



## COMMONWEALTH of VIRGINIA

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

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

April 10, 2023

### By Email

Thomas J. Stallings, Esquire  
McGuire Woods  
800 East Canal Street  
Richmond, Virginia 23219

**RE: Certificate of Public Need (COPN)  
No. VA-04834  
(COPN Request Number VA-8611)  
Chesapeake Diagnostic Imaging Centers, LLC  
(CDIC)  
Chesapeake, Virginia  
Planning District (PD) 20  
Health Planning Region IV  
Establishment of a specialized center for  
magnetic resonance imaging (MRI) services  
deploying one relocated scanner**

Dear Mr. Stallings:

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 captioned above. As required by Subsection B of Virginia Code § 32.1-102.3, I have considered all matters, listed therein, 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 on this application in accordance with the Virginia Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*

Based on my review of this application and on the recommended decision of the adjudication officer, I am approving the application with a condition requiring charity care. The project proposed in the application would meet a public need.

The reasons for my decision include the following:

- (i) The project is consistent with applicable provisions of the State Medical Facilities Plan;
- (ii) The total project capital costs are reasonable and include no financing costs; the project is feasible;
- (iii) As a proposed relocation of an existing outpatient regulated scanner and service, CDIC's project is inventory-neutral, and would allow continuation of direct services to CDIC's existing patient base;
- (iv) Utilization of existing area providers of MRI services is not likely to be harmed by CDIC's project;
- (v) Continuation of patient scanning and office operations at CDIC's current leased space and location have reportedly become problematic due to practical and building-related issues; and
- (vi) Anthem and Aetna – area providers of health care insurance, have written in support of the CDIC project.

Sincerely,



Parham Jaber, MD, MPH  
Acting State Health Commissioner

Encl.: 2

cc (via email):  
Nancy Welch, MD, MHA, MBA, Director, Chesapeake 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, Director, Division of Certificate of Public Need



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

THIS CERTIFIES THAT Chesapeake Diagnostic Imaging Centers, LLC, is authorized to initiate the proposal described herein.

NAME OF FACILITY: Western Branch Imaging Center

LOCATION: 4200 Portsmouth Boulevard, Chesapeake, Virginia 23321

OWNERSHIP AND CONTROL: Chesapeake Diagnostic Imaging Centers, LLC, will maintain ownership of and control over the approved resources.

SCOPE OF PROJECT: Establishment of a specialized center for magnetic resonance imaging (MRI) scanning through relocation of one MRI scanner, in accordance with specifications and representations made during the course of review and adjudication. The total authorized capital cost of the project is \$3,474,944. The project is scheduled to be completed by November 15, 2024. This Certificate is issued with the CONDITION that appears on its Reverse.



Pursuant to Chapter 4, Article 11 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 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-04834

Date of Issuance: April 10, 2023

Expiration Date: April 9, 2024

  
Parham Jaber, MD  
Acting State Health Commissioner

**CONDITION Placed on the Issuance of this Certificate:**

Chesapeake Diagnostic Imaging Centers, LLC, shall provide MRI imaging 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 2.5% of its gross patient revenue derived from **MRI diagnostic imaging services**.

Compliance with this condition shall be documented to the Division of Certificate of Public Need (DCOPN) annually by providing audited or otherwise appropriately certified financial statements documenting compliance with the preceding requirement. Chesapeake Diagnostic Imaging Centers, 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.*

Chesapeake Diagnostic Imaging Centers, LLC, shall provide MRI imaging 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, Chesapeake Diagnostic Imaging Centers, 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.

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**Recommended Case Decision  
Certificate of Public Need (COPN)  
Request Number VA-8611  
Chesapeake Diagnostic Imaging Centers, LLC  
Chesapeake, Virginia  
Planning District (PD) 20  
Health Planning Region IV  
Establishment of a specialized center for  
magnetic resonance imaging (MRI) services  
deploying one relocated scanner**

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This document is a recommended case decision submitted to the State Health Commissioner ( hereinafter “Commissioner”) for consideration and adoption. It follows full review of the application captioned above and the convening of an informal fact-finding conference (IFFC)<sup>1</sup> conducted in accordance with the Virginia Administrative Process Act (VAPA)<sup>2</sup> and Title 32.1 of the Code of Virginia.

**Authority**

Article 1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the “COPN Law”) addresses medical care services 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.”<sup>3</sup> The endeavor described and proposed in the application falls within the statutory definition of “project” contained in the COPN Law, and, thereby, requires a certificate of public need (COPN, or “Certificate”) to be issued before the project may be undertaken.<sup>4</sup>

**Statement of Facts**

1. Chesapeake Diagnostic Imaging Centers, LLC (CDIC), is an Alabama limited liability company whose ultimate corporate parent is Chesapeake Regional Healthcare.
2. In its application, CDIC proposes to establish MRI services through relocation of one scanner currently located at CDIC’s Kingsborough Imaging Center, in the City of Chesapeake, to

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<sup>1</sup> The IFFC was held on December 21, 2022. The certified reporter’s transcript of the IFFC is in the administrative record relating to this application. (This application had earlier been in competition with two other projects proposed in PD 20, both of which have been approved after independent factual reviews and determinations under the COPN Law and under a stipulation agreed to by all parties to the relevant proceedings.)

<sup>2</sup> Va. Code § 2.2-4000 *et seq.*

<sup>3</sup> Va. Code § 32.1-102.1:2 (A); (a “Certificate” or COPN).

<sup>4</sup> Va. Code § 32.1-102.1.

a site on Portsmouth Boulevard, also in the City and 16 miles away. Total capital and financing costs of the project are \$3,474,944.

3. On March 21, 2022, the Department of Health, Division of Certificate of Public Need (DCOPN) released a staff analysis and report recommending denial of the project proposed by CDIC.<sup>5</sup>

### **Applications of Criteria of Public Need**

The eight statutory considerations customarily applied to applications for a Certificate appear below, with discussion:

**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.**

CDIC touts its project as an improvement in convenient accessibility for patients, pointing out the project is an establishment by relocation and as one housed in a new setting better suited and located to serve residents of Chesapeake than is the current Kingsborough location, in the eastern portion of PD20.

DCOPN notes prevailing predictions of population growth and aging in the localities to be served. Chesapeake Regional Healthcare, the ultimate corporate parent of CDIC, largely constitutes the structure for providing services at Chesapeake Regional Medical Center, which provided an amount of charity care equivalent to 2.16 percent of its gross patient revenues in 2020. This figure is lower than the average of 2.5 percent of such revenues among all acute-care hospitals operating that year in HPR V.<sup>6</sup> If approved, CDIC's project should include a standard charity care condition based on this average, to appear on the reverse of the resulting Certificate.

CDIC's project would establish a center for MRI diagnostic services, served by nearby public transit, approximately two miles from I-664, a major east-west thoroughfare highway that serves PDs 20 and 21.

**2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following: (i) The level of community support for the project demonstrated by citizens, businesses, and governmental leaders representing the area to be served; (ii) The availability of reasonable alternatives to the proposed service or facility that would meet the needs of the population in a less costly, more efficient, or more effective manner; (iii) Any recommendation or report of the regional health planning agency regarding an**

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<sup>5</sup> That staff report, addressing COPN request nos. VA-8607, -8610, and -8611, is incorporated into this recommended decision by reference.

<sup>6</sup> Table 6, DCOPN Staff Report at 6.

**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 project; (v) The financial accessibility of the project to the residents of the area to be served, including indigent residents; (vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a project.**

DCOPN reports that that division received 14 letters supporting the project proposed by CDIC, including an officer of Anthem and a Virginia legislator.<sup>7</sup> As DCOPN observes, one of nine benefits articulated by writers is that the project seems a “[c]ommon sense, inventory-neutral redistribution” of equipment needing certification, *i.e.*, an MRI scanner.<sup>8</sup>

The Kingsborough site, leased to CDIC, presents physical and circumstantial challenges to the practical logistics of operating an MRI scanner. CDIC has a patient base that is provided routinely diagnostic data of vital importance to contemporary medical diagnosis. These challenges reportedly include several practical or building-related problems, *e.g.*, inadequate heating, room and door sizing limitations that disrupt needed use of assistive devices.

Bon Secours Hampton Roads Health System (BSHR) opposes the project proposed by CDIC. In a letter, BSHR reminds the Commissioner that a past proposed project,<sup>9</sup> substantially similar to the one CDIC currently proposes, was denied by the Commissioner in 2021. BSHR contends approval of CDIC’s project to relocate an MRI scanner to the Western Branch portion of Chesapeake would risk harming nearby, underutilized MRI services (including its own), as the Commissioner stated in denying the 2021 project. DCOPN echoes this contention, citing such unused capacity as a primary reason for denial.<sup>10</sup>

In response, CDIC states that the facility resulting from the proposed project would serve its existing patient base, and that “Chesapeake Regional [Healthcare] already serves thousands of MRI outpatients who live closer to the [proposed] Western Branch site [than] to any other Chesapeake Regional location.”<sup>11</sup>

CDIC argues that benefits of the project include bringing low-cost MRI availability to the intended area, which is within CDIC’s primary service area. It further argues that no alternative to the project exists. It pointedly argues that it should not, effectively, “be forced to continue to operate” its MRI scanner at the Kingsborough location, which, it reports, has become untenable. The site on which the relocated MRI scanner would provide services is 16 miles from the Kingsborough location.

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<sup>7</sup> Letter from Del. G. Davis to C. Greene (undated), CDIC IFFC Ex. 9. *See* CDIC Proposed Findings and Conclusions at 18. Additional persons in business, local or public positions or offices, and health care also wrote in support.

<sup>8</sup> DCOPN Staff Report at 10.

<sup>9</sup> COPN Request No. VA-8538.

<sup>10</sup> DCOPN Staff Report at 14, Table 10 at 20, 31. MRI scanners in PD 20 operated at a 2020 level equivalent to 70.16 percent of the 5,000-procedure standard contained in 12 VAC 5-230-150.

<sup>11</sup> CDIC Proposed Findings and Conclusions at 10.



The project proposed by CDIC is feasible and total costs of the project are reasonable. Benefits of the project include its inventory-neutral nature and those stemming from the historical performance of Chesapeake Regional Healthcare in routinely providing low-cost MRI services in PD 20.

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

SMFP provisions governing projects generally proposing MRI services indicate that a surplus of eight MRI scanners already exists in PD 20 and utilization among PD 20's 30 MRI scanners is 70.16 percent of an SMFP standard,<sup>12</sup> the project proposed by CDIC carries no new-to-the inventory increase and is not an expansion of an existing service. Therefore, the utilization standards of the SMFP<sup>13</sup> are inapplicable to the project proposed by CDIC.

The project demonstrates adequate compliance with applicable provisions of the SMFP.

**4. The extent to which the proposed service or facility fosters institutional competition that benefits the area to be served while improving access to essential health care services for all persons in the area to be served.**

CDIC's corporate parent is Chesapeake Regional Healthcare – the health care services and operations overseen by the Chesapeake Hospital Authority (the "Authority"). The Authority is a "public body politic" tasked with "provid[ing] for the public health [and] welfare . . . of the residents of the City of Chesapeake [and] other persons. . . ."<sup>14</sup> Approval of CDIC's project bears promise in sustaining competition by and with the Authority, and continuing access to low-cost MRI scanning for residents of Chesapeake.

The project proposed by CDIC involves relocation of an MRI scanner; it adds nothing to the inventory of approved MRI capacity in PD 20. The center that would result from CDIC's project would offer a low-cost alternative to hospital-based scanning services and other services, thereby providing beneficial competition and needed financial access for patients in the western portion of the City of Chesapeake.

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

The project proposed by CDIC would likely result in the relocated service maintaining an appropriate and useful relationship to the existing health care system of

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<sup>12</sup> 12 VAC 5-230-150.

<sup>13</sup> 12 VAC 5-230-150 and -160.

<sup>14</sup> Va. Code, Authorities, Chesapeake Hospital Authority, § 3.



the Western Branch portion of the City of Chesapeake, with CDIC continuing its customary provision of MRI services at low cost.<sup>15</sup>

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

The project is feasible, overall. Gauging CDIC's project against the subitems of feasibility (contained in the ending phrase of this statutory consideration) reveals no salient issues. Approval of the project would be beneficial to the applicant. Resources for construction and actual operation appear generally available.

**7. The extent to which the project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) The introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) The potential for provision of services on an outpatient basis; (iii) Any cooperative efforts to meet regional health care needs; (iv) At the discretion of the Commissioner, any other factors as may be appropriate.**

Not directly applicable, although it is notable that approval of the CDIC project would continue operation and availability of an existing, low-cost, outpatient service.

**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 serve (i) The unique research, training, and clinical mission of the teaching hospital or medical school, and (ii) Any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.**

Not applicable, without prejudice to the applicant.

### **Conclusions and Recommendation**

Review of the record indicates sufficient evidence to support the conclusion that the project is consistent with the eight statutory considerations of public need. The project is approvable under the COPN Law. Specific reasons for this recommended decision include:

- (i) The project is consistent with applicable provisions of the SMFP;
- (ii) The total project capital costs are reasonable and include no financing costs; the project is feasible;

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<sup>15</sup> The project should distinctly serve the Commissioner's goal of promoting charity care, as the pro forma financial statement prepared by the applicant contains the apparent intention to provide an amount of charity care equivalent to 3.5 percent of gross patient revenues, thereby exceeding the HPR V hospital average of 2.5 percent of such revenues. See DCOPN Staff Report at 17.

- (iii) As a proposed relocation of an existing outpatient regulated scanner and service, CDIC's project is inventory-neutral, and would allow continuation of direct services to CDIC's existing patient base;
- (iv) Utilization of existing area providers of MRI services is not likely to be harmed by CDIC's project;
- (v) Anthem and Aetna – area providers of health care insurance, have written in support of the CDIC project;<sup>16</sup> and
- (vi) Continuation of patient scanning and office operations at CDIC's current leased space and location have become problematic due to building-related issues, as CDIC recounts.

Respectfully submitted,



Douglas R. Harris, JD  
Adjudication Officer

April 5, 2023

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<sup>16</sup> Notably, an inactive detail of the COPN Law provides that "the parties to a case [*i.e.*, an IFFC on a COPN application] shall include only the applicant, any person showing good cause, any *third-party payor* providing health care insurance or prepaid coverage to five percent or more of the patients in the applicant's service area, and the relevant health planning agency." Va. Code Sec. 32.1-102.6 D.