



COMMONWEALTH of VIRGINIA

Colin M. Greene, MD, MPH
State Health Commissioner

Department of Health
P O BOX 2448
RICHMOND, VA 23218

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

November 9, 2022

By Email

Matthew D. Jenkins, Esquire
Hunton Andrews Kurth
Riverfront Plaza, East Tower
Richmond, Virginia 23219

Certificate of Public Need (COPN)
Number VA-04814
(Request Number VA-8620)
Maryview Hospital, LLC
d/b/a Bon Secours Maryview Medical Center
Portsmouth, Virginia
Planning District (PD) 20
Health Planning Region V
Expansion of cardiac catheterization services

Dear Mr. Jenkins:

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 this 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. The project proposed in the application will meet a public need.

Matthew Jenkins, Esquire

November 9, 2022

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The reasons for my decision include the following:

- (i) Maryview's 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) The total costs of the project are reasonable;
- (iii) No known opposition to the project exists;
- (iv) Harm to the utilization of any existing provider of cardiac catheterization services is unlikely;
- (v) As an existing provider of open heart surgery and interventional cardiology services, Maryview has demonstrated a public need, expressed as an institution-specific need, to maintain sufficient cardiac catheterization resources to support its program of evolving interventional cardiac services; and
- (vi) Restoring the cardiac catheterization capacity Maryview had before June 2022 will serve to fill out its overall system of interventional cardiac resources and services, which now include an innovation, a hybrid OR capable of hosting various state-of-the art procedures performed in a promising new subfield, of interventional cardiology, known as structural heart disease and structural heart surgery.

Sincerely,

DocuSigned by:

Colin M. Greene

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Colin M. Greene, MD, MPH
State Health Commissioner

Encl.: 2

cc (via email):

Sulola Adekoya, MD, MPH

Acting Director, Portsmouth City 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 Maryview Hospital, LLC, d/b/a Bon Secours Maryview Medical Center, is authorized to initiate the proposal described herein.

NAME OF FACILITY: Bon Secours Maryview Medical Center

LOCATION: 3636 High Street, Portsmouth, Virginia 23707

OWNERSHIP AND CONTROL: Maryview Hospital, LLC, will maintain ownership of and control over the approved resources

SCOPE OF PROJECT: Expansion of cardiac catheterization services by adding an additional iteration of cardiac catheterization equipment, *i.e.*, one cardiac catheterization laboratory, thereby restoring the cardiac catheterization service to two cardiac catheterization laboratories for conventional cardiac catheterization services. In acceptance of the applicant's PROFFER, the cardiac catheterization equipment currently within an operating room (OR) recently converted to a Hybrid OR (in connection with a Registration of Replacement dated June 10, 2021) shall not be used to provide conventional cardiac catheterization services without certification from the Commissioner. This Certificate is issued in reliance on representations made during the course of review and adjudication. The total authorized capital cost of the project is \$5,000. The project is scheduled to be completed by March 15, 2023. This Certificate is issued with the restatement of **CONDITION** that appears on its Reverse.



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 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-04814

Date of Issuance: November 9, 2022

Expiration Date: November 8, 2023

DocuSigned by:
Colin M. Greene
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Colin M. Greene, MD, MPH

Condition Placed on the Issuance of this Certificate:

Maryview Hospital, LLC, shall provide cardiac catheterization 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 compliance with the Bon Secours Hampton Roads System (BSHR) system-wide charity care condition attached to Certificate No. VA-04237, issued Jan. 1, 2010. Subject to adjustment as specified in the BSHR system-wide condition, that system-wide condition requires an overall charity care contribution in an aggregate amount equal to at least **4% of overall gross patient revenue**.

**Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8620**

**Maryview Hospital, LLC
d/b/a Bon Secours Maryview Medical Center
Portsmouth, Virginia
Planning District (PD) 20
Health Planning Region V
Expansion of cardiac catheterization services**

Introduction

This document is a recommended case decision submitted to the State Health Commissioner (“Commissioner”) for his consideration and adoption. It follows review of the application captioned above that included the convening of an informal fact-finding conference (IFFC),¹ conducted in accordance with the Virginia Administrative Process Act (VAPA)² and Title 32.1 of the Code of Virginia, followed by preparation of this recommended decision.

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.”³ The endeavor proposed in this 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.⁴

Factual Background

1. Bon Secours Hampton Roads Health System, Inc. (BSHRHS), is the sole corporate member of Maryview Hospital, LLC, d/b/a Bon Secours Maryview Medical Center (“Maryview”). Maryview is a comprehensive, 346-bed, acute-care hospital with a main campus in Portsmouth.

¹ The IFFC was held on August 18, 2022. The IFFC had originally been scheduled for June 7, 2022, and was continued to this later date at the request of the applicant. A certified transcript of the IFFC 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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2. In 2003, the Commissioner issued a Certificate authorizing Maryview to establish and provide open heart surgery services. For years, Maryview's overall open-heart and interventional cardiac services has included a complement of two cardiac catheterization laboratories. In June 2022, Maryview completed a process of converting and replacing one of its two units of cardiac catheterization equipment for use in the performance of procedures in a hybrid operating room (OR).⁵ Maryview redeployed this unit of equipment to the performance of various sophisticated vascular surgery procedures. As a result, Maryview currently maintains only one cardiac catheterization laboratory for the performance of conventional cardiac catheterization procedures.

3. Maryview proposes to restore cardiac catheterization capacity to its historic level of two cardiac catheterization laboratories. Maryview maintains that the majority of costs involved are attributable to the completed endeavor of establishing and outfitting the hybrid OR, and that the total capital costs for the project are \$5,000.

Summary of DCOPN Staff Report

In a staff report dated May 19, 2022, prepared by the Department of Health's Division of Certificate of Public Need (DCOPN) on Maryview's project (the "DCOPN staff report"), that division recommended that the Commissioner deny the project, relying, in substantial part, on the project's supposed inability to comply with the State Medical Facilities Plan.

Factual Analysis

Salient analysis and conclusions regarding Maryview's project and relating directly to the eight considerations of public need contained in the COPN law, appearing in bold type below,⁶ are set forth in relation to each 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.

Maryview's project would provide and increase access to services by ensuring continued, timely access to conventional cardiac catheterization services by restoring Maryview's historically-held, operationally-needed capacity. Maryview is the only BSHRHS provider of cardiac catheterization services in PD 20.

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

⁵ A hybrid OR is a developing innovation. It is a highly sterile surgical theater that is configured and equipped with advanced medical imaging devices and surgical technology that enable highly-beneficial, minimally-invasive surgery. A hybrid OR hosts interventional cardiac, vascular and neurosurgical procedures, and shows promise for performing additional procedures.

⁶ See Subsection B of Virginia Code § 32.1-102.3.

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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 [i.e., Certificate] that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6;⁷ (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 has received over two dozen letters in support of the Maryview project and no letters of opposition. Maryview's current level of cardiac catheterization utilization exceeds the capacity of its single cardiac catheterization laboratory, rendering the alternative of maintaining the status quo inadequate. The costs of the project are outweighed by the benefits of having sufficient cardiac catheterization capacity ready to assist in combating heart disease. If approved, the project would be covered by an existing, system-wide charity care condition for BSHRHS, promoting financial accessibility.

3. The extent to which the proposed project is consistent with the State Health Services Plan [i.e., *de facto*, the SMFP].⁸

The COPN law requires that "[a]ny decision to issue . . . a [COPN] shall be consistent with the most recent applicable provisions of the [SMFP]"⁹ The SMFP, contained in the Virginia Administrative Code (VAC), includes provisions applicable to projects involving cardiac catheterization services.

The availability provision of the SMFP applicable to Maryview's project provides that a project proposing expansion of existing cardiac catheterization services should be approved only when "[a]ll existing cardiac catheterization laboratories operated by the applicant's facilities where the proposed expansion is to occur have performed an average of 1,200 DEPs [i.e., diagnostic equivalent procedures]" annually.¹⁰ Cardiac catheterization utilization of Maryview's single laboratory is running at an annualized level of 1,676 DEPs in 2022. This total is 139.7 percent of the SMFP threshold and has grown fully 29 percent over the last five years.¹¹

Maryview's 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.¹²

⁷ No regional health planning agency currently exists to report on projects proposed in Health Planning Region (HPR) V, which includes PD 20.

⁸ 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. The SMFP remains in effect as regulation in reviewing applications for a COPN.

⁹ Va. Code § 32.1-102.3 (B).

¹⁰ 12 VAC 5-230-400.

¹¹ Maryview Proposed Findings and Conclusions at 15.

¹² See *Roanoke Mem. Hosp. v. Kenley*, 3 Va. App. 599, 352 S.E.2d 525 (1987).

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

Not applicable, without prejudice to the applicant.

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.

Maryview's project would meet a public need, expressed as an institution-specific need, to expand cardiac catheterization capacity and would not directly affect other facilities in the existing health care system of the area.

This need came about in recent months, as Maryview reoriented one unit of cardiac catheterization equipment toward creating a hybrid OR, where advanced imaging meets the latest in surgical technique, overseen by a new subfield of interventional cardiology, known as structural heart disease. Restoring Maryview's historical cardiac catheterization capacity would reflect acknowledgment of Maryview's freely-made business decision to pursue overall cardiac service improvement by establishing a hybrid OR.

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.

Maryview's project is feasible in relation to all particulars specified.

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.

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.

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Conclusion and Recommendation

As demonstrated by the evidence and analysis, Maryview's project would meet a public need, expressed as an institution-specific need, under the COPN Law. I recommend that the project be approved.¹³

Specific reasons supporting this recommended decision include:

- (i) Maryview's 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) The total costs of the project are reasonable;
- (iii) No known opposition to the project exists;
- (iv) Harm to the utilization of any existing provider of cardiac catheterization services is unlikely;
- (v) As an existing provider of open heart surgery and interventional cardiology services, Maryview has demonstrated a public need, expressed as an institution-specific need, to maintain sufficient cardiac catheterization resources to support its program of evolving interventional cardiac services; and
- (vi) Restoring the cardiac catheterization capacity Maryview had before June 2022 would serve to fill out its overall system of interventional cardiac resources and services, which now include an innovation, a hybrid OR capable of hosting various state-of-the art procedures performed in a promising new subfield, of interventional cardiology, known as structural heart disease and structural heart surgery.

Respectfully submitted,



November 3, 2022

Douglas R. Harris, JD
Adjudication Officer

¹³ Any Certificate resulting from this recommended decision should (i) include a charity care condition, and (ii) include, on its face and in clear terms, a provision that the cardiac catheterization equipment that has been dedicated to use in Maryview's hybrid OR shall remain so deployed and not redeployed for conventional cardiac catheterization services without certification authorizing such action from the Commissioner. Maryview has proffered as much at the IFFC. IFFC Transcript at 33-34.