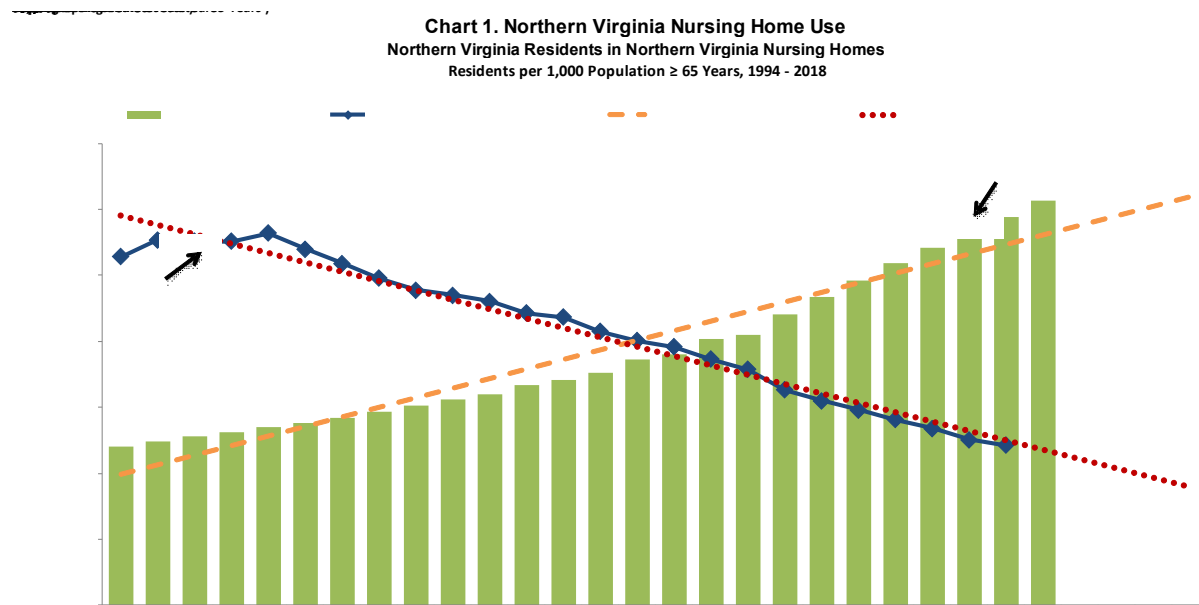
NF-CCRC = Nursing Facility in Continuing Care Retirement Community

NF = Nursing Facility

It is evident that there is no public need for additional nursing homes or additional nursing home beds in Northern Virginia. As has been the case for several decades age specific nursing home use rates are likely to continue to fall over the next decade (Chart 1). Aggregate demand (total number of nursing patient days of care provided) is likely to remain relatively stable year to year and trend downward, with continued incremental decreases in average regional occupancy. As has occurred over the last two decades, several local facilities are likely to seek authorization to relocate capacity within the planning

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region as they modernize and revitalize aging services. There is no public need to be satisfied or benefit to be obtained by transferring the license for nursing home beds from one oversupplied region to another.



Source: Virginia Nursing Home Patient Origin Surveys 1994, 1998, 2002, 2006 and 2014; VDH License Surveys 1995-1999, Virginia Health Information Licensure Surveys 2001 - 2018; U.S. Census 1990 -2018 Bridged Population Estimates for, CDC Wonder On-line Data; 2020; Calculations & Tabulations HSAHV, 2020.

B. Nursing Facility Development in Virginia

Most long term care nursing facilities (nursing homes) in Virginia date from the late 1970s and the 1980s. Service development and growth was stimulated and has been sustained by the initiation and maturation of the Virginia Medicaid program, which is now the principal source of payment for nursing home care.⁶ As was the case in most states, a reliable source of payment and entrepreneurial zeal, coupled with less than effective planning and regulation in the 1980s resulted in substantial excess nursing home capacity statewide. By the late 1980s it became evident that the bed surplus could not be absorbed easily or quickly. The Virginia General Assembly imposed a moratorium on nursing home development in 1988.

The moratorium remained in place for eight years. It was replaced in 1996 with a prospective planning process that limits nursing home development to those areas where a specific need is identified and quantified in a published “request for applications” (RFA). Under this process, applications for nursing care facilities and beds may not be filed (i.e., will not be accepted) unless the Commissioner of Health has determined that beds may be needed in a given planning area—in one of Virginia’s 22 planning districts⁷. Northern Virginia (PD 8) is one of these districts.

⁶ Legislation authorizing the Medicaid program was enacted in 1965. Federal funds became available in 1966. The Virginia program was established in 1969, the 41st state to join the national program.

⁷ The Northern Virginia health planning region (Health Planning Region II) is coterminous with Virginia Planning District 8. The terms Northern Virginia and PD 8 are used interchangeably here.

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There are exceptions to the RFA process. The principal exception permits qualified continuing care retirement communities (CCRCs) to submit COPN proposals to develop, outside the RFA planning process, a number of nursing care beds equal to 20% of the number of residential units in the retirement community.⁸ This favorable treatment is based on the belief that encouraging development of CCRCs is sound public policy, that onsite access to long-term nursing care is supportive of, if not essential to, efficient and effective CCRC operations, and that the nursing home beds developed are, at least in principle, dedicated to serving residents of the retirement community.⁹ As a result of this preferential treatment, the majority of new nursing home beds authorized statewide over the last two decades have been those developed by CCRCs outside the RFA planning process. With the exception of two local relocation projects, all of the net additional capacity developed in Northern Virginia over the last 25 years has been CCRC affiliated beds.

Since the RFA process was instituted, four new Northern Virginia CCRCs have received approval to operate nursing home beds: the Johnson Center at Falcon's Landing (Sterling, VA), Greenspring Village (Springfield, VA), Ashby Ponds (Ashburn, VA), and The Mather (Tysons). A fifth CCRC, Goodwin House, recently obtained COPN authorization to replace its dated nursing facility. The Mather, the most recently authorized CCRC nursing care facility, is expected to open in 2023.

Exceptions to the RFA planning process that apply to commercial nursing homes, such as Leewood Healthcare Center, include the relocation of a nursing facility within the planning district, the relocation of licensed beds from one facility to another within the same planning district, the onsite modernization and/or replacement of dated facilities, and the replacement and relocation of facilities that are to be taken out of service. Five facilities (Annaburg Manor, Birmingham Green, Inova Cameron Glen, Inova Commonwealth, and Manor Care-Fair Oaks) have received approval to replace beds in new locations in PD 8. These changes have responded to evolving demographic patterns within the planning district.

In principle, nursing home beds in CCRCs are dedicated to serving residents of the retirement community. In practice, many CCRC's developed more nursing home beds than necessary to serve their residential retirement communities. Subsequently, when demand from within the retirement community proved insufficient to permit efficient use of the capacity developed, these developers have been permitted to admit patients directly from the community, serving substantial numbers of patients who would otherwise seek care in commercial nursing homes.¹⁰ This pattern and practice is well established and is not likely to change soon. Some of these facilities serve Medicaid patients, others do not.

Most Northern Virginia's nursing care facilities were developed more than two decades ago, the majority between 1973 and 1986. During the last two decades all net increases in capacity have been continuing

⁸ The number of beds that may be authorized is limited to 60 if 20% of the residential units exceeds 60.

⁹ Some also argue that the availability and use of CCRCs results in lower overall Medicaid program expenditures for nursing home care, provided retirement communities do not serve Medicaid patients. There is little empirical evidence to support this belief or assumption.

¹⁰ HSANV, an early proponent of CCRC development, continues to be supportive. The principal HSANV concern with current policy, as it has come to be applied in Northern Virginia, is that as nursing home use rates have fallen, CCRCs have been permitted to continue to admit private pay patients directly from the community (i.e., from outside the retirement community) but in some cases do not serve Medicaid patients. This practice gives competitive advantage to CCRCs over nursing homes serving a wider array of nursing home patients.

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care retirement communities. The percentage of licensed nursing home beds located in CCRCs has increased to about 20% of the regional licensed bed complement currently. This is substantially higher than the number and percentage in other Virginia planning regions.

C. Planning Guidance: Inter-District Nursing Home Bed Transfers

The Leewood Healthcare Center application is filed pursuant to the provisions of a 2013 amendment to the Virginia COPN statute. The applicable language reads

§ 32.1-102.3:7. Application for transfer of nursing facility beds.

A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve applications for the transfer of nursing facility beds from one planning district to another planning district when no Request for Applications has been issued in cases in which the applicant can demonstrate

- (i) there is a shortage of nursing facility beds in the planning district to which beds are proposed to be transferred,*
- (ii) the number of nursing facility beds in the planning district from which beds are proposed to be moved exceeds the need for such beds,*
- (iii) the proposed transfer of nursing facility beds would not result in creation of a need for additional beds in the planning district from which the beds are proposed to be transferred, and*
- (iv) the nursing facility beds proposed to be transferred will be made available to individuals in need of nursing facility services in the planning district to which they are proposed to be transferred without regard to the source of payment for such services.*

B. Applications received pursuant to this section shall be subject to the provisions of this article governing review of applications for certificate of public need.

Source: HB 2292, Enacted in the 2013 session of the Virginia Assembly.

The Leewood application has been accepted for review as a qualified exception to the RFA nursing capacity planning process, presumably on the basis of the RFA bed need calculation showing a need for 284 additional beds in PD 8 by 2022. This is permissible even though the proposed RFA published earlier this year (for the year 2022) found no need and no justification for issuing a call for applications to meet the purported bed deficit derived from the calculation.¹¹

Acceptance of the application fulfills the mandatory provision of the amendment. The underlying question posed by the submission is whether there is a real need for additional beds in PD 8, and whether a transfer of licensed capacity from Southwest Virginia to Northern Virginia is in the public interest. A related subsidiary question, if some public benefit to the proposal can be identified, is whether that benefit is sufficient to justify the \$3.43 million investment.

Leewood asserts, and argues correctly, that its proposal is similar to and consistent with more than a half dozen projects receiving COPN authorization to move nursing facility beds from one planning district to another. The recently authorized 30-bed expansion at Heritage Hall-Leesburg is one of these projects.

¹¹ A copy of the RFA is enclosed separately and available from HSANV on request.

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D. Cost Considerations

Leewood estimates the capital cost for the 25 beds that would be added to be \$3,431,518. This sum includes \$2,770,883 in construction costs, \$375,000 in equipment and furnishings and about \$386,000 in fees, taxes and related development expenses. The project would be financed with private equity funds. No direct financing expense is anticipated. This proposal comes in association with the unfolding Portopiccicolo Group nursing care accumulation venture so presumably project funds come from capital Portopiccicolo Group has borrowed to finance its nursing home purchases.¹²

Direct construction costs for the renovation and expansion of the assisted living facility to develop the 25-bed addition are expected to total \$2,770,883. This equates to about \$214 per sq. ft. and \$110,836 per bed. Both construction and total project unit costs are within the range reported for comparable projects locally and elsewhere in Virginia.

These costs are within the Virginia Medicaid program (Department of Medical Assistance Services or DMAS) capital cost payment guidelines and limits. The applicant's projected direct construction cost of about \$214 per square foot is within the range reported for "mid-level" nursing homes nationwide.¹³

The potential economic benefit of the project to the applicant is indicated by the projected change in payer mix with the additional beds. The principal change anticipated is an increase in the number and percentage of Medicare patients and a decrease in the percentage of Medicaid patients. In 2018 Leewood's patient mix was 66% Medicaid, 13% Medicare, and 21% private pay and other insurers. With the 25 additional beds the mix is expected to be 60% Medicaid, 17% Medicare and 23% private pay and other insurers. The applicant projects a service volume gain of 6,015 patient days in 2024 (over 2018) when the 25-bed addition would be fully operational. Of the projected gain, 53% would be among Medicare patients and 43% among Medicaid patients. A payer mix change of this nature and magnitude would be profitable. The potential economic gains that would flow from the transfer would be likely to grow, to compound over the useful life of the project.

If found to be needed, projected capital costs of the project do not disqualify or call into question the merits of the proposal. If not needed to meet a demonstrated public need, the economic benefits that are likely to flow from the project, considered in their entirety, take on the character of an engineered anticompetitive economic windfall.

It is worth noting that converting unused (surplus) semiprivate beds to private beds, including renovating and otherwise modernizing the rooms and associated space, may be undertaken at the discretion of the owner without COPN authorization. It is not necessary to move licensed capacity from one over built planning district to another to permit or otherwise facilitate the modernization of dated facilities or to convert redundant semiprivate rooms to more attractive rooms. Capacity changes such as that proposed by Leewood are business investment decisions, a question of where and when to deploy capital.

¹² The application contains a statement from the principals' certified public accountant stating that they have the resources to undertake and complete the project. To date Portopiccicolo Group has acquired 16 Virginia nursing homes and about 100 facilities nationwide.

¹³ Mid-level skilled nursing projects "have a price range between \$197 and \$231 per square foot" See John Yedinak "Skilled Nursing Construction Costs Continue to Rise," *Skilled Nursing News*, January 25, 2018 at <https://skillednursingnews.com/2018/01/skilled-nursing-construction-costs-continue-rise/> and Weitz News Blog, "Weitz Senior Living Construction Costs Brief," January 19, 2017 at <https://www.weitz.com/weitz-senior-living-construction-costs-brief-january-2017/>

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E. Health System Considerations

The project would reduce licensed nursing home capacity in Southwest Virginia (PD 5) by 25 beds and increase capacity in PD 8 by an equivalent number. These changes, both of which would occur in recently acquired Portopiccino Group nursing homes, would not introduce a new service provider.

Changes of this magnitude can be accommodated without notable disruptions or distortions. Nevertheless the proposal is problematic in several important respects:

- The rationale for the project, and for the \$3.43 million capital outlay, is that Virginia's Division of Public Need (DCOPN) has determined that there will be a public need for several hundred additional nursing home beds in Northern Virginia (PD 8) within the next couple of years, specifically 284 beds in 2022.

There is no reliable data, or other indication, that is true. The most recent RFA, published earlier this year with bed need projections for 2022, was published as a notice of no public need. The relevant language reads:

"The RFA for nursing home beds issued in 2019 is hereby issued as a notice that there is no need for additional nursing home beds. As shown in the preceding table, no planning district is identified by the standards of the SMFP as having a forecasted need for nursing home beds by 2022. No planning district in the Commonwealth currently meets the four-part test for qualification by:

- 1) Having a positive formula-generated need projection, and;
- 2) Having a median annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 93% or higher, and;
- 3) Having an average annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 90% or higher
- 4) Having no uncompleted nursing home beds authorized within the last three years that will be Medicaid-certified."

Source: Notice of No Need for Certificate of Public Need Applications for Development of Additional Nursing Home Beds, The Virginia State Board of Health and the Virginia Department of Medical Assistance Services, 2020, pp. 2-3. (Enclosed)

The Leewood Healthcare Center proposal is grounded in the "formula-generated need projection" element of the four pronged test for determining a need for additional beds. Application of the formula by DCOPN results in a "calculated" purported need for 284 additional beds in PD 8 (Northern Virginia) in 2022.

- The RFA bed need calculation performed by DCOPN in accordance with the request for applications (RFA) planning methodology is not dispositive and is not represented to be by DCOPN, the Commissioner of Health, or the Virginia Board of Health. As several of the more recent RFA notices show the nursing home bed need calculation is unreliable and, consequently, subject to misunderstanding and misuse. For example:
 - The RFA notice for 2015 found a "*calculated*" need for 1,059 beds in PD 8. No call for applications was issued because the region's average occupancy was 89.2%, well below

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the 93% planning standard. No RFA issued statewide. No potential applicant tried to take advantage of the purported need for more than 1,000 beds in PD 8.

- The RFA notice for 2017 found a “*calculated*” need for 976 beds in Northern Virginia. No call for applications was issued because the region’s average occupancy was 87.8%, substantially below the 93% planning standard. (Note: an RFA was issued for 30 beds in PD 18.) No potential applicant tried to take advantage of the purported need for nearly 1,000 beds in PD 8.
- The RFA notice for 2019 found a “*calculated*” surplus of 259 beds in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 88%. No RFA issued statewide.
- The RFA notice for 2020 found a “*calculated*” surplus of 41 beds in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 86.5%. No RFA issued statewide. No potential applicant tried to take advantage of the purported need for additional beds in PD 8.
- The RFA notice for 2021, found a “*calculated*” need for 362 beds in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 86.0%. No RFA issued statewide. Heritage Hall-Leesburg took advantage of this situation and, though opposed by HSNV, obtained COPN approval to add 30 beds.
- The RFA notice for 2022, the most recent, finds a “*calculated*” need for 284 beds in Northern Virginia. The region’s average Medicaid occupancy was 84.5%. No RFA issued statewide. Leewood Healthcare Center has filed the instant application to add 25 beds under this finding.

These arithmetic gyrations, and conflicting bed need projections, result from calculations using the Virginia State Medical Facilities Plan (SMFP) bed need formula. Unfortunately the formula being used incorporates outdated (2014) age-specific nursing home use rates, inconsistent population projections, and a methodology that is not compatible with a rapidly changing market characterized by sustained *use rate decreases*. Because a dated static use rate, rather than a trended rate, is used the calculation necessarily overstates projected future need and demand. The overstatement is greater in areas, such as Northern Virginia, where use rate decreases are more substantial and where population growth is high.

There has never been an RFA calling for additional nursing home beds in Northern Virginia. As decreasing use rates and falling average occupancy levels indicate there has been no need for additional capacity. That remains the case. All of the published RFAs showing a formula generated need for additional beds in PD 8 are evidence of a flawed methodology not a need for additional services or capacity.

It is evident that, contrary to the applicant’s assertion and purported belief, there will be no need for additional nursing home capacity in Northern Virginia in 2022. Similarly, there is no expectation, or reason to believe, that there will be a need for additional facilities or beds within the next decade and beyond.

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- There is excess capacity (surplus beds) in both PD 5 and PD 8. Aggregate and age-specific nursing home use rates are decreasing in both regions.

Use rates have long been much lower in Northern Virginia than statewide and in PD 5. They also continue to decrease far more rapidly in PD 8 than in PD 5. Among those 85 years of age and older, the age group with the highest nursing home use rate, the PD 5 rate fell from 146.9 days per 1,000 in 2006 to an estimated 114.4 days per 1,000 in 2017. The comparable PD 8 rate was far lower, 90.5 days per 1,000 in 2006 with a sharp decrease to an estimated 45.2 days per 1,000 in 2017. Thus, over the last decade the PD 8 (Northern Virginia) use rate decrease (50.1%) was more than twice that of PD 5 (22.1%).

In recent years average nursing home occupancy has been higher in PD 5 than in PD 8, 87.1% in PD 5 in 2017 compared with 81.3% in PD 8. There is no evidence to suggest that this pattern will change soon. Projection of the longstanding PD 5 and PD 8 occupancy trends to the early 2020s suggests that average occupancy is likely to continue to be much higher in PD 5 than in PD 8 (Chart 2).

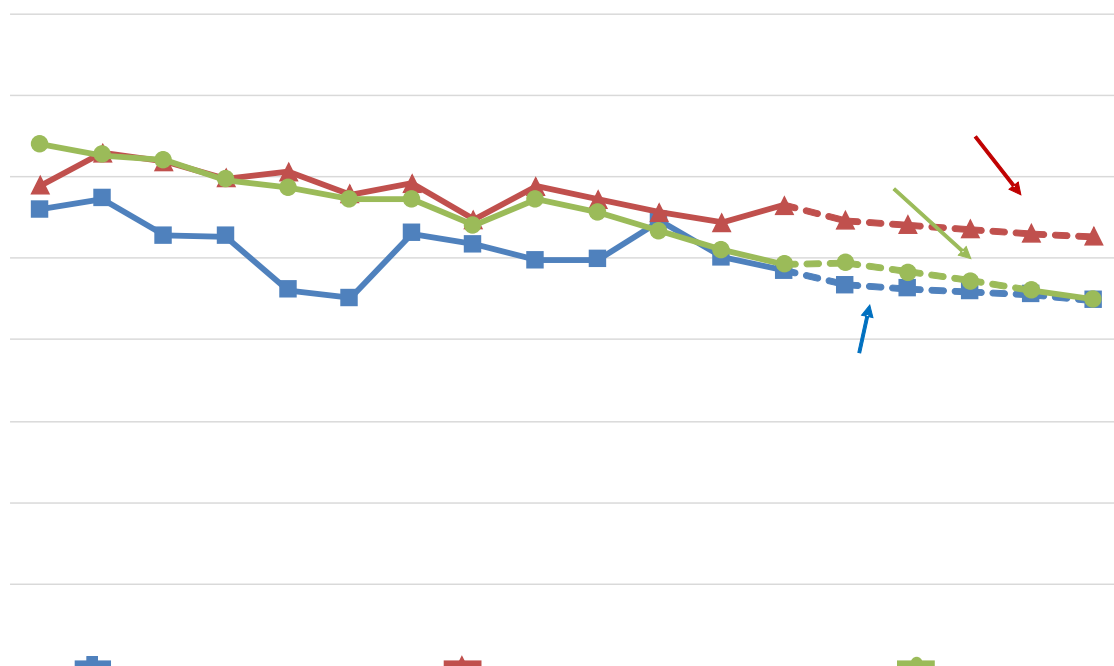
These longstanding and ongoing demand and service delivery trends do not support moving capacity from PD 5 to PD 8. They indicate that the Accordius Health at Roanoke beds should remain in PD 5, not move to PD 8.

There is no evident public need or justification for relocating beds from PD 5 to PD 8. The public would be better served by keeping the beds in PD 5, or moving them to one of the nursing homes Portopiccolo Group owns and controls in a planning district that actually needs capacity.¹⁴ They are more likely to be used efficiently in PD 5 than in PD 8. Moreover, reducing the licensed capacity of Accordius Health at Roanoke does nothing to improve its ability to attract patients in PD 5 which has much higher use rates and bed occupancy than Northern Virginia. Given low and decreasing use rates and occupancy levels in PD 8, adding beds to the region, whether by relocation from outside the region or from direct new construction, is problematic. Market realities are such that adding unneeded capacity, and filling the new beds developed, will necessarily come at the expense of existing service providers.

The applicant's reasons for the project are evident and clearly stated. The application contains multiple references to the desire to serve more private pay and Medicare patients. If successful, this would be of considerable economic value to the applicant, but this private economic interest does not constitute a public need or community benefit.

¹⁴The Portopiccolo Group has acquired 16 Virginia nursing homes. With the current turbulence and economic challenges in the industry additional facilities may be acquired. To date Portopiccolo has acquired two facilities in Northern Virginia, Leewood Healthcare Center and Iliff Nursing and Rehabilitation Center.

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Source: VHI Annual Licensure Surveys 2006 - 2018; Calculations & Tabulations HSAHV, 2020.

III. Conclusions and Alternatives for Agency Action

A. Findings and Conclusions

Leewood Healthcare Center proposes to expand by twenty-five beds, an increase in capacity of 18.9%, by means of a “transfer” of licensed capacity from Accordius Health at Roanoke, a sister facility in Southwest Virginia. This is permissible under existing law and regulation under specific circumstances and conditions. A proposed request for applications (RFA) published earlier this year contains a problematic nursing home bed need calculation that purports to show that 284 additional beds will be needed in PD 8 (Northern Virginia) in 2022. That RFA also contains an equally problematic finding of a 224 bed surplus in PD 5.

These calculations and findings notwithstanding, the RFA issued earlier this year, for the year 2022, did not establish an actual public need for additional nursing home beds in any planning region. The principal reason for the negative finding statewide is that the RFA planning process examines four measures to determine whether there is a public need for additional capacity. In addition to the bed need calculation, average and median annual occupancy of existing Medicaid certified beds should exceed 90% and 93% respectively, and COPN authorized beds not yet operational must be taken into account.

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Low and decreasing use rates have resulted in lower occupancy levels statewide. Consequently, though the current RFA shows a “*calculated*” need for additional beds in nine planning districts, with the greatest need in Northern Virginia, there is no call for applications in any district. As in Northern Virginia, none of the districts with a “*calculated*” need meet the other requirements. Other than the flawed “*calculated bed need*” criterion, Northern Virginia does not meet any of the other three measures used to assess public need for nursing home beds. Average occupancy of all licensed beds, and of Medicaid certified beds are far below planning standards and continue to decrease. In addition, the 30 beds authorized at Heritage Hall-Leesburg, which are to be Medicaid certified and not scheduled to be placed in service until 2023, are not likely to be operational until 2024 or later.

The problematic nature of the RFA bed need calculation is well known and understood by those familiar with the industry and with Virginia regulatory and licensing programs. It is unreliable and subject to misuse. The age-specific nursing facility use rates are both dated and static. They become more problematic each year as actual use rates decrease, locally and statewide. In markets with secular negative use rate trends the calculation substantially overstates demand. This is especially true of Northern Virginia which is in the midst of a three decade decrease in aggregate and age specific rates. The older the base use rate applied, and the more distant the projection, the greater the error inherent in the bed need calculation.

Beyond these considerations, the proposal is deficient in a number of respects:

- Recent, current and projected nursing home service volumes and trends indicate that the capacity that would be relocated is more likely to be needed in PD 5 than in PD 8. Repositioning the 25 beds will not improve or enhance access in any meaningful way in either region.
- Because there are substantial numbers of unused (surplus) beds in both regions, the shift in licensed capacity will decrease marginally average occupancy in PD 8 and increase marginally average occupancy in PD 5. There is no discernible public benefit in this paper exercise.
- No explanation is offered for the atypically low occupancy of Accordius Health at Roanoke. Reducing its licensed bed capacity will not address problems at the facility that result in low occupancy in a high occupancy planning district.
- Though the project may be of considerable potential economic value to Leewood Healthcare Center, it offers no discernible value or benefit to the communities in which Leewood and Accordius Health at Roanoke are located, or to the public generally.
- If the service volumes and case mix projected for the initial years following completion of the project are achieved, it will reduce the number of private pay and Medicare patients who would otherwise obtain care at neighboring nursing facilities. In an oversupplied market, Leewood Healthcare Center’s gain by means of a more favorable patient mix would come at the expense of nursing care facilities with overlapping service areas.
- In a market with substantial and growing surplus capacity, the proposed \$3.43 million capital expenditure is unnecessary and from a public payments perspective wasteful. Given the projected service volume and payer case mix changes projected by the applicant, virtually all of the unnecessary capital expense would be defrayed with Medicare and Medicaid payments.
- The problematic nature and deficiencies of the RFA bed need calculation are widely known and discussed. They are well known and understood by the applicant.
- The policy and practice underling the reigning interpretation of the language in HB 2292 that pertains to the transfer for nursing home capacity across planning district boundaries is anticompetitive, favoring multi-facility Virginia operators, including private equity ventures, over other potential competitors.

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B. Alternatives for Agency Action

1. The Health Systems Agency of Northern Virginia may recommend to the Commissioner of Health that a Certificate of Public Need authorizing the project be granted.

A favorable recommendation may be based on concluding that:

- Taken as a whole the project appears to be consistent with the provisions of House Bill, 2292, as interpreted and applied recently in several similar projects, which makes filing of the application permissible and subsequent approval of the project essentially mandatory.
- The capital outlay, approximately \$3.43 million for twenty-five beds, is acceptable in that, ultimately, Leewood will offer a valuable service that is likely to be used by many.
- Potential negative effects on neighboring nursing homes, though potentially damaging in an environment of low operating margins, would not be destabilizing and are therefore acceptable.

2. The Health Systems Agency of Northern Virginia may recommend to the Commissioner of Health that a Certificate of Public Need authorizing the project not be granted.

A recommendation of denial of the project may be based on concluding that:

- There is no public need for additional nursing home capacity in Northern Virginia. Consequently, the capital expenditure that would be incurred is unnecessary and wasteful.
- Nursing home use rates and occupancy trends in PD 5 and PD 8 support keeping the beds that would be relocated in PD 5 where they are more likely to be needed and used more efficiently.
- The project would be of substantial economic benefit to Leewood Health Care Center, but of little, if any, public benefit or value.
- The project is not consistent with applicable provisions of the Virginia State Medical Facilities Plan.

IV. Checklist of Mandatory Review Criteria

1. Maintain or Improve Access to Care

The Leewood Healthcare Center project is not needed to maintain or improve access to nursing care services. There is substantial and growing surplus (unused) nursing home capacity in both commercial and CCRC based nursing care facilities in PD 8.

Moving beds from Southwest Virginia to Northern Virginia, from PD 5 to PD 8, cannot be expected to improve or otherwise affect demand for or access to nursing care services. Both regions have more capacity than will be used efficiently over the next decade, including ample numbers of Medicare and Medicaid certified beds.

To the extent access to care would be affected by the change, moving beds from a planning district with a much higher indigenous use rate and higher bed occupancy rate to a district with a much lower, and decreasing, use rate and occupancy level would have negative effects.

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The project is not consistent with the criterion.

2. Meet Needs of Residents

There is no demonstrated public need for additional nursing home capacity in the region. The long term nursing care needs of the region are being met. In addition to more than 4,500 licensed nursing home beds, the region has an even larger number of assisted living beds, and an array of home health, rehabilitation, and related health and social support services.

Leewood relies solely on the spurious bed need projection published in the nursing home RFA issued earlier this year in asserting there is a public need, and therefore justification, for the project. The nature and value of this approach is suggested by the applicant's repeated failure (unwillingness) to provide its own estimate or projection of future demand and the number of beds actually needed.

Of course it is possible that, as a foreign (out of state) private equity accumulator of nursing homes, the applicant is not in a position to assess local needs and service trends. Adding capacity under these circumstances would be problematic and cannot be construed to be in the public interest.

3. Consistency with Virginia State Medical Facilities Plan

The proposal is not consistent with applicable provisions of COPN program regulations, including the State Medical Facilities Plan. Nor is it consistent with sound regional health planning policies and practices in Northern and Southwest Virginia.

Specifically, the proposal conflicts with the plain, unambiguous requirements of Section 12VAC5-230-620 of the SMFP which addresses directly the expansion of nursing homes. It reads in its entirety:

“Proposals to increase existing nursing facility bed capacity should not be approved unless the facility has operated for at least two years and the facility's average annual occupancy of the facility's existing beds was at least 93% in the relevant reporting period as reported to VHI.” **Virginia SMFP, p. 32.**

The project also conflicts with the substance and planning principles of **Section 12VAC5-230-610B** of the plan which specifies that:

“No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid-certified. This presumption of ‘no need’ for additional beds extends for three years from the issuance date of the certificate,” **Virginia SMFP, p. 30.**

The project is not responsive to, or consistent with, any provision or element of the SMFP that warrants or supports approval of the project.

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4. Beneficial Institutional Competition while Improving Access to Essential Care

The Protopiccolo Group, the parent corporation of Leewood Health Care and Accordius Health at Roanoke, is a private equity firm which recently has acquired 16 nursing care facilities in Virginia and appears to be acquiring more. Leewood is one of those facilities. The project, which was filed shortly after the Protopiccolo purchase, appears to be entrepreneurial in nature.

To the extent the project would have competitive effects they are likely to be anticompetitive and negative. With decreasing use rates and declining average occupancy levels, adding unneeded capacity in PD 8 means that should the applicant attain its service volume projections, the increased Medicare and private pay caseloads would come at the expense of nearby nursing care facilities. The project would have no discernible general effect on access to nursing home care in PD 5 or PD 8, both of which have large numbers of unused nursing home beds.

5. Relationship to Existing Health Care System

The proposal is submitted as an exception to the regular nursing care facility planning process. The project is modest in that it calls for a 25 bed expansion of Leewood, in response to a purported need for 284 beds, and a 25 bed reduction in the licensed capacity of Accordius Health at Roanoke. Neither would be likely to have significant health system effects.

Given low and falling use rates and decreasing average annual occupancy, if the increased Medicare and private pay caseloads the applicant projects are achieved the project would be likely to have negative service volume and associated economic effects on neighboring nursing homes.

6. Economic, Financial Feasibility

The capital outlay proposed (\$3.43 million) is substantial, unnecessary and from a taxpayer and public interest perspective wasteful. Nevertheless, as a private equity venture, shifting capacity to a market with a much larger private pay market is economically rational and likely to generate high annual rates of return over the life of the project. The proposal is financially feasible and, given the ongoing Protopiccolo Group nursing home accumulation venture, presumably can be financed as proposed with private equity capital.

7. Financial, Technological Innovations

The project does not entail innovate technologies, practices or economic elements distinct from those now widely available in the region. The project is essentially a relatively minor element of a private equity venture, an attempt to take advantage of the unusual opportunity presented by recent nursing home capacity transfer COPN decisions.

8. Research, Training Contributions and Innovations

The project does not have a significant research or training component. It is a relatively straightforward economic venture