



COMMONWEALTH of VIRGINIA

Colin M. Greene, MD, MPH
Acting State Health Commissioner

Department of Health
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RICHMOND, VA 23218

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March 18, 2022

By Email

Emily W. G. Towey, Esquire
Hancock Daniel
4701 Cox Road
Glen Allen, Virginia 23225-2050

RE: Certificate of Public Need (COPN)
No. VA-04785 (Request Number VA-8573)
Riverside Hospital, Inc., d/b/a
Riverside Smithfield Hospital
Smithfield, Isle of Wight County
Planning District (PD) 20
Health Planning Region (HPR) V
Establishment of a New Hospital

Dear Ms. Towey:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the "COPN law"), I have reviewed the application proposing the above-captioned project submitted by Riverside Hospital, Inc. (the "Smithfield project" or "project").

As required by Subsection B of Virginia Code § 32.1-102.3, I have considered all matters, listed therein, that must be taken into account in making a determination of public need under the COPN law.

I have reviewed and adopted the enclosed findings, conclusions and recommended decision of the adjudication officer that convened the informal fact-finding conference in accordance with the Virginia Administrative Process Act to discuss the Smithfield project, reviewing the administrative record pertaining to the project and writing the enclosed recommended decision.

Emily Towey, Esquire

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Based on my review of this case and on the recommended decision of the adjudication officer, I am approving the Smithfield project with a condition requiring an appropriate level of charity care, as directed in the COPN Law. The project merits approval and will receive a COPN. The project is necessary in meeting a public need.

The reasons for my decision include the following:

- (i) The Smithfield project is consistent with the State Medical Facilities Plan (SMFP), is in harmony or in general agreement with the SMFP or with the public policies, interests and purposes to which the SMFP and the COPN law are dedicated;
- (ii) Maintaining the status quo is not a preferable alternative, as it does not reasonably respond to demonstrated growth and development in Isle of Wight County, and beyond;
- (iii) The Smithfield project would directly improve geographic and financial access to hospital services and emergency medical services for residents of PD 20 (and some residents of PD 19), many of whom live in rural areas and federally-designated medically-underserved communities;
- (iv) The administrative record on the Smithfield project demonstrates that the project enjoys substantial and broad public support, much of it emanating from the area to be served;
- (v) Approval of the Smithfield project would introduce an element of beneficial competition into PD 20, which currently displays marked concentration of resources and services in its health care market; Riverside, the proposing market entrant, has direct and ongoing experience with and commitment to sustaining and operating small hospitals and to meeting public need, expressed as a local and rural need, in PDs 18, 21 and 22 – areas across the Tidewater region of Virginia;
- (vi) The capital costs of the Smithfield project are reasonable and include no financing costs; and

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(vii) Approval of the Smithfield project would reasonably marshal reviewable and awardable resources of the Commonwealth, without presenting an adverse effect on the patient volume, proficiency or health care services provided by existing or to-be-built health facilities in PD 20 and HPR V.

Sincerely,

DocuSigned by:



80186E196D924B6

Colin M. Greene, MD, MPH
Acting State Health Commissioner

Encl.

cc

(via email):

Todd Wagner, DO, MPH, MBA

Director, Western Tidewater Health District

Deborah K. Waite

Virginia Health Information, Inc.

Allyson Tysinger, Esq.

Senior Assistant Attorney General

Douglas R. Harris, JD

Adjudication Officer

Erik O. Bodin, III

Division of Certificate of Public Need

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

THIS CERTIFIES THAT Riverside Hospital, Inc., is authorized to initiate the proposal as described herein.

NAME OF FACILITY: Riverside Smithfield Hospital

LOCATION: At the intersection of U.S. Route 258 and Virginia Route 10 (with a presumed address on Benns Grant Boulevard), Smithfield, Virginia 23430

OWNERSHIP AND CONTROL: Riverside Hospital, Inc., will own and operate the hospital

SCOPE OF PROJECT: Establishment of a general hospital with a total of 50 acute-care beds (consisting of 34 medical-surgical beds, 10 intensive care beds, and 6 obstetric beds), four general-purpose operating rooms, computed tomography services using one fixed scanner, and magnetic resonance imaging services deploying one mobile scanner, all in accordance with representations made during the course of review and adjudication. The total authorized capital cost of the project is \$100,000,000. The project is scheduled to be completed by September 15, 2025.




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-04785 (VA-22-20-01-A)

Date of Issuance: March 18, 2022

Expiration Date: March 17, 2023

DocuSigned by:

80168E196D924B6

Colin M. Greene, MD, MPH
Acting State Health Commissioner

Condition Placed on the Issuance of this Certificate:

Riverside Hospital, Inc. (“Riverside”), shall provide acute-care, surgical care and diagnostic care 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) 20 in an aggregate amount equal to at least 3.5% of Riverside’s gross patient revenue derived from services provided at the hospital that will result from completion of this project.

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. Riverside 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.*

Riverside shall provide services at the hospital to be completed 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, Riverside shall facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant’s service area.

**Recommendation
to the State Health Commissioner
on Certificate of Public Need
Request Number VA-8573
Riverside Hospital, Inc. d/b/a
Riverside Smithfield Hospital
Smithfield, Isle of Wight County
Planning District (PD) 20
Health Planning Region (HPR) V
Establishment of a New Hospital**

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 application captioned above, and convening of an informal fact-finding conference (IFFC)¹ on the application conducted in accordance with the Virginia Administrative Process Act (VAPA).²

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

Factual and Procedural Background

1. Riverside Hospital, Inc. (“Riverside”), is a Virginia nonstock, not-for-profit corporation. Riverside operates Riverside Regional Medical Center (RRMC), its flagship, 450-bed⁵ tertiary care hospital and long-established regional referral center in the city of Newport News, PD 21, Health Planning Region V. Riverside and its affiliated health care enterprises, corporations and partnerings across PD boundaries, have a comprehensive array of tertiary, acute, referral and

¹ The IFFC was convened and conducted in-person on December 10, 2021. (The IFFC had originally been scheduled by operation of statute for November 5, 2021, and was continued to this later date at the request of the applicant.) A certified transcript of the IFFC is in the record.

² Va. Code § 2.2-4000 *et seq.*

³ Va. Code § 32.1-102.1:2 (A).

⁴ Va. Code § 32.1-102.1.

⁵ An additional contingent of 126 psychiatric care beds exist within the RRMC physical plant or on the RRMC campus.

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primary medical resources, providing surgical, therapeutic, diagnostic and palliative care services in numerous inpatient and outpatient settings in the Tidewater region of Virginia.

2. In its application, Riverside proposes to establish an acute-care hospital proximate to the intersection of U.S. Route 258 (58), and Virginia primary routes 32 and 10, in Isle of Wight County, PD 20, HPR V. As a proposal constituting an “[e]stablishment of a medical care facility” under the COPN law,⁶ the project in the application submitted by Riverside (the “Smithfield project”) would include a total of 50 acute-care beds, *i.e.*, 34 medical-surgical (“med/surg”) beds, 10 intensive care (“ICU”) beds and six obstetric care beds. The hospital would also have four general-purpose operating rooms (ORs) and a computed tomography (CT) scanner and service, and would accommodate a magnetic resonance imaging (MRI) service using a mobile scanner. The hospital would offer related services, most notably, emergency department services, to which the COPN law does not apply. Total capital costs of the Smithfield project are \$1,000,000, to be defrayed by reserves accumulated by Riverside with no financing costs.

3. Riverside characterizes the Smithfield project, most prominently and generally, as one that would establish “a local hospital in a medically underserved community that has experienced significant growth and development in recent years.”⁷ Notably, RRMC – Riverside’s flagship tertiary-care hospital and referral medical center – is located in PD 21 (north of the James River), while the project is proposed for location in PD 20 (south of the James River).⁸ RRMC serves as the tertiary, regional medical referral center for three affiliated small rural hospitals in the Tidewater region of Virginia: i) Riverside Walter Reed Hospital (in Gloucester County, PD 18); ii) Riverside Doctors Hospital Williamsburg (James City County, PD 21); and iii) Riverside Shore Memorial Hospital (Accomack County, PD 22).

Summary and Incorporation of Certain Text of DCOPN Staff Report

In a staff report dated October 21, 2021, prepared by the Department of Health’s Division of Certificate of Public Need (DCOPN) on the Smithfield project (the “DCOPN staff report”),⁹ that division recommended that the Commissioner deny the Smithfield project, for reasons identified therein. Reasons for DCOPN’s conclusion are grounded in the inability of the Smithfield project to demonstrate *strict consistency* with applicable provisions of the State Medical Facilities Plan (SMFP), a document last substantively revised in 2009 is due for replacement as required by 2020 law.¹⁰

⁶ Specifically, Va. Code § 32.1-102.1:3.

⁷ Riverside Proposed Findings and Conclusions at (unnumbered) 1, 13.

⁸ For health planning purposes, VDH continues to recognize the existence of PDs 20 and 21 for health planning purposes (as envisioned in the 1967 legislative study proposing Virginia’s planning district system), while these PDs have merged to form one PD, *i.e.*, PD 23, for purposes generally relating to the Regional Cooperation Act (Va. Code § 15.2-4700 *et seq.*).

⁹ The DCOPN staff report also addressed and analyzed a separate application, *i.e.*, COPN Request No. VA-8572, submitted by Sentara Hospitals, consisting of a proposal to add 27 acute care beds at Sentara Leigh Hospital, in the city of Norfolk, PD 20. Sentara’s proposal, *i.e.*, a project formerly competing with the present project, was approved by the Commissioner via a COPN issued November 19, 2021, *viz.*, COPN No. VA-04764.

¹⁰ The SMFP must be substantially revised (and replaced by or re-oriented as a “State Health Services Plan”) pursuant to 2020 law. Senate Bill 764 (Acts of Assembly, c. 1271, 2020).

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By reference, the text of the DCOPN staff report and conclusions drawn in that report that are consistent with the recommended decision made below (distinct from the staff recommendation made by DCOPN) are incorporated hereby into the present recommended decision for the purpose of establishing and corroborating facts and demonstrating analysis that together support and constitute the evidentiary basis on which the recommended decision made below rests.

Analysis and Conclusions Relating to the Proposed Project

Salient analysis and conclusions regarding the Smithfield project and relating directly to the eight considerations of public need contained in the COPN law (the "statutory considerations"¹¹ appearing in bold type), are set forth in relation to each statutory consideration below.

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.

According to DCOPN, there are 2,281 med/surg beds at hospitals in PD 20. Nearly 82 percent of these beds are in the eastern half of the PD. The Smithfield project would bring acute care services to the north-west portion of PD 20, mainly, to Isle of Wight County.¹² The envisioned hospital would provide services in an emergency department that would be an additional and local destination for emergency medical services (EMS) transport. The hospital would provide an additional, local site for area residents to seek obstetric services.¹³ Isle of Wight County, still overwhelmingly rural, bears signs of marked increases in population and development.

Aside from 81 med/surg beds at Southampton Memorial Hospital in the town of Franklin, the concentration of med/surg beds in the urban-suburban eastern half of PD 20 are not clearly, reasonably and effectively accessible to residents of the growing service area Riverside has identified for its project. While DCOPN states the applicable driving time standard in the SMFP (discussed below) has been met, Riverside contends such a conclusion does not currently and fully reflect real-world experience.¹⁴

The population of Isle of Wight County, while not large, grew nearly 52 percent between 1990 and 2020, and is expected to grow nearly ten percent between 2020 and 2030. This population is aging, with the elderly cohort expected to comprise over 19 percent of the service area population.¹⁵ With consideration of population growth, expanse of geography, singular barriers to road travel presented by watercourses and waterways, the Smithfield project bears

¹¹ See Subsection B of Virginia Code § 32.1-102.3.

¹² Currently, there are no acute care hospitals in the counties of Isle of Wight, Surry or Sussex.

¹³ Obstetric services will be programmatically modeled after of those provided at and in affiliation with Riverside Shore Memorial Hospital (PD 22) which has long provided obstetric care services. Email from G. Phillips (numbered exhibit in administrative record).

¹⁴ Riverside IFFC Exhibit ("Ex.") 10A (table). Often, bridges must be crossed. Riverside IFFC Ex. 10B (map).

¹⁵ Riverside Proposed Findings and Conclusions at 6, 7; Riverside IFFC Ex. 9.

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clear potential for reasonably and effectively increasing access to general and essential health care services and improving the delivery of emergency medical services, for people in the growing north-west portion of PD 20, where several federally-designated, medically-underserved communities lie, along with a portion of PD 19, located in HPR IV.

The Smithfield project, then, has the potential to serve a rural area that is, according to the chief of EMS for Isle of Wight County, facing local challenges to access, including delay (resulting from physical distance and increasing roadway traffic) and limited resources in the delivery of emergency medical services. The EMS chief separately agreed that the area, coinciding roughly with Isle of Wight County, is growing dramatically and could reasonably be characterized as becoming a “bedroom community,”¹⁶ with a substantial number of new housing starts under construction.

Approval of the Smithfield project would allow a reasonable, modest, acute-care hospital to be established and to be situated strategically to meet a public need, expressed as a local and rural need, for facility-based health care resources.¹⁷

2. The extent to which the proposed project will meet the needs of people in the area to be served, as demonstrated by each of the following: (i) the level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served; (ii) the availability of reasonable alternatives to the proposed project that would meet the needs of people in the area to be served in a less costly, more efficient, or more effective manner; (iii) any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the proposed project; (v) the financial accessibility of the proposed project to people in the area to be served, including indigent people; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project.

Community Support. The Smithfield project enjoys substantial public support, evidenced by nearly 2,100 letters and numerous emails in the administrative record on the Smithfield project. The letters include written support from four members of the General Assembly,¹⁸ leaders in local and county government, civics and business, physicians, and providers of health care and EMS. Notably, the project is supported by Chesapeake Regional Healthcare, a primary health system in PD 20,¹⁹ and is not opposed by Sentara Healthcare, the largest health system in

¹⁶ IFFC Transcript (“Tr.”) at 76 (Carroll).

¹⁷ Similarly, in the text of past case decisions of the Commissioner in which unrelated applications for a COPN were analyzed, the general understanding and issue of “institutional need” was specifically characterized as being “a public need, expressed as an institutional need,” as an attempt to remain faithful to the authority granted in the COPN law.

¹⁸ Senators Cosgrove, Lucas and Norment, and Delegate Brewer have written in thoughtful support of the Smithfield project. All four legislators represent residents living in areas directly or potentially affected by the determination and case decision to be made on the Smithfield project.

¹⁹ IFFC Tr. at 17.

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HPR V.²⁰ A local pastor observes by letter that area residents need a local hospital, and “4,000 new multi-family and single-family residential units [are] under construction in Isle of Wight County. . . .”²¹

The only letter of opposition to the Smithfield project was written on behalf of Bon Secours Hampton Roads Health System (“Bon Secours”), which operates hospitals in the eastern half of PD 20. In 2018, Bon Secours received a Certificate authorizing the establishment of an 18-bed, surgically-focused hospital in the Harbour View area of the expansive city of Suffolk,²² to the east, but has not yet constructed the physical plant for the hospital.

Reasonable Alternatives. Maintaining the status quo is not a reasonable alternative to the Smithfield project. No identifiable alternative to the project would provide local access to inpatient medical and surgical services, as well as obstetric, emergency and diagnostic services to the growing area of the Commonwealth identified by Riverside.

Costs and Benefits. The costs of the Smithfield project are reasonable, as DCOPN concluded, and the benefits, including those of improving access (discussed above) and introducing beneficial competition (discussed below) are manifold.

Financial Accessibility. Regarding financial access, Riverside operates three small, local hospitals in the Tidewater region of Virginia. These hospitals provide charity care at rates in excess of the 3.5 percent 2019 average among 22 acute-care hospitals in HPR V. In addition, RRMC, alone, provided over two billion dollars of charity care in 2019.²³ Riverside has agreed to accept a charity care condition on the operation of the hospital that would result from the Smithfield project, as routinely devised in accordance with the COPN law.

Other Factors. In 2021, the Commissioner denied an application from Bon Secours to expand the as-yet unbuilt hospital at the core of the Harbour View project to 36 beds, proposing an effective tripling of its bed complement.²⁴ The Commissioner listed six reasons for his decision, including the foreseeable negative system-based effects on nearby, existing facilities that approval would bring, and the concern that “the project would dramatically extend and alter the scope, size and purpose of an approved but undeveloped hospital, before that hospital has even generated utilization data to warrant such an expansion.”²⁵ When built, the hospital at Harbour View is expected to serve a population relatively distinct from that targeted by the Smithfield project.

The expansion earlier proposed by Bon Secours is distinguishable from the prospect of serving public need presented by the Smithfield project. Universally, separate applications for a COPN present specific, often unique, facts. Review and denial of Bon Secours’ expansion

²⁰ Riverside IFFC Ex. 21. Additionally, over recent months, dozens of residents have telephoned the Office of the State Health Commissioner, in Richmond, expressing support for the Smithfield project. The number of these phone calls in support of the project may be unprecedented, and is, at least, atypical.

²¹ Letter from Rev. A. Bracey, to N. Oliver, Sept. 20, 2021 (Administrative Record Ex. 40).

²² COPN No. VA-04631.

²³ DCOPN Staff Report at 10.

²⁴ Case Decision on COPN Request No. VA-8520 (21-20-01-A), March 11, 2021.

²⁵ *Id.*

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project occurred a full year ago. A decision to approve the Smithfield project now would not be inconsistent with any administrative precedent in the COPN arena.

Additionally, Bon Secours represented in 2018 that its project to establish an 18-bed hospital in Suffolk, if approved, would be operational by February 1, 2021. Following approval of a recently-reviewed significant change request, the Bon Secours project is not scheduled to be operational until November 30, 2025 – weeks after the target date for the project under review, *i.e.*, the Smithfield project, to become operational.

3. The extent to which the proposed project is consistent with the State Health Services Plan [*i.e.*, *de facto*, the SMFP].²⁶

The COPN law requires that “[a]ny decision to issue . . . a [COPN] shall be consistent with the most recent applicable provisions of the [SMFP]”²⁷ The SMFP, contained in the Virginia Administrative Code (VAC), includes several provisions applicable to a project proposing the establishment of a new hospital with med/surg beds, ICU beds, surgical services, CT imaging services and MRI imaging services.²⁸

The State Board of Health adopted the SMFP as a document of regulatory guidance in administering an overall system of planning principles for health facilities and services in Virginia, as directed in the COPN law. In large measure, the SMFP exists to provide detailed, precise standards for reviewable resources and services, often based on observable practice and health professional principles that provide pragmatic, quantifiable measures to aid in making sound determinations based in public need. These standards alone are not determinative of public need, but are often reliable in initially gauging public need and arriving at a *prima facie*, or initial, indication whether public need exists.²⁹ This initial assay, performed routinely by DCOPN, must be augmented, and is at times overcome, by analysis of and public reflection upon data and information and careful observations relating to and coming under *the other seven statutory considerations* in order to gain full factual awareness and obtain an assessment of public need.

DCOPN relied on the SMFP’s computational methodologies for reaching the conclusion that the Commissioner should deny the Smithfield project. Specifically, by applying the applicable methodologies in the SMFP, DCOPN concluded that in 2026 PD 20 will have a surplus of 211 med/surg beds and a surplus of 16 ORs, although it calculated a need for 88 ICU

²⁶ 12 Virginia Administrative Code (VAC) 5-230-10 *et seq.* While Senate Bill 764 (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. Therefore, the SMFP remains in effect as regulatory guidance in reviewing applications for a COPN. *See* Footnote 9.

²⁷ Va. Code § 32.1-102.3 (B).

²⁸ 12 Virginia Administrative Code (VAC) 5-230-90 *et seq.*

²⁹ Additionally, the SMFP was last substantively revised in 2009. Many provisions of the SMFP, including certain computational methodologies therein, appear to be blunt instruments, less than fully helpful and incisive in predictively gauging whether public need for a particular project exists or will exist for certain services and proposed projects regulated under the COPN law, as some past case decisions requiring the specialized competence of the Commissioner have indicated.

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beds in PD 20.³⁰ Riverside submitted data and conclusions suggesting the surpluses identified by DCOPN do not actually exist and that a need for med/surg beds and ORs exist in PD 20.³¹ Acknowledgement of Riverside's effort is not acceptance of the results.

In this case, the 50 hospital beds sought by Riverside constitute less than 2.2 percent of the total current inventory of approved med/surg beds in PD 20, nearly all of which are concentrated in the eastern half of the PD. The four ORs sought are equivalent to 2.5 percent of the inventory of ORs in PD 20, some of which are dedicated to specialized purposes and not available for general surgical usage. Such margins seem not particularly significant when determining public need for a modest proposal, submitted by a health system with a demonstrated commitment to operating small hospitals in rural areas of Virginia, to establish an acute-care hospital in a developing rural area somewhat distant from all but one existing hospital in the PD.

Upon consideration of all salient matters, I conclude that sufficient data and information weigh in favor of and substantiate a determination that the Smithfield project is consistent with the SMFP, or in harmony or in general agreement with the SMFP or with the public policies, interests and purposes to which the SMFP and the COPN law are dedicated.³² The Commissioner, in his discretion and in exercising his specialized competence to make determinations of public need, may readily find SMFP consistency in this case.

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.

Approval of the Smithfield project would allow an entrant into the acute-care market of PD 20. This would foster beneficial institutional competition, controlling healthcare costs and promoting access to and quality of healthcare services.

The U.S. Department of Justice and the Federal Trade Commission use the Herfindahl-Hirschman Index (HHI) to gauge competition in a market. The HHI is a commonly-accepted method of measuring market concentration, the use of which has been proffered in relation to the analysis of numerous past, unrelated applications for a COPN over years. Application of the HHI results in a figure that can range from close to zero to 10,000. Riverside submitted testimony and documentation from an economist indicating that the HHI of the service area identified by Riverside for the Smithfield project (consisting of Isle of Wight and Surry counties, and the city of Suffolk) is currently 4,808.³³ An HHI over 2,500 indicates a market is highly concentrated and less than ideally competitive.

³⁰ DCOPN Staff Report at 33-41. Riverside's inclusion of a CT scanner and an MRI scanner in the Smithfield project would not add to any inventory and would be inventory-neutral. These scanners would be relocated from Riverside-operated, approved facilities.

³¹ Riverside Proposed Findings and Conclusions at 25-32. I do not accept Riverside's calculations, but note them as assertions in the record and as potential indications that calculating numerical need for a reviewable resource is, at times, less certain than it appears.

³² See *Roanoke Mem. Hosp. v. Kenley*, 3 Va. App. 599, 352 S.E.2d 525 (1987).

³³ Riverside IFFC Ex. 34.

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Sentara Healthcare dominates the healthcare market of PD 20, controlling *over 56 percent of the med/surg beds* in the inventory. Bon Secours and Chesapeake Regional Medical Center round out the triad of leading hospital-based health systems in PD 20, decreasing market concentration minimally. The entry of Riverside into the PD 20 market, as would occur with approval of the Smithfield project, would likely have a moderating and leavening effect on market concentration in PD 20.

The Smithfield project offers a unique opportunity to increase beneficial competition by establishing a modest acute-care hospital in a developing rural area distant from many established and approved, but as-yet unbuilt, healthcare resources. The project is proposed, enabled and promoted by Riverside, a major health care system based in a conjoining PD, thereby poised to exert downward pressure on healthcare costs and a deconcentrating effect on the attendant local market for health care services.

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 Smithfield project would, in effect, increase the inventory of acute-care and inpatient ORs in PD 15 only marginally. The diagnostic scanners included in the proposed project would be relocated from existing facilities and are inventory-neutral. While existing hospitals in PD 20 exhibit available med/surg bed capacity according to DCOPN's calculations, they are not controlled by or aligned with a new market entrant – one that proposes situating acute-care hospital resources at a well-traversed local crossroads, thereby meeting the public need of a growing community in a wide, rural area. The Smithfield project bears an entirely appropriate relationship to the healthcare system in the area to be served and offers meaningful improvement in health care delivery.

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

DCOPN concluded that the LewisGale project is financially feasible. The project stands to provide benefits to Riverside. As DCOPN concluded, the attendant construction costs of the project are reasonable.

Financial resources required to fund the Smithfield project are available internally to Riverside and include no financing costs. Human resources necessary to implement and operate the various services that would come about due to the project – an estimated 205 staff³⁴ – are or would likely become readily available, as Riverside has established and effective programs for training and recruiting healthcare personnel. The cost of capital, as that matter is conventionally understood under this statutory consideration, does not appear to present 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

³⁴ Administrative Record Ex. 42 (email from G. Phillips).

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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.

Not applicable, without prejudice to the applicant.

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

In view of all eight statutory considerations and upon analytical review of the administrative record compiled in relation to the Smithfield project, I conclude that the project would meet a public need and merits approval. I recommend that the application seeking authorization to establish a 50-bed acute-care hospital in Isle of Wight County, as proposed by Riverside, be approved. Riverside should receive a Certificate authorizing the project as it is necessary to meet a demonstrated public need.

Specific reasons supporting this recommendation include:(i) The Smithfield project is consistent with the SMFP, is in harmony or in general agreement with the SMFP or with the public policies, interests and purposes to which the SMFP and the COPN law are dedicated;

(ii) Maintaining the status quo is not a preferable alternative, as it does not reasonably respond to demonstrated growth and development in Isle of Wight County, and beyond;

(iii) The Smithfield project would directly improve geographic and financial access to hospital services and emergency medical services for residents of PD 20 (and some residents of PD 19), many of whom live in rural areas and federally-designated medically-underserved communities;

(iv) The administrative record on the Smithfield project demonstrates that the project enjoys substantial and broad public support, much of it emanating from the area to be served;

(v) Approval of the Smithfield project would introduce an element of beneficial competition into PD 20, which currently displays marked concentration of resources and services in its health care market; Riverside, the proposing market entrant, has direct and ongoing experience with and commitment to sustaining and operating small hospitals and to meeting public need, expressed as

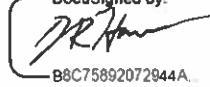
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a local and rural need, in PDs 18, 21 and 22 – areas across the Tidewater region of Virginia;

(vi) The capital costs of the Smithfield project are reasonable and include no financing costs; and

(vii) Approval of the Smithfield project would reasonably marshal reviewable and awardable resources of the Commonwealth, without presenting an adverse effect on the patient volume, proficiency or health care services provided by existing or to-be-built health facilities in PD 20 and HPR V.

Respectfully submitted,

DocuSigned by:

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March 14, 2022

Douglas R. Harris, JD
Adjudication Officer