



COMMONWEALTH of VIRGINIA

Department of Health

M. NORMAN OLIVER, MD, MA
STATE HEALTH COMMISSIONER

PO BOX 2448
RICHMOND, VA 23218

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1-800-828-1120

September 20, 2021

By Email

Jamie B. Martin, Esquire
Williams Mullen
200 South 10th Street, Suite 1600
Richmond, Virginia 23219

Stephen G. Reardon, Esquire
Spotts Fain
411 East Franklin Street, Suite 600
Richmond, Virginia 23219

RE: Certificate of Public Need (COPN)
Number VA-04757 (Request Number VA-8549)
Virginia Commonwealth University Health System Authority (VCUHS)
Chesterfield County, Planning District (PD) 15
Health Planning Region (HPR) IV
Establishment of an Outpatient Surgical Hospital with
Four Operating Rooms (ORs); and

COPN Number VA-04756 (Request Number VA-8547)
Colon and Rectal Endoscopy and Surgery Center, LLC
Hanover County, PD 15, HPR IV
Establishment of an Outpatient Surgical Hospital with
One Special-Purpose OR

Dear Ms. Martin and Mr. Reardon:

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 applications proposing the above-captioned projects, submitted by the Virginia Commonwealth University Health System Authority (the "VCUHS project") and Colon and Rectal Endoscopy and Surgery Center, LLC (the "CARES 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.

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Stephen Reardon, Esq.
September 20, 2021
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I have reviewed and adopted the enclosed findings, conclusions and recommended decisions of the adjudication officer who convened the informal fact-finding conference to discuss the VCUHS project and the CARES project, and who reviewed the entire administrative record pertaining to the project.

Based on my review of the VCUHS project and on the recommended decision of the adjudication officer, I am approving this project with a condition requiring an appropriate level of charity care. This project merits approval and will receive a Certificate. It is necessary to meet a public need.

The reasons for my decision on the VCUHS project include the following:

- (i) The VCUHS project is consistent with the SMFP, and is in harmony or in general agreement with the SMFP or with the planning principles, public policies, interests and purposes to which that plan and the COPN law are dedicated;
- (ii) Approval of the VCUHS project would address an *undisputed* institutional need for expanding and decompressing surgical services at VCUHS' urban, acute-care campus, *i.e.*, redirecting outpatient surgeries to the facility proposed in the VCUHS project;
- (iii) The status quo is not a reasonable alternative to the VCUHS project;
- (iv) While significant, the capital costs of the VCUHS project are reasonable and consistent with similar past projects;
- (v) VCUHS provides an exemplary level and total amount of charity care to residents of the Commonwealth – a policy that would be extended through implementation of the VCUHS project; and
- (vi) The VCUHS project would improve geographic and practical access and the delivery of care for existing health system patients.

Based on my review of the CARES project and on the recommended decision of the adjudication officer, I am approving this project with a condition requiring an appropriate level of charity care. This project merits approval and will receive a Certificate. It is necessary to meet a public need.


The reasons for my decision on the CARES project include the following:

- (i) The CARES project is consistent with the SMFP, and is in harmony or in general agreement with the SMFP and with the planning principles, public policies, interests and purposes to which that plan and the COPN law are dedicated;
- (ii) Approval of the CARES project would add one OR – a *de minimis* addition, to the inventory of ORs in PD 15;

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- (iii) No credible and uninterested opposition to the CARES project exists;
- (iv) Approval of the CARES project would substantially enhance geographic, financial and practical access to needed specialized surgical services, while increasing beneficial competition and lowering costs; and
- (iv) The CARES project holds the direct potential to enable an energized, dedicated subspecialty physician's group to provide and increase direct access to needed specialty surgical and health care services for somewhat disadvantaged residents of the eastern portion of PD 15.

Sincerely,

DocuSigned by:

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M. Norman Oliver, MD, MA
State Health Commissioner

Enclosures

cc (by email):
Danny TK Avula, MD
Director, Richmond Health District
Thomas Franck, MD, MPH
Director, Chickahominy Health District
Vanessa MacLeod, Esq.
Assistant Attorney General
Erik O. Bodin, III
Director, Division of Certificate of Public Need
(DCOPN)
Piero Mannino, JD, MPIA
Supervisor, DCOPN
Nick Megibow, JD
Project Analyst, DCOPN
Douglas R. Harris, JD
Adjudication Officer
Peter Mellette, Esq.

**Recommended Decisions Presented
to the State Health Commissioner on:**

**Certificate of Public Need (COPN)
Request Number VA-8549
Virginia Commonwealth University Health System Authority
Chesterfield County, Planning District (PD) 15
Health Planning Region (HPR) IV
Establishment of an Outpatient Surgical Hospital (OSH) with
Four Operating Rooms (ORs); and**

**COPN Request Number VA-8547
Colon and Rectal Endoscopy and Surgery Center, LLC
Hanover County, PD 15, HPR IV
Establishment of an OSH with
One Special-Purpose OR**

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 applications 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 endeavors proposed in the pending applications, captioned above, fall within the statutory definition of “project” in the COPN law, and, thereby, requires a certificate of public need (COPN, or “certificate”).⁴

¹ The IFFC was convened and conducted in person on June 22, 2021. A certified transcript of the IFFC was made and is in the administrative 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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Factual and Procedural Background

1. The Virginia Commonwealth University Health Systems (VCUHS) Authority is a public body corporate and political subdivision of the Commonwealth. VCUHS is an operational complement to a public university, operating a nationally-recognized academic medical school, a teaching hospital that administers a comprehensive array of training programs and conducts various research initiatives, and a tertiary-quaternary health system.
2. VCUHS provides a multitude of medical and health care services, including numerous specialty and subspecialty services, on an urban, acute-care campus and at outpatient facilities available to residents of the Commonwealth. VCUHS is licensed for 765 hospital beds, 31 acute-care, or inpatient, ORs and six outpatient ORs. VCUHS' inpatient ORs operated in 2019 at a level exceeding 139.6%,⁵ and perhaps approaching 143%,⁶ of the utilization standard contained in the State Medical Facilities Plan (SMFP).
3. VCUHS proposes to establish a four-OR OSH located in an area of Chesterfield County known as Courthouse Landing. Total capital costs of the project proposed by VCUHS (the "VCUHS project") are \$30,712,529, to be defrayed through accumulated reserves.
4. Colon and Rectal Endoscopy and Surgery Center, LLC (CARES), is a Virginia limited liability company organized specifically to carry out the proposed project and, thereafter, operate it as a facility. The sole member of CARES is an existing specialty physicians' group that would be associated with the OSH, Colon and Rectal Specialists, Inc.
5. CARES proposes to establish an OSH with one special-purpose OR, as well as one procedure room, in or near Mechanicsville, located in Hanover County. Total capital and financing costs of the project proposed by CARES (the "CARES project") are \$4,495,083.
6. In a staff report dated May 19, 2021, prepared by the Virginia Department of Health, Division of Certificate of Public Need (DCOPN, or "division"), that division recommended that the Commissioner approve the VCUHS project, finding a public need for it, and deny the CARES project.
7. On May 21, 2021, Bon Secours Richmond Health System ("Bon Secours") submitted a petition seeking to show good cause and establish itself as a party to the proceedings as they relate to the VCUHS project. In that petition, Bon Secours alleged four substantial material mistakes of law in the staff report prepared by DCOPN and. On September, 11, 2021, the Commissioner rejected the allegations and denied the petition from Bon Secours.

⁵ DCOPN Staff Report at 17.

⁶ VCUHS Proposed Findings and Conclusions at 1.

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Summary and Incorporation of the DCOPN Staff Report

Regarding the VCUHS project, DCOPN recommended in its report (the "DCOPN staff report") that the Commissioner approve the project because:

- (i) In light of factually-relevant administrative precedents, *i.e.*, two recently-adjudicated COPN decisions, the VCUHS project is consistent with the SMFP, or is in harmony or general agreement with the SMFP;
- (ii) Approval of the VCUHS project would address a demonstrated institutional need for expanding surgical services at VCUHS' urban, acute-care campus;
- (iii) The status quo is not a viable alternative to the VCUHS project; and
- (iv) While significant, the capital costs of the VCUHS project are consistent with similar past projects.

By reference, (i) the recommendation in the DCOPN staff report to approve the VCUHS project and (ii) portions and provisions relating to the VCUHS project, the CARES project or both, that are consistent with the present recommended decisions, are incorporated into this combined document for the purposes of solidifying a recommended decision to approve the VCUHS project, and establishing and corroborating facts and demonstrating analysis that support and help constitute the evidentiary basis on which the two recommended decisions herein rest.

Conclusion and Recommendation Regarding the VCUHS Project

In recognition of (i) an established administrative procedure, routinely operationalized by DCOPN and the Commissioner, in which an application for a COPN that is not competing with any other application receives a staff recommendation of approval and is submitted by DCOPN directly to the Commissioner for his approval, (ii) a separate, routine procedure in which the parties to proceedings on two or more competing applications may, by written stipulation, remove and excuse an application that has been recommended for approval by DCOPN from agency adjudication and further proceedings and submit such an application directly to the Commissioner, and upon my independent review and analysis of the VCUHS project, I conclude and recommend that the Commissioner approve the VCUHS project. **VCUHS should receive a certificate authorizing the VCUHS project because, under the statutorily-required analysis, it is necessary to meet a demonstrated public need.**

Specific reasons supporting my recommendation on the VCUHS project include:

- (i) The VCUHS project is consistent with the SMFP, and is in harmony or in general agreement with the SMFP or with the planning principles, public policies, interests and purposes to which that plan and the COPN law are dedicated;
- (ii) Approval of the VCUHS project would address an *undisputed* institutional need for expanding and decompressing surgical services at VCUHS' urban, acute-care

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campus, *i.e.*, redirecting outpatient surgeries to the facility proposed in the VCUHS project;

- (iii) The status quo is not a reasonable alternative to the VCUHS project;
- (iv) While significant, the capital costs of the VCUHS project are reasonable and consistent with similar past projects;
- (v) VCUHS provides an exemplary level and total amount of charity care to residents of the Commonwealth – a policy that would be extended through implementation of the VCUHS project; and
- (vi) The VCUHS project would improve geographic and practical access and the delivery of care for existing patients of VCUHS.

Analysis and Conclusions and Recommendation on the CARES Project

Salient analysis and conclusions regarding the CARES project and relating directly to the eight considerations of public need contained in the COPN law (the “statutory considerations”),⁷ appearing in bold type below, are set forth below in relation to each statutory consideration.

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.

The CARES project would increase geographic, financial and practical access to vital health care services for people in the area to be served, which is showing appreciable growth in population. Geographically, the CARES project would be readily accessible via nearby interstates 95 and 295, and located in the eastern portion of PD 15.

The CARES project would increase financial and practical access to colorectal cancer screening, colonoscopies and colorectal surgeries. Patients without commercial insurance or coverage through federal reimbursement programs often forego receiving regular or intermittent colonoscopies altogether. The physicians’ group that is the sole member of the applicant has an existing outreach program for educating people about colorectal cancer, providing screenings and promoting the prevention of colorectal disease.

Patients without commercial insurance who are covered by Medicare and Medicaid may tend to forego colonoscopies due to inconvenience and potential higher out-of-pocket costs, in part, because federal regulation requires these procedures be performed in a hospital or OSH. These patients, many of whom are African-American, comprise a significant portion of CARES’ patient population in the eastern portion of PD 15. If approved, the CARES project would enable patients covered by Medicare and Medicaid to receive colonoscopies and surgical services at the resulting OSH. The CARES project would stand to increase access in concert with recently-revised standards; specifically, in May 2021 the U.S. Preventive Services Task

⁷ See Virginia Code § 32.1-102.3 (B). The DCOPN staff report contains additional analysis and conclusions.

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Force expanded its recommendation by lowering the age at which a person should receive a first colonoscopy from 50 years of age to 45 years. Approval of the CARES project would enable CARES to perform these vital screenings, and additional colorectal procedures and surgeries for patients conveniently, in an appropriately-outfitted, dedicated special-purpose OR, and without referral to a generally-purposed OR at a hospital or OSH.

Most patients in PD 15 have their colonoscopies performed in outpatient facilities that do not accept reimbursement from Medicare or Medicaid, according to CARES. The applicant asserts that, for patients carrying Medicare and Medicaid coverage, federal regulation results in the burden being placed onto hospitals, where the charges are much greater. Due to cost and inconvenience, some patients elect to forego a hospital surgical visit. CARES represents that its charge for a diagnostic colonoscopy would be \$1,000, slightly higher than the reimbursement from Medicare and Medicaid and much lower than the charge at an area hospital, where the charge is in a range nearly five times that amount and higher, *i.e.*, according to the applicant, \$4,685 to \$21,838. The CARES project would reduce costs dramatically, thereby promoting competition in PD 15.

Acute colorectal surgeries, including those addressing anorectal fistulas, Crohn's disease complications, abscesses, lesions, hemorrhoids and colorectal cancer, would be performed in the special-purpose OR within the facility to be built in carrying out the CARES project.⁸ Transmission of viruses and other contagions is better managed in smaller, discreet settings, such as a specialized OSH.

In past decisions, the Commissioner has repeatedly acknowledged the benefits and clinical appropriateness of single-purpose OSHs, even when the procedures performed therein could be performed in a physician's office.⁹ In addition, recent medical literature shows that surgeon specialization and concentration of practice have promising effects on outcomes, while significantly reducing complications. More specifically, the ready availability of an OSH collocated with an office housing the physicians' group associated with CARES would stand to promote access to vital screenings and procedures and prevent second anesthetizations and colonoscopies, thereby directly improving the health of residents in a somewhat disadvantaged area.

More generally, the project stands to promote better outcomes among a population at greater risk for colorectal cancer, and to promote the availability of life-saving procedures to patients carrying Medicare and Medicaid reimbursement.

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

⁸ CARES envisions performing approximately 30 acute-care colorectal surgeries in the special-purpose OR it seeks. See Letter to N. Oliver from A. Vorenberg, Feb. 12, 2021 at 1-2 (Administrative Record Exhibit 5).

⁹ See, *e.g.*, DCOPN Staff Report on COPN Request No. VA-8362, May 21, 2018.

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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.

DCOPN received over 55 letters of support for the CARES project, most signaling recognition of a need for an increase in access to affordable colorectal screening, surgery and treatment. State Del. Lamont Bagby, who represents a legislative district roughly coinciding with the eastern portion of PD 15, states that “[t]he East End of Richmond has long suffered from a scarcity of resources for our citizens that are readily available, at lower costs, in other portions of the Richmond Metropolitan Area.” The delegate also states that colonoscopies are “critical for the African American community [which needs] nearby physical access, more options for Medicare/Medicaid, and less expensive colonoscopies.”¹⁰ DCOPN received one letter of opposition to the CARES project. That letter was submitted by Bon Secours Richmond Health System, which also separately submitted a petition for good cause against the VCUHS project.¹¹

While alternatives to the CARES project may exist, few practical alternatives exist for providing direct access to colorectal education, screening and surgery in the eastern portion of PD 15, where a significant number of disadvantaged persons and persons with a statistically high level of predisposition to colorectal cancer live. Approval of the CARES project would directly provide a vital need to residents of the area to be served. CARES has agreed to imposition of a routinely-devised charity care condition to promote financial access to its surgical services.

The costs of the CARES project, under \$4.5 million, are likely to be far outweighed by the benefits to the targeted population in increased good health and longevity. At the IFFC, the applicant showed *singular determination and commitment* to providing life-saving education, screening and colorectal surgical services that would be geographically, practically and financially accessible to residents of the area.

3. The extent to which the proposed project is consistent with the State Health Services Plan [i.e., the SMFP].¹²

The COPN law requires that “[a]ny decision to issue . . . a [COPN] shall be consistent with the most recent applicable provisions of the [SMFP]”¹³ The SMFP, contained in the Virginia Administrative Code (VAC), includes several provisions applicable to a project proposing the establishment of an OSH.¹⁴

¹⁰ Letter to N. Oliver from L. Bagby, June 7, 2021 (Additional IFFC Exhibit).

¹¹ As denoted above, this petition was denied.

¹² 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 operative guidance in reviewing applications for a COPN.

¹³ Va. Code § 32.1-102.3 (B).

¹⁴ 12 Virginia Administrative Code (VAC) 5-230-490 *et seq.*

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A slight surplus of ORs exists in PD 15. PD 15 has a total of 164 general purpose ORs. DCOPN initially calculated that a 2026 surplus of 10 or 11 ORs exists in PD 15,¹⁵ and later agreed with a calculation showing a surplus of 4.4 ORs.¹⁶ The existence of a calculated surplus is not determinative of SMFP inconsistency. In this case, at most, the surplus of ORs constitutes 2.7 percent of the authorized, general-purpose OR inventory. Such a margin is not significant, especially in a PD the size and sophistication of PD 15, when determining public need. The prevailing surplus is marginal and nominal. Further, many of the ORs in PD 15 display high utilization.¹⁷

Upon consideration of applicable SMFP provisions and all salient matters, I conclude that data and information weigh in favor of and substantiate a determination that the CARES project is consistent with the SMFP, or in harmony or in general agreement with the SMFP or with the planning principles, public policies, interests and purposes to which that plan and the COPN law are dedicated.¹⁸

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 CARES project would introduce a new surgery services provider in PD 15, increasing competition outright. It would consist of one special-purpose OR, in which a narrowly-tailored list of procedures and surgeries would be performed, offering little risk of harm to the utilization of existing ORs. CARES argues that 83% of the ORs in PD 15 are under the control of three hospital systems.¹⁹ The enthusiasm, dedication and commitment of the physicians' group associated with the applicant toward providing direct, practical and financial accessibility to specialized colorectal services and surgery for a population that is relatively disadvantaged, when compared to residents in affluent portions of PD 15, constitutes a specifically beneficial instance of competition.

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.

Approval of the CARES project, in effect, would increase the inventory of acute-care and outpatient ORs in PD 15 only minimally. While several ORs in PD 15 exhibit available capacity, these resources are not controlled by or aligned with a specialized physicians' group enthusiastically and singularly dedicated to promoting colorectal health in the eastern portion of PD 15. The CARES project would constitute a particularly beneficial addition to the armamentarium of health care facilities and resources that make up the existing health care system of the area.

¹⁵ DCOPN Staff Report at 15.

¹⁶ VCUHS Brief Opposing Good Cause Petition at 3; DCOPN Proposed Findings and Conclusions at 2; VCUHS Rebuttal at 1.

¹⁷ DCOPN Staff Report at 12-17.

¹⁸ See *Roanoke Mem. Hosp. v. Kenley*, 3 Va. App. 599, 352 S.E.2d 525 (1987).

¹⁹ CARES Proposed Findings and Conclusions at 5.

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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.

The costs of the CARES project are reasonable and the project is feasible. Thirty to forty percent of the practice of the physicians' group associated with CARES consists of colorectal surgical procedures that are not colonoscopies.²⁰ Approval of the project would allow Medicare and Medicaid reimbursement for these surgeries and obviate the need to perform them in an OSH or hospital, where outpatient surgeries are often bumped from their place on applicable schedules. Financial and human resources required to implement and operate the project are or appear readily available. The cost of capital, as that matter is conventionally understood under this statutory consideration, does not appear to be an issue.

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 CARES project would provide improvements or innovations in the delivery of health care services by placing a single, special-purpose OR at the disposal of a specialized physicians' group that exhibits singular dedication to the colorectal health of residents of the eastern portion of PD 15, including those who carry Medicare and Medicaid reimbursement. The performance of specialized procedures and surgeries becomes routinized and honed in a setting maintained and outfitted specifically for those specific surgeries, unlike an OR in a typical OSH or hospital that must accommodate surgeries of various types.

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, without prejudice to the applicant.

Conclusion and Recommendation Regarding the CARES Project

In relation to all eight statutory considerations and upon analytical review of the administrative record compiled in relation to the CARES project, I conclude that the project merits approval. I recommend that the application for authorization to initiate the CARES project, as proposed, be approved. **CARES should receive a certificate authorizing the project because, under the statutorily-required analysis, it is necessary to meet a demonstrated public need.**

²⁰ *Id.*

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Specific reasons supporting this recommendation include:

- (i) The CARES project is consistent with the SMFP, and is in harmony or in general agreement with the SMFP and with the planning principles, public policies, interests and purposes to which that plan and the COPN law are dedicated;
- (ii) Approval of the CARES project would add one OR – a *de minimis* addition, to the inventory of ORs in PD 15;
- (iii) No credible and uninterested opposition to the CARES project exists;
- (iv) Approval of the CARES project would substantially enhance geographic, financial and practical access to needed specialized surgical services, while increasing beneficial competition and lowering costs; and
- (iv) The CARES project holds the direct potential to enable an energized, dedicated subspecialty physician's group to provide and increase direct access to needed specialty surgical and health care services for somewhat disadvantaged residents of the eastern portion of PD 15.

Respectfully submitted,

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

September 15, 2021

Douglas R. Harris, JD
Adjudication Officer

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

THIS CERTIFIES THAT the Virginia Commonwealth University Health System Authority is authorized to initiate the proposal as described herein.

NAME OF FACILITY: VCU Health Courthouse Landing Pavilion.

LOCATION: 8701 Iron Bridge Road, Richmond, Virginia 23237.

OWNERSHIP AND CONTROL: The approved resources will be owned and operated by the Virginia Commonwealth University Health System Authority, a/k/a VCU Medical Center, a public body corporate and political subdivision of the Commonwealth.

SCOPE OF PROJECT: Establishment of an outpatient surgical hospital, consisting of four operating rooms, two procedure rooms, offices and attendant space, in accordance with specifications and representations made during the course of review. The total authorized capital cost of the project is \$30,712,529. The project is scheduled to be completed by March 1, 2023.



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-04757

Date of Issuance: September 20, 2021

Expiration Date: September 19, 2022

DocuSigned by:

M. Norman Oliver, MD

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M. Norman Oliver, MD, MA
State Health Commissioner

Condition Placed on the Issuance of this Certificate:

The Virginia Commonwealth University Health System Authority shall provide surgical services to all persons in need of these services, regardless of their ability to pay, and shall facilitate the development and operation of primary medical care services to medically underserved persons in Planning District (PD) 15 in an aggregate amount equal to at least **2.7%** of the **Virginia Commonwealth University Health System Authority's gross patient revenue derived from surgical services provided at VCU Health Courthouse Landing Pavilion.**

Compliance with this condition shall 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. The Virginia Commonwealth University Health System Authority shall accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, is available from Virginia Health Information, Inc. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*

The Virginia Commonwealth University Health System Authority shall provide surgery services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 *et seq.*), Title XIX of the Social Security Act (42 U.S.C. § 1396 *et seq.*), and 10 U.S.C. § 1071 *et seq.* Additionally the Virginia Commonwealth University Health System Authority shall facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area.

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

THIS CERTIFIES THAT Colon and Rectal Endoscopy and Surgery Center, LLC, is authorized to initiate the proposal as described herein.

NAME OF FACILITY: Colon and Rectal Endoscopy and Surgery Center.

LOCATION: A shell building at the northeast corner of the intersection of Pole Green Road and Bell Creek Road – a location yet to carry a postal address that is likely within the 8300 block of Bell Creek Road, Mechanicsville, Virginia 23116.

OWNERSHIP AND CONTROL: The approved resource will be owned and operated by Colon and Rectal Endoscopy and Surgery Center, LLC, the sole member of which is Colon and Rectal Specialists, Inc., a Virginia stock corporation.

SCOPE OF PROJECT: Establishment of an outpatient surgical hospital consisting of one special-purpose operating room dedicated to performing colonoscopies and colorectal surgeries, one specialized procedure room, and attendant offices and space, in accordance with specifications and representations made during the course of review. The total authorized capital cost of the project is \$4,495,083. The project is scheduled to be completed by June 15, 2022.



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-04756

Date of Issuance: September 20, 2021

Expiration Date: September 19, 2022

DocuSigned by:

M. Norman Oliver, MD

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M. Norman Oliver, MD, MA
State Health Commissioner

Condition Placed on the Issuance of this Certificate:

Colon and Rectal Endoscopy Surgery Center, LLC, shall provide surgery services to all persons in need of these services, regardless of their ability to pay, and shall facilitate the development and operation of primary medical care services to medically underserved persons in Planning District (PD) 15 in an aggregate amount equal to at least **2.7% of Colon and Rectal Endoscopy Surgery Center, LLC gross patient revenue derived from surgical services.**

Compliance with this condition shall 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. Colon and Rectal Endoscopy Surgery Center, LLC, shall accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, is available from Virginia Health Information, Inc. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*

Colon and Rectal Endoscopy Surgery Center, LLC, shall provide surgery services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 *et seq.*), Title XIX of the Social Security Act (42 U.S.C. § 1396 *et seq.*), and 10 U.S.C. § 1071 *et seq.* Additionally Colon and Rectal Endoscopy Surgery Center, LLC, shall facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area.

VIRGINIA DEPARTMENT OF HEALTH

Office of Licensure and Certification

Division of Certificate of Public Need

Staff Analysis

May 19, 2021

COPN Request No. VA-8547

Colon and Rectal Endoscopy and Surgery Center, LLC, Richmond, Virginia

Establish an outpatient surgical hospital with one special purpose OR

COPN Request No. VA-8549

Virginia Commonwealth University Health System Authority, Richmond, Virginia

Establish an outpatient surgical hospital with up to four ORs

Applicant

Colon and Rectal Endoscopy and Surgery Center, LLC

Colon and Rectal Endoscopy and Surgery Center, LLC (“CRESC”) is a Virginia limited liability company organized on November 24, 2020. Colon and Rectal Specialists, Ltd. is the sole member of CRESC. Colon and Rectal Specialists, Ltd. is a Virginia stock corporation formed in October 1986. The proposed location, the Colon and Rectal Endoscopy and Surgery Center (“CARES Center”) would be located in Hanover County in Health Planning Region (HPR) IV, Planning District (PD) 15.

Virginia Commonwealth University Health System Authority

The Virginia Commonwealth University Health Systems Authority (“VCUHS”) is a public body corporate and political subdivision of the Commonwealth of Virginia governed by the Virginia Commonwealth University Health System Authority Act of 1996-Title 23, Chapter 6.2, 23-50.16:1 of the Code of Virginia. VCUHS would own and operate the proposed VCU Health Courthouse Landing Pavilion (“Courthouse Landing Pavilion”). The Courthouse Landing Pavilion is to be located in Chesterfield County, Planning District (PD) 15, Health Planning Region (HPR) IV.

Background

Division of Certificate of Public Need (“DCOPN”) records show that there are currently 186 COPN authorized operating rooms (“OR”) in PD 15 (**Table 1**). CRESC calculated an inventory of 173 COPN authorized ORs in their application. The applicant provided a list but DCOPN was unable to reconcile the discrepancies between these numbers and both the reported ORs in VHI’s data and DCOPN’s own records. VCUHS calculated an inventory of 178 COPN authorized ORs in their application. The discrepancy between this and DCOPN’s numbers appears to be based

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on the 164 ORs reported to VHI in 2018, and VCUHS adding COPN authorized ORs that were approved, but not yet operational by the end of 2018.

Table 1: PD 15 COPN Authorized OR Inventory

Acute Care Hospitals	# of ORs
Bon Secours Memorial Regional Medical Center	8
Bon Secours Richmond Community Hospital	3
Bon Secours St. Francis Medical Center	13
Bon Secours St. Mary's Hospital	21
Chippenham Hospital	9
Henrico Doctor's Hospital - Parham	11
Henrico Doctor's Hospital - Retreat	5
Henrico Doctors' Hospital - Forest	21
Johnston-Willis Hospital	16
VCU Health System	31
West Creek Medical Center, Inc.	4
Acute Care Hospital Total	142
Outpatient Surgical Hospitals	
American Access Care of Richmond	2
Bon Secours Memorial Ambulatory Surgical Center	5
Boulders Ambulatory Surgery Center	3
Cataract and Refractive Surgery Center	1
Skin Surgery Center of Virginia	2
St. Mary's Ambulatory Surgery Center	4
MEDARVA Stony Point Surgery Center	6
MEDARVA Surgery Center at West Creek	2
Urosurgical Center of Richmond	3
VSA Vascular Center	2
VCU NOW Center	6
Virginia Commonwealth University Medical Center - Pediatric Outpatient Surgery	2
Virginia Eye Institute	5
Virginia League for Planned Parenthood	1
Outpatient Surgical Hospital Total	44
2021 Grand Total	186

Source: DCOPN

Proposed Projects

CRESC

CRESC seeks to build an outpatient surgical hospital with one limited use OR and one procedure room. The proposed facility would be located at the northwest corner of the intersection of Bell Creek Road and Pole Green Road in Hanover County. The applicant states that they will be occupying the new office and procedure space regardless of State Health Commissioner's ("Commissioner") decision on the proposed project. The applicant states that approval of the project would allow the applicant to construct the OR as part of the new construction rather than retrofitting existing space for the outpatient surgical hospital in the future, which would offer significant cost savings to the applicant. The applicant has proffered that, should the proposed

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project receive approval, the proposed OR would be limited to the 42 CPT codes related to the applicant's area of specialization that were provided in their application¹. The total capital and financing costs of this proposed project is estimated to be \$4,495,083 (**Table 2**). The facility would be leased from a related party for an amount necessary to amortize the debt over the cost of the facility. The applicant estimates that the debt service cost per patient day would be \$475.00 in year one and \$457.00 in year two.

Table 2. COPN Request No. VA-8547 Capital and Financing Costs

Direct Construction Costs	\$2,563,426
Equipment Not Included in Construction Contract	\$241,292
Site Acquisition Costs	\$274,967
Site Preparation Costs	\$163,184
Architectural and Engineering Fees	\$168,185
Other Consultant Fees	\$44,216
Conventional Loan Financing	\$71,870
Total Cost on Long Term Financing	\$967,943
TOTAL Capital and Financing Costs	\$4,495,083

Source: COPN Request 8547

VCUHS

VCUHS proposes establish a four OR outpatient surgical hospital located in the Courthouse Landing area of Chesterfield County. In addition to the four ORs, the Courthouse Landing Pavilion will include two procedure rooms, complementary physician offices and support services, and a Preoperative Assessment Communication Education clinic, which provides a range of clinical services aimed to enhance recovery after surgery. The applicant states that the proposed ORs would be used by lower-acuity surgical services including, but not limited to, general surgery, plastic and reconstructive surgery, gynecology, urology, and oncology. The applicant additionally states that the proposed project will augment VCUHS' range of outpatient surgical services available off campus, while decompressing its overcrowded ORs at the downtown campus, to ensure availability of capacity for high-acuity and emergent cases. The applicant finally states that they anticipate that 60% of the downtown adult outpatient case volumes that are clinically appropriate for the outpatient surgical hospital setting, in the service lines that will be offered, will decant to the Courthouse Landing Pavilion, excluding those anticipated to shift to the recently approved NOW Center ASC. The total capital cost of this proposed project is estimated to be \$30,712,529 (**Table 3**). VCUHS would lease the base building from the developer and pay for the direct capital costs associated with the project through the accumulated reserves of VCUHS.

¹ COPN Request No. VA-8547 application pp. 17-18

Table 3. COPN Request No. VA-8549 Capital and Financing Costs

Direct Construction Costs	\$11,934,243
Equipment Not Included in Construction Contract	\$6,570,000
Site Acquisition Costs	\$10,869,686
Architectural and Engineering Fees	\$693,600
Other Consultant Fees	\$645,000
TOTAL Capital and Financing Costs	\$30,712,529

Source: COPN Request 8549

Project Definition

CRESC

Section 32.1-102.1:3 of the Code of Virginia defines a project, in part, as the “[e]stablishment of a medical care facility described in subsection A”. A medical care facility is defined, in part, as “Any facility licensed as a hospital, as defined in § 32.1-123.”

VCUHS

Section 32.1-102.1:3 of the Code of Virginia defines a project, in part, as the “[e]stablishment of a medical care facility described in subsection A”. A medical care facility is defined, in part, as “Any facility licensed as a hospital, as defined in § 32.1-123.”

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

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

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

CRESC

The applicant asserts that the proposed project will increase access to colonoscopies and colorectal surgeries for Medicare and Medicaid patients. In support of this, the applicant states that Bon Secours Memorial Regional Hospital is the only place in the area where Medicare and Medicaid patients can receive colonoscopies. While DCOPN acknowledges that approval would increase access to Medicaid and Medicare patients, it rejects the applicant’s assertion regarding Bon Secours Memorial Regional Hospital. While it is true that Bon Secours Memorial Regional Hospital is the only hospital in the immediate area, several other locations with available ORs are within a 15-minute drive of the project location. Moreover, the applicant asserts that the proposed project will reduce costs by reducing the incidence of multiple colonoscopies and generating better outcomes from patients including providing specialty surgical care during an initial colonoscopy. DCOPN does not dispute this assertion, but notes that this benefit is not unique to the proposed project and would be true of any location that performed colonoscopies and had a COPN authorized OR. Additionally, the applicant asserts that the proposed project will increase competition

and lower costs for colonoscopies and colorectal surgery. Based on the price comparisons provided by the applicant, which are in line with comparisons between hospitals and outpatient surgical hospitals, DCOPN agrees with this assertion. Finally, the applicant asserts that the proposed project will fulfill a need created by a projected population growth in the area where the proposed project would be located. DCOPN rejects this assertion, as the sole support offered by the applicant for this need is a projected population increase in Hanover County and King William County, the latter of which, the applicant acknowledges is located outside of PD 15. While it is true that there is a projected increase in population, the applicant does not make a compelling case regarding the insufficiency of current services to address the growing population, nor did DCOPN identify one during its review of the project.

Geographically, the CARES Center would be located just west of the I-295 interchange with Pole Green Road. The proposed location would be located 6.6 miles from the intersection of I-95 and I-295 and 12.6 miles from the intersection of I-295 and I-64. The applicant did not address, and DCOPN did not identify, any public transport that serviced the proposed location.

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

VCUHS

As discussed throughout this report, VCUHS continues to have an institutional need to expand its surgical services. Despite approval of 8 ORs in the past two years, VCUHS' ORs still operate well above the SMFP threshold. Moreover, the placement of VCUHS' downtown campus makes additional expansion extremely difficult. This had previously been addressed by approval of the establishment of surgical services at VCU's Neuroscience, Orthopaedic and Wellness Center ("NOW Center")². Approval of the project would allow VCUHS to continue to decompress its overutilized ORs. Moreover, as noted in 12VAC5-230-490 below, approval of the project would increase access to residents of PD 15 that are not currently within a thirty-minute drive under normal driving conditions of surgical services.

Geographically, the Courthouse Landing Pavilion would be located in the Courthouse Landing development in Chesterfield County, off of Iron Bridge Road. The applicant states that the location is about one minute from SR-288, which provides convenient access to I-95, SR 360, and US 301. The applicant did not address, and DCOPN did not identify, any public transport that serviced the proposed location.

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

² COPN No. VA-04686

2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following:

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

CRESC

DCOPN received 55 letters of support for the proposed project from members of the public. Collectively, these letters articulated the pricing benefits of having a colonoscopy performed in an outpatient setting. The letters additionally articulated the desire to increase the number of locations where Medicare and Medicaid patients could receive colonoscopies.

DCOPN received one letter of opposition from Bon Secours Health System (“BSHS”), which is addressed below. DCOPN subsequently received a letter responding to Bon Secours’ letter of opposition from the applicant. Any new points raised by the applicant will be addressed where appropriate within the staff report.

VCUHS

DCOPN received 20 letters of support for the proposed project from members of the public and physicians associated with VCUHS. Collectively, these letters articulated the need to decompress the over utilized ORs at VCUHS and the difficulties currently experienced by physicians in booking non-emergent subspecialty surgeries with the current high utilization of the existing ORs. Moreover, these letters articulated the inability for VCUHS to expand at its downtown campus. Finally, several letters from members of the public articulated their support because of the convenience and proximity to their homes.

DCOPN received one letter of opposition from BSHS, which is addressed below. DCOPN subsequently received a letter responding to Bon Secours’ letter of opposition from the applicant. Any new points raised by the applicant will be addressed where appropriate within the staff report.

Bon Secours Letter of Opposition

DCOPN received one letter of opposition from BSHS. In this letter, BSHS first asserts that the 2019 data shows that there is a surplus of ORs in PD 15. BSHS’ calculations are, with the exception of some variations in the population data, in line with DCOPN’s calculations below and reach the same calculation of ORs projected to be needed in 2026.

Second, BSHS raises concerns over the VHI data used in the calculations. Specifically, BSHS calls into question the data reported by Urological Center of Richmond and Virginia Eye Institute. BSHS calculates that Urological Center of Richmond would need to operate their OR over 23 hours a day every day for the entire year of 2018 to reach the reported numbers. BSHS additionally states that Virginia Eye Institute would need to have operated over 12 hours a day every day for the entire year of 2018 to reach the reported numbers. Given the reported utilization for both Urological Center of Richmond and Virginia Eye

Institute in 2019, 322.5% and 274.4% respectively, DCOPN concurs with BSHS that the projected surplus in PD 15 is likely greater than represented in its calculations.

Thirdly, BSHS asserts that there are a significant number of ORs, eight of which will be under the control of VCUHS, that have been approved, but are not yet operational. BSHS argues that it would be premature to approve any additional ORs for VCUHS under these circumstances. DCOPN rejects this assertion as there is no requirement to do so in COPN law, and no precedent in past decisions to support this approach. BSHS additionally makes several assertions regarding the VCUHS application, such as maintenance of the status quo as an alternative, or arguments made in the application previously rejected by DCOPN, that are discussed in greater detail elsewhere in the staff report.

BSHS finally makes assertions regarding the CRESC application. BSHS asserts that the proposed project would have a negative impact on existing providers and asserts that CRESC acting as an operator would be a better alternative. While it is true that the proposed project would have a negative impact on utilization, this argument is true of any new entrant into an area. Additionally, the proposed project is very narrowly tailored with only a very limited number of CPT codes being able to be performed at the CARES Center's proposed OR. Finally, as shown in **Table 8** below, Bon Secours Memorial Regional Medical Center, where CRESC currently performs procedures when an operating room is necessary, operated at 112% of the SMFP threshold in 2019, the last year for which DCOPN has data available. As such, DCOPN disagrees with the assertion that the introduction of the CARES Center would have a negative effect on providers in the immediate area. DCOPN will address the effects of the CARES Center in the planning district as a whole and any alternatives to the proposed project in detail below.

Public Hearing

A public hearing was required due to there being two competing applicants in the review³. DCOPN conducted the required public hearing by telephone on April 21, 2021. A total of 33 individuals called in to the public hearing. Each of the projects were presented by representatives from the applicant organizations. 2 members of the public indicated that they were in support of CRESC's COPN Request number VA-8547 and 16 members of the public indicated that they were in support of VCUHS' COPN Request number VA-8549. Three members of the public, all of whom were associated with Bon Secours Health System, indicated that they opposed both projects. One member of the public, acting as counsel for Bon Secours Health System, spoke in opposition to both proposed projects. The points raised by this individual were identical to their letter of opposition discussed above.

(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;

³ Va Code § 32.1-102.6

CRESC

The status quo is a preferable alternative to the proposed project. As discussed below, there is a surplus of ORs projected through 2026. As such, absent a compelling need that would overcome this surplus, the proposed project should not be approved. Of the benefits raised above, all of could be attributed to any project placing a surgical suite in a physicians' office specializing in the same area. DCOPN recognizes the proposed project would introduce a lower cost option to the area, and finds this factor to be particularly important, but can nonetheless not justify the addition of another OR in a planning district notoriously oversaturated with ORs based solely on these factors. Moreover, approval of a project in spite of a surplus of ORs in the planning district for such universal reasons would set a catastrophic precedent that would necessitate the approval of a vast number of ORs in a planning district that is already over full. As such, DCOPN concludes that the applicant has not made a sufficient case providing a compelling reason why the proposed project should be approved despite the surplus of ORs within the planning district and, as such, concludes that the status quo is a preferable alternative to the proposed project.

VCUHS

DCOPN is not aware of any reasonable alternatives to the proposed project. The status quo is not a viable alternative to the proposed project. Under the status quo, MCV would continue to experience volumes in excess of the SMPF, leading to extended hours, overworked staff, and the frequent rescheduling of outpatient procedures to free up GPOR space for more complex and urgent cases. BSHS alleges that COPN No. VA-04727 shows that VCUHS would be able to add capacity at MCV. DCOPN rejects this argument. While VCUHS was able to add capacity at this location in this instance, an examination of the area surrounding MCV clearly supports VCU's assertions regarding ongoing difficulties securing additional space to expand its surgical services in its downtown campus. Moreover, adopting BSHS' interpretation would effectively result in DCOPN penalizing VCUHS for making every available attempt to add capacity at their downtown campus before attempting to expand beyond that area. As such, DCOPN concludes that expansion on the MCV campus is not possible because of the lack of available room within their current footprint. For the aforementioned reasons, DCOPN concludes that the status quo is not a viable alternative to the proposed project.

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

Currently there is no organization in HPR IV designated by the Virginia Department of Health to serve as the Health Planning Agency for PD 15. Therefore, this consideration is not applicable to the review of the proposed project.

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

As demonstrated in **Table 2**, the total capital and financing costs of this proposed project is estimated to be \$4,495,083. The facility would be leased from a related party for an amount necessary to amortize the debt over the cost of the facility. The applicant estimates that the debt service cost per patient day would be \$475.00 in year one and \$457.00 in year two. The costs for the project are reasonable and consistent with previously approved projects to establish an outpatient surgical hospital. For example, COPN No. VA-03807 issued to Bon Secours Mary Immaculate Hospital to establish an outpatient surgical hospital costing approximately \$4,322,617; and COPN No. VA-03817 issued to Bon Secours Hampton Roads Health Systems, Inc. to establish an outpatient surgical hospital costing approximately \$4,575,900. As discussed above, the proposed project would introduce a new low cost option to Medicaid and Medicare patients.

VCUHS

As demonstrated in **Table 3**, the total capital cost of this proposed project is estimated to be \$30,712,529. VCUHS would lease the base building from the developer and pay for the direct capital costs associated with the project through the accumulated reserves of VCUHS. The costs for the project are significant, but fall between the two latest approved projects to establish an outpatient surgical hospital with four ORs. For example, COPN No. VA-04588 issued to University of Virginia Medical Center to establish an outpatient surgical hospital with four ORs costing approximately \$38,470,797; and COPN No. VA-04691 issued to Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. to establish an outpatient surgical hospital with four ORs costing approximately \$28,261,845. As discussed throughout this report, the proposed project would address an institutional need at VCHUS' downtown campus and reduce instances of non-emergent surgical cases being rescheduled. Moreover, as discussed below, the proposed project would increase access to surgical services for residents of the southern portion of PD 15 who are not within a thirty-minute drive under normal driving conditions of a surgical service provider within PD 15.

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

As discussed above, the applicant states that the proposed project would reduce the costs of, and improve access to, colonoscopies and colorectal surgeries. The applicant does not address this criteria beyond this. DCOPN does not have any past records of charity care for CRESC. Recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. Accordingly, should the Commissioner approve the proposed project, the CARES Center is expected to provide a level of charity care for total gross patient revenues that is no less than the equivalent average for charity care contributions in HPR IV.

VCUHS

The applicant states that the proposed project will be financially accessible to all patients. The applicant additionally states that VCUHS is the largest safety net provider in the Virginia, accepting all patients without regard to their ability to pay or other considerations. As **Table 4** below demonstrates, VCUHS provided 4.22% of its gross patient revenue in the form of charity care in 2019. This charity care contribution represents the highest percentage in HPR IV. The applicant provided a projected payor mix that included 26% Medicare, 25% Medicaid, and 2% charity care. This charity care projection is below the regional average found in **Table 4** below. Recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. Accordingly, should the Commissioner approve the proposed project, VCUHS is expected to provide a level of charity care for total gross patient revenues that is no less than the equivalent average for charity care contributions in HPR IV.

Table 4: HPR IV 2019 Charity Care Contributions

Hospital	Gross Patient Revenues	Adjusted Charity Care Contribution	Percent of Gross Patient Revenue:
VCU Health System	\$821,906,538	\$34,703,353	4.22%
Bon Secours Richmond Community Hospital	\$299,864,540	\$13,214,243	4.41%
VCU Community Memorial Hospital	\$296,240,103	\$11,849,658	4.00%
Sentara Halifax Regional Hospital	\$1,020,058,202	\$36,854,815	3.61%
Bon Secours St. Francis Medical Center	\$1,562,406,719	\$43,217,694	2.77%
Bon Secours Memorial Regional Medical Center	\$2,226,799,125	\$59,804,440	2.69%
Bon Secours St. Mary's Hospital	\$335,602,265	\$8,611,288	2.57%
Centra Southside Community Hospital	\$2,094,715,568	\$34,597,144	1.65%
Bon Secours Southside Regional Medical Center	\$7,394,600,760	\$107,675,784	1.46%
CJW Medical Center	\$980,419,839	\$13,467,848	1.37%
John Randolph Medical Center	\$4,822,100,793	\$53,542,021	1.11%
Henrico Doctors' Hospital	\$223,258,497	\$1,196,980	0.54%
Bon Secours Southern Virginia Regional Medical Center	\$131,865,765	\$0	0.00%
Vibra Hospital of Richmond LLC	\$64,413,240	\$0	0.00%
Cumberland Hospital for Children and Adolescents	\$821,906,538	\$34,703,353	4.22%
Total \$ & Mean %	\$28,431,547,392	\$755,934,000	2.7%

Source: 2019 VHI Data

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

VCUHS' Institutional Need

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

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

DCOPN does, however, recognize that the circumstances and facts surrounding the current application and COPN No. VA-04588 are incredibly similar. Both projects involve the need by a hospital associated with an academic institution located in the crowded downtown area of a city to decompress their GPORs. Additionally, both projects propose to solve this issue by beginning to offer surgical services at a location on the outskirts of the city at an outpatient facility. Moreover, DCOPN acknowledges this application, as well as a great deal of its analysis, is incredibly similar to COPN No. VA-04686, which, based largely on its incredible similarity to COPN No. VA-04588, authorized the establishment of surgical services at VCU's NOW Center.

The State Health Services Plan

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

3. The extent to which the proposed project is consistent with the State Health Services Plan;

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

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

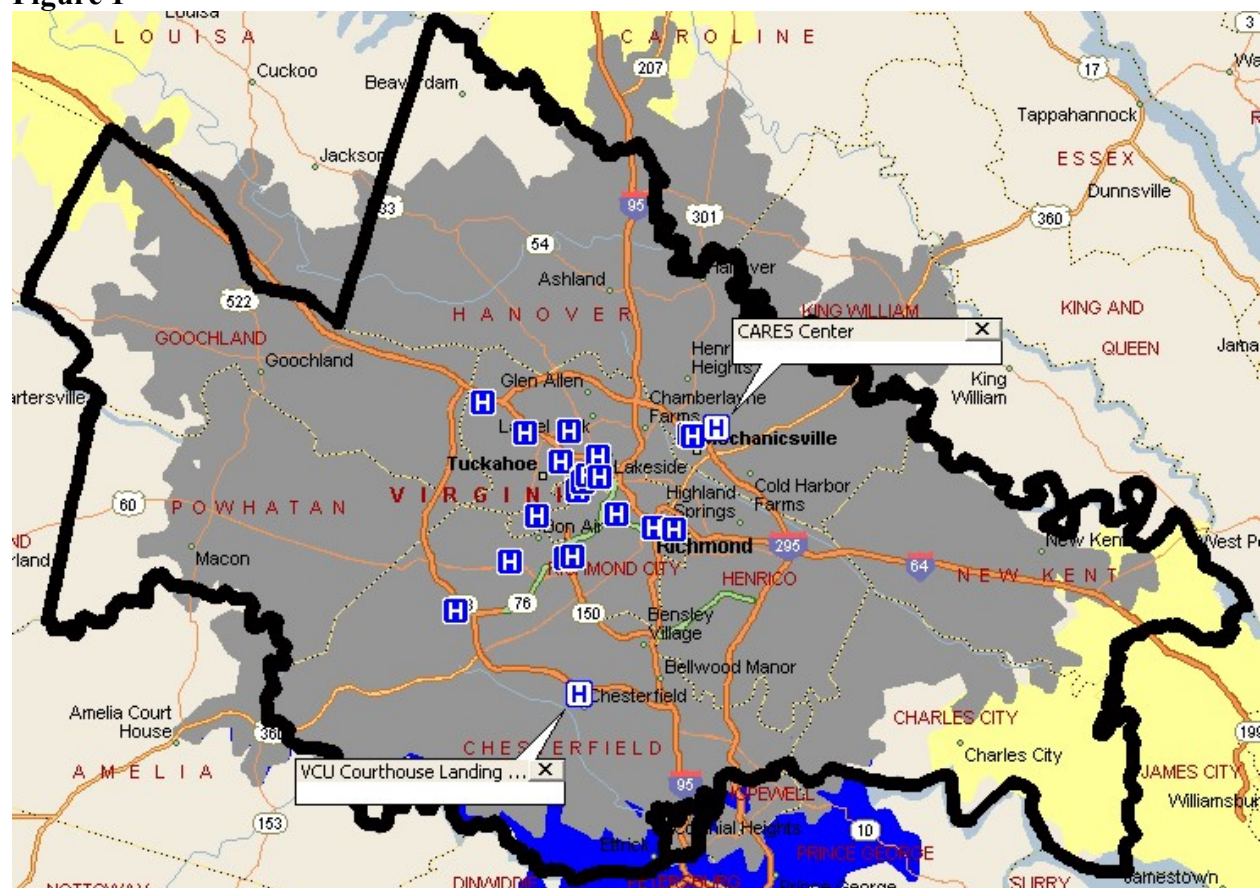
12VAC5-230-490. Travel Time.

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

The black line in Figure 1 identifies the boundary of PD 15. The dark "H" signs in **Figure 1** mark the locations of COPN recognized ORs that are within 30 minutes of portions of PD 15. The grey shading illustrates the area that is within a thirty-minute drive under normal driving conditions of all approved surgical service providers in PD 15 with the exception of the applicants. The yellow shading illustrates the area that is not within a thirty-minute drive under normal driving conditions of a surgical service provider within PD 15, but are within a thirty-minute drive under normal driving conditions of a surgical service provider outside of PD 15.

The blue shading shows the area that would be solely within a thirty-minute drive under normal driving conditions of one of the applicants. **Figure 1** indicates that the Courthouse Landing Pavilion project would increase access to a small area of the sparsely populated southern part of PD 15 along Lake Chesdin that is not currently within a thirty-minute drive under normal driving conditions of surgical services. **Figure 1** does not indicate that the CARES project would increase access to residents of PD 15 not currently within a thirty-minute drive under normal driving conditions of surgical services. With regard to the section of the planning district not shaded in the western and northern portions of the planning district, these areas are significantly less populated than other areas of the planning district. As such, DCOPN concludes that surgical services are within 30 minutes driving time one way under normal conditions of 95% of the population of PD 15.

Figure 1



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

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

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

Where:

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

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

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

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

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

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

The preceding formula can be used to affirm whether there is currently an excess of GPORs in PD 15. The preceding formula can also determine the overall need for ORs within PD 15 five years from the current year, i.e., in the year 2026. The current GPOR inventory for PD 15 is broken down by facility, category, and utilization rate as shown in **Table 1** above.

Based on OR utilization submitted to and compiled by VHI, for the five year period 2015 through 2019, which is the most recent five-year time span for which relevant data is available, the total numbers of reported inpatient and outpatient OR visits to hospital-based and freestanding (i.e., to outpatient surgical hospitals/ambulatory surgical centers) are shown in **Table 5**.

**Table 5: Inpatient & Outpatient GPOR
Utilization in PD 15: 2015-2019**

Year	Total Inpatient & Outpatient OR Visits
2015	136,455
2016	133,411
2017	136,449
2018	134,998
2019	141,390
Total	682,703
Average	136,541

Source: 2015-2019 VHI Data and COPN Records

Based on actual population counts derived as a result of the 2010 U.S. census, and population projections as compiled by Weldon Cooper, **Table 6** presents the U.S. Census' baseline population estimates for Planning District 15 for the five years 2015-2019 as follows:

Table 6: PD 15 Population: 2015-2019 & 2026

Year	Population
2015	1,050,634
2016	1,061,347
2017	1,072,468
2018	1,084,014
2019	1,096,002
Total	5,364,465
Average	1,072,893
2026	1,169,237

Source: Weldon Cooper

Based on the above population estimates from the 2010 U.S. Census and extrapolating, DCOPN calculates an average annual increase of 9,628 from 2010 to 2020 and 8,753 from 2020 to 2030, the cumulative total population of PD 15 for the same historical five-year period as referenced above, 2015-2019, was 5,308,777, while the population of PD 15 in the year 2026 (PROPOP – five years from the current year) is projected to be 1,172,635. These figures are necessary for the application of the preceding formula, as follows:

ORV	÷	POP	=	CSUR
Total PD 15 GPOR Visits 2015 to 2019:		PD 15 Historical Population 2015 to 2019:		Calculated GPOR Use Rate 2015 to 2019:
682,703		5,364,465		0.1273

CSUR	*	PROPOP	=	PORV
Calculated GPOR Use Rate 2015 to 2019:		PD 15 Projected Population 2026:		Projected GPOR Visits 2026:
0.1273		1,169,237		148,844

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

AHORV = 266,011 total inpatient and outpatient OR hours (**Table 7**) reported to VHI for 2019, divided by 141,390 total inpatient and outpatient OR visits reported to VHI for that same year (**Table 5**);

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Table 7: PD 15 Total OR Room Hours: 2019

Facility	Inpatient OR Hours	Outpatient OR Hours	Total Hours
Bon Secours Memorial Regional Medical Center	8,611	12,934	21,545
Bon Secours Richmond Community Hospital	41	591	632
Bon Secours St. Francis Medical Center	6,952	10,700	17,652
Bon Secours St. Mary's Hospital	17,268	19,126	36,394
Boulders Ambulatory Surgery Center	0	4,816	4,816
Cataract and Refractive Surgery Center	0	2,221	2,221
Chippenham Hospital	6,435	4,072	10,507
Henrico Doctor's Hospital - Parham Doctors' Hospital	4,511	3,847	8,358
Henrico Doctor's Hospital - Retreat	1,673	2,555	4,228
Henrico Doctors' Hospital - Forest	9,043	9,462	18,505
Johnston-Willis Hospital	9,193	12,081	21,274
MEDARVA Surgery Center @ West Creek	0	2,629	2,629
Skin Surgery Center of Virginia	0	6,000	6,000
St. Mary's Ambulatory Surgery Center	0	4,688	4,688
Stony Point Surgery Center	0	8,850	8,850
Urosurgical Center of Richmond	0	5,160	5,160
VCU Medical Center	37,966	32,636	70,602
Virginia Eye Institute	0	21,950	21,950
Grand Total	101,693	164,318	266,011

Source: VHI 2019 Data

$$\text{AHORV} = 1.8814$$

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

$$\frac{\text{FOR} = 0.1273 \times 1,169,237 \times 1.8814}{1600}$$

$$\text{FOR} = 280,034.86 \div 1,600$$

$$\text{FOR} = 175.02$$

Current PD 15 GPOR inventory: 186

Net Surplus: 10 GPORs for 2026 planning year

Using the above methodologies, there is a predicted need for 176 GPORs in PD 15 by 2026. As such, the conclusion would be logically reached there will be a surplus of 10 ORs in the planning district by the year 2026.

Both applicant's calculations differ from those laid out above. The applicants' calculations utilize 2014-2018 data rather than 2015-2019 data. As these calculations are outdated, DCOPN did not check the applicant's calculations directly. Moreover, the population projections provided by both applicants differed from DCOPN's population projections. DCOPN attempted to reconcile these numbers, but was unable to do so. Both applicants

arrived, based on the 2014-2018 data, at a much higher projected need for 183 GPORs in 2025. While these numbers are significantly higher, they still result in a projected surplus of 3 ORs.

Both applicants make the argument that special purpose operating rooms, such as ophthalmic or the proposed limited use operating room at the CARES Center, should not be counted in the inventory. The applicants claim that these operating rooms skew the inventory by showing or exaggerating a surplus of operating rooms. DCOPN rejects this assertion. Limited use operating rooms are hardly a new phenomenon. Were such an exception intended, it would have been included in the SMFP. Moreover, there is no precedent for DCOPN doing this. Finally, such practice, absent some clearly established framework, would lead to inconsistent and unpredictable results. For these reasons, DCOPN strongly rejects the proposition by both applicants that special purpose operating rooms be excluded from the inventory.

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

Not applicable. Neither applicant is seeking to relocate existing ORs.

12VAC5-230-510. Staffing.

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

CRESC

The applicant has provided assurances that the proposed surgical services will be under the direction of one or more of the qualified physicians.

VCUHS

The applicant has provided assurances that the proposed surgical services will be under the direction of an appropriately qualified physician serving as Medical Director. The applicant additionally states that all physicians practicing at the proposed location will be members of the VCUHS active medical staff.

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

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

CRESC

Not applicable. The applicant does not have, nor is claiming to have, an institutional need for additional GPORs.

VCUHS

VCUHS asserts that it has a compelling institutional need for the proposed expansion of its surgical services. The applicant additionally asserts that their 31 GPORs in 2019 operated at 142.7% of the SMFP threshold. As detailed in **Table 8** below, the data provided to DCOPN by VHI shows that VCUHS' 31 GPORs operated in 2019, the last year for which DCOPN has data from VHI, at 139.6% of the SMFP threshold of 1,600 hours per OR. In analyzing the potential need for the requested 4 ORs at the new Courthouse Landing Pavilion location, DCOPN calculated that, even when adding the requested 4 ORs, the 6 ORs approved in COPN No. VA-04686 and the two ORs approved in COPN No. VA-04727, the total hours of VCUHS in 2019 would still result in it operating slightly in excess of the SMFP threshold. As such, DCOPN concludes that VCUHS has established an institutional need to expand and that the requested number of ORs are reasonable based on the level of utilization.

Table 8: PD 15 GPOR Room Utilization: 2019

Facility	# of ORs	Total Hours	Hours per OR	Utilization Rate
Bon Secours Memorial Regional Medical Center	12	21,545	1,795.4	112.2%
Bon Secours Richmond Community Hospital	3	632	210.7	13.2%
Bon Secours St. Francis Medical Center	11	17,652	1,604.7	100.3%
Bon Secours St. Mary's Hospital	21	36,394	1,733.0	108.3%
Boulders Ambulatory Surgery Center	3	4,816	1,605.3	100.3%
Cataract and Refractive Surgery Center	1	2,221	2,221.0	138.8%
Chippenham Hospital	9	10,507	1,167.4	73.0%
Henrico Doctor's Hospital - Parham Doctors' Hospital	11	8,358	759.8	47.5%
Henrico Doctor's Hospital - Retreat	5	4,228	845.6	52.9%
Henrico Doctors' Hospital - Forest	21	18,505	881.2	55.1%
Johnston-Willis Hospital	16	21,274	1,329.6	83.1%
MEDARVA Surgery Center @ West Creek	2	2,629	1,314.5	82.2%
Skin Surgery Center of Virginia	2	6,000	3,000.0	187.5%
St. Mary's Ambulatory Surgery Center	4	4,688	1,172.0	73.3%
Stony Point Surgery Center	6	8,850	1,475.0	92.2%
Urosurgical Center of Richmond	1	5,160	5,160.0	322.5%
VCU Medical Center	31	70,602	2,277.5	142.3%
Virginia Eye Institute	5	21,950	4,390.0	274.4%
Grand Total	164	266,011	1,622.0	101.4%

Source: VHI 2019 Data

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

CRESC

Not applicable. The applicant does not have, nor is claiming to have, an institutional need for additional GPORs.

VCUHS

There are no GPORs within the VCU health system that should be relocated to the Courthouse Landing Pavilion. In addition to its downtown campus, VCUHS operates one facility, the NOW Center, with COPN authorized ORs. The NOW Center, however, was authorized by the Commissioner in November 2019 and has not yet become operational. As such, reallocation of any ORs from this location would be premature. Moreover, given that this location is accounted for in the decompressing of the downtown campus' ORs, reallocation would be unlikely to alleviate the overutilization of the ORs on the downtown campus. Based on the facts above, DCOPN concludes that relocation of existing GPORs within the health system is not feasible.

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

CRESC

Not applicable. The applicant does not have, nor is claiming to have, an institutional need for additional GPORs.

VCUHS

The proposed project does not involve nursing facilities.

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

CRESC

Not applicable. The applicant does not have, nor is claiming to have, an institutional need for additional GPORs.

VCUHS

VCUHS argues that this is not establishing a new service, but expanding an existing service at VCUHS' main campus. This argument was made previously by the applicant in COPN Request No. VA-8463. While DCOPN ultimately recommended approval of the project, it rejected this argument. DCOPN stated in its report that

“While section D below clearly states that this section may not be used to justify a new service, the applicant asserts that a special exemption for academic medical centers needing to decompress high volumes has been made in a recent decision by the Commissioner⁴. DCOPN disagrees with this interpretation. While it is true that the applicant in COPN No. VA-04588 did cite institutional need as part of their application, the decision by the Commissioner does not rely

⁴ COPN No. VA-04588.

on this single fact. In his analysis of the SMFP, the Adjudication Officer clearly notes that the applicant in COPN No. VA-04588 had a utilization rate of 86.2%⁵. Furthermore, the Adjudication Officer makes no mention of institutional need in his recommendation⁶. As such, it is unreasonable to assume that the approval of COPN No. VA-04588 is based on this section of the SMFP.”

DCOPN concluded that “[t]his section clearly prevents VCUHS from using the utilization of MCV to establish GPORs at the NOW Center under 12VAC5-230-80. As discussed above, the decision by the commissioner to issue COPN No. VA-04588 does not rely on the argument of intuitional need. As such, there is no special exemption that would allow academic medical centers needing to decompress high volumes to establish a new service based on intuitional need.” DCOPN adopts and reaffirms its previously conclusions and rejects VCUHS interpretation that this is not establishing a new service and finds that this section clearly bars the applicant from establishing surgical services at the Courthouse Landing Pavilion under 12VAC5-230-80.

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;**

CRESC

The introduction of a new service provider into an area with existing providers, by its very nature, will generate some degree of institutional competition. Moreover, as discussed above, the applicant asserts that Bon Secours Memorial Regional Medical Center is the only location in the area where Medicaid and Medicare patients can receive colonoscopies. DCOPN rejected this assertion noting that several other locations are available within a 15 minute drive. DCOPN does recognize that approval of the project would introduce a lower cost option in the area to residents of the area. In this regard, DCOPN concludes that the proposed project would foster institutional competition that benefits the area to be served.

VCUHS

As addressed above, the introduction of a new service provider into an area with existing providers, by its very nature, will generate some degree of institutional competition. However, given the high utilization of the ORs at MCV and the percentage of outpatient cases VCUHS anticipates decanting to the Courthouse Landing Pavilion, DCOPN finds it doubtful that the Courthouse Landing Pavilion will significantly compete with existing providers in the area. As such, DCOPN does not expect that the approval of this project will materially increase beneficial institutional competition within the area.

⁵ *Id.*, Adjudication Officer’s Report p.7.

⁶ *Id.*, pp. 10-11

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;

CRESC

As discussed above, both in DCOPN's analysis of the application and its analysis of BSHS' letter of opposition, the proposed project is very narrowly tailored with only a very limited number of CPT codes being able to be performed at the CARES Center's proposed OR. Moreover, as shown in **Table 8** above, the facility where the applicant currently performs its colonoscopies and colorectal surgeries, Bon Secours Memorial Regional Medical Center, is currently operating above the SMFP threshold. As such, at worst, the proposed project would not affect the utilization of Bon Secours Memorial Regional Medical Center and, at best, would alleviate some of the burden on its overburdened ORs.

VCUHS

As discussed above, VCUHS anticipates decanting a significant portion of its outpatient surgical cases to the Courthouse Landing Pavilion. Additionally, as shown in **Figure 1** above, the proposed project would increase access to a small portion of residents of PD 15 not currently within a thirty-minute drive under normal driving conditions of a surgical service provider within PD 15. However, while these factors will alleviate some effect on existing providers in the marketplace, DCOPN acknowledges that it would be unreasonable to assume the establishment of a new location by an established and significant provider in the planning district would not have some material effect on exiting providers in the area. As such, DCOPN concludes that, while the above referenced factors will somewhat mitigated the severity, the proposed project is likely to have some effect on the utilization of existing providers in the area.

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;

CRESC

As demonstrated in **Table 2**, the total capital and financing cost of this proposed project is estimated to be \$4,495,083. The facility would be leased from a related party for an amount necessary to amortize the debt over the cost of the facility. The applicant estimates that the debt service cost per patient day would be \$475.00 in year one and \$457.00 in year two. Additionally, as discussed above, DCOPN determined that the costs for the project are reasonable and consistent with previously approved projects to establish an outpatient surgical hospital. For the aforementioned reasons, DCOPN concludes that the proposed project is financial feasible.

With regards to the availability of human resources, CRESC anticipates the need for an additional one PRN RN and one PRN CNRA. The applicant asserts that they will acquire these additional employees by advertising in various media. Given the lack of additional information or methods of recruitment for employees with such in-demand skillsets, the applicant's response raises some concern that the proposed project could have a detrimental

impact on existing providers. However, while some concern exists, no provider, including BSHS in their extensive letter of opposition, has raised this as an issue. As such, DCOPN concludes that the applicant will successfully be able to staff the proposed project without having a significant negative impact on existing providers of this service.

VCUHS

As demonstrated in **Table 3**, the total capital cost of this proposed project is estimated to be \$30,712,529. VCUHS would lease the base building from the developer and pay for the direct capital costs associated with the project through the accumulated reserves of VCUHS. Additionally, as discussed above, DCOPN determined that the costs for the project are significant, but are consistent with the past two approved projects to establish an outpatient surgical hospital with four ORs. For the aforementioned reasons, DCOPN concludes that the proposed project is financial feasible.

With regards to the availability of human resources, VCUHS anticipates the need for 70.5 FTEs to staff this project, including 25.75 FTEs for Registered Nurses, 10.25 for Licensed Practical Nurses, 6.0 FTEs for Surgical Techs, and 6.0 FTEs for Anesthesia Techs. With regards to how the applicant plans to recruit this very large population of medical professions, the applicant states:

“VCUHS has developed key workforce initiatives in areas such as education, career development, family/work life balance, community outreach, housing, transportation, and compensation. Overall, these initiatives have minimized turnover and aided in recruiting and retention. Indeed, VCUHS’ efforts (including its efforts to optimize work schedules and extend hours of operation) have reduced its vacancy and turnover rates to the lowest level in the last several years. Although the ongoing pandemic undeniably creates staffing challenges, VCUHS continues to focus on and succeed in staffing and recruitment efforts. VCUHS recently elevated its medical surge status, triggering a surge plan that will shift operations, including ramping up staffing resources, to prepare for higher demand in certain clinical areas...”

The applicant additionally discusses their four consecutive redesignation as a Magnet hospital. Finally, the applicant states that 85% of their employees reside in the service area of the proposed project and asserts that many of these employees would be interested in working at the new location. DCOPN notes that, while this assists with staffing at the proposed location, it would create vacancies at MCV that would still need to be filled. While, DCOPN concludes that the applicant will successfully be able to staff the proposed project, lingering concern remains regarding whether it can do so without having a significant negative impact on existing providers of this service.

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; and

CRESC

The proposed project would provide improvements on the delivery of health services by increasing the provision of services on an outpatient basis by increasing access to Medicare and Medicaid patients seeking to receive colonoscopies in an outpatient setting.

VCUHS

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

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

CRESC

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

VCUHS

VCUHS owns and operates MCV, the teaching hospital associated with Virginia Commonwealth University. The applicant provided the following with regard to this standard:

“As an the region’s academic medical center, VCUHS has a three-part mission aimed at (i) preserving and restoring health for all people, (ii) seeking the cause of diseases through innovative research, and (iii) educating those who serve humanity. This project will further that mission by fostering research and education opportunities in a much-needed outpatient-focused setting.

VCUHS continually looks for pathways to offer innovative diagnostic and treatment options to its patients outside of the downtown campus. Approximately 85% of VCUHS’ more than 300 clinical research studies are outpatient studies, and approximately 15-20% (or approximately 45-60 studies) involve a procedure that could be clinically appropriate for an ASC. This proposal will enable

VCUHS to increase enrollment on research studies at a new off-campus location and to provide patients with more treatment options.

VCUHS also plays an essential role as the Commonwealth's largest safety net provider in providing care to indigent and underserved patient populations throughout Virginia. With this project, VCUHS projects serving 51% Medicare and Medicaid patients.

In sum, the Courthouse Landing Pavilion will enable VCUHS to improve access to its surgical services for all patients while also supporting its research and training mission and its commitment to providing high-quality care for all."

DCOPN Findings and Conclusions

CRESC

DCOPN finds that the proposed project to outpatient surgical hospital with one limited use OR is inconsistent with the applicable criteria and standards of the SMFP and the Eight Required Considerations of the Code of Virginia. Furthermore, DCOPN finds that the status quo is a preferable alternative to the proposed project. There is a surplus of ORs within the planning district and, while the applicant has offered some benefits to the proposed project, none are sufficiently compelling to establish a compelling public need that would overcome this surplus.

Finally, DCOPN finds that the total capital and financing cost of this proposed project are \$4,495,083 (**Table 2**). The facility would be leased from a related party for an amount necessary to amortize the debt over the cost of the facility. The applicant estimates that the debt service cost per patient day would be \$475.00 in year one and \$457.00 in year two. The costs for the project are reasonable and consistent with previously approved projects to establish an outpatient surgical hospital. For example, COPN No. VA-03807 issued to Bon Secours Mary Immaculate Hospital to establish an outpatient surgical hospital costing approximately \$4,322,617; and COPN No. VA-03817 issued to Bon Secours Hampton Roads Health Systems, Inc. to establish an outpatient surgical hospital costing approximately \$4,575,900.

VCUHS

As previously discussed, this project is remarkably similar to two previous applications submitted to DCOPN, COPN Request No. VA-8305 and 8463. All projects involve the need by a hospital associated with an academic institution located in the crowded downtown area of a city to decompress their GPORs. Additionally, all projects propose to solve this issue by beginning to offer surgical services at a location on the outskirts of the city at an outpatient facility. In COPN Request No. VA-8305, the Commissioner approved the project, stating that "[r]igid adherence to a...surplus...as a barrier to a deserving, modest project that shows great promise for increased quality in specialized care is not warranted" and that the proposed project was "consistent with the SMFP, or is in harmony or general agreement with the SMFP." While DCOPN does not generally adopt this viewpoint generally, given the near identical fact pattern

between these two applications, it must view the Commissioner's decision as instructive in this particular application.

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

Finally, DCOPN finds that the total capital costs of the proposed project are \$30,712,529 (**Table 3**). VCUHS would lease the base building from the developer and pay for the direct capital costs associated with the project through the accumulated reserves of VCUHS. DCOPN finds that the capital costs for the project are significant, but are consistent with the two latest approved projects to establish an outpatient surgical hospital with four ORs. For example, COPN No. VA-04588 issued to University of Virginia Medical Center to establish an outpatient surgical hospital with four ORs costing approximately \$38,470,797; and COPN No. VA-04691 issued to Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. to establish an outpatient surgical hospital with four ORs costing approximately \$28,261,845.

DCOPN Staff Recommendation

CRESC

The Division of Certificate of Public Need recommends **denial** of Colon and Rectal Endoscopy and Surgery Center, LLC's proposed project to establish an outpatient surgical hospital with one special purpose OR:

1. The proposed project is inconsistent with the applicable criteria and standards of the SMFP and the Eight Required Considerations of the Code of Virginia
2. The status quo is not a viable alternative to the proposed project.
3. The capital costs are reasonable and consistent with the projects of this type.

VCUHS

The Division of Certificate of Public Need recommends **conditional approval** of Virginia Commonwealth University Health System Authority's proposed project to establish an outpatient surgical hospital with up to four ORs:

1. Based on two prior decisions by the Commissioner with a nearly identical fact pattern to the current application, the proposed project is consistent with the SMFP, or is in harmony or general agreement with the SMFP.

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2. Approval of the project would address an institutional need to expand surgical services at VCUHS' downtown campus.
3. The status quo is not a viable alternative to the proposed project.
4. The capital costs are significant, but are consistent with the past two projects of its type.

DCOPN's recommendation is contingent upon Virginia Commonwealth University Health System Authority's agreement to the following charity care condition:

Virginia Commonwealth University Health System Authority will provide surgical services to all persons in need of these services, regardless of their ability to pay, and will provide as charity care to all indigent persons free services or rate reductions in services and facilitate the development and operation of primary care services to medically underserved persons in an aggregate amount equal to at least 2.7% of Virginia Commonwealth University Health System Authority's total patient services revenue derived from surgical services provided at the VCU Health Courthouse Landing Pavilion as valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. Compliance with this condition will be documented to the Division of Certificate of Public Need annually by providing audited or otherwise appropriately certified financial statements documenting compliance with the preceding requirement. Virginia Commonwealth University Health System Authority will accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. is available from Virginia Health Information. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1 et seq.

Virginia Commonwealth University Health System Authority will provide surgical services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. Additionally Virginia Commonwealth University Health System Authority will facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area.