



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 28, 2022

By Email

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

**Certificate of Public Need (COPN)
Number VA-04815
(Request Number VA-8631)
Eastern Healthcare Group, LLC
("Eastern Healthcare")
Newport News, Virginia
Planning District (PD) 21
Health Planning Region V
Addition of 15 nursing home beds at Old Dominion Nursing
and Rehabilitation Center through relocation of beds
from Williamsburg Landing**

Dear Mr. Cobb:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the "COPN Law"), I have reviewed the application 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 Cobb, Esquire

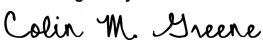
November 28, 2022

Page 2 of 2

The reasons for my decision include the following:

- (i) Eastern Healthcare's 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) 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 nursing home services is unlikely;
- (v) The project is consistent with numerous administrative precedents set over several years; and
- (vi) The project constitutes an appropriate and reasonable relocation, within a planning district, of existing resources, already shown to be needed according to a computational methodology by which nursing home bed need is determined.

Sincerely,

DocuSigned by:

80186E196D924B6...
Colin M. Greene, MD, MPH
State Health Commissioner

Encl.: 2

cc (via email):

Natasha Dwamena, MD, MPH, FACOG
Director, Peninsula 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 Eastern Healthcare Group, LLC, is authorized to initiate the proposal described herein.

NAME OF FACILITY: Old Dominion Nursing and Rehabilitation Center

LOCATION: 4 Ridgewood Parkway, Newport News, Virginia 23602

OWNERSHIP AND CONTROL: Eastern Healthcare Group, LLC, will maintain ownership of and control over the approved resources.

SCOPE OF PROJECT: Addition of 15 nursing home beds through relocation from Williamsburg Landing. 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 \$5,109,505. The project is scheduled to be completed by December 1, 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 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-04815

Date of Issuance: November 28, 2022

Expiration Date: November 27, 2023

DocuSigned by:
Colin M. Greene
80186E196D924B6...
Colin M. Greene, MD, MPH

**Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8631**

**Eastern Healthcare Group, LLC
Newport News, Virginia
Planning District (PD) 21
Health Planning Region V
Addition of 15 nursing home beds at Old Dominion Nursing
and Rehabilitation Center through relocation of beds
from Williamsburg Landing, Inc.**

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. Eastern Healthcare Group, LLC (“Eastern Healthcare”), is a Delaware limited liability company that operates Old Dominion Nursing and Rehabilitation Center (“Old Dominion”). Old Dominion is a 115-bed skilled nursing facility located in Newport News, PD 21.

¹ The IFFC was held on September 6, 2022. The IFFC had originally been scheduled for August 8, 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.

Adjudication Officer's
Recommendation
Page 2 of 5

2. Eastern Healthcare proposes to relocate 15 nursing home beds from Williamsburg Landing in James City County, PD 21. Williamsburg Landing is a continuing care retirement community whose operations include a 73-bed nursing facility that is experiencing low utilization.⁵ Williamsburg Landing has entered into an agreement with Eastern Healthcare, whereby it forebears its rights to the 15 beds if the proposed project is approved and is also seeking a variance from the Commissioner to facilitate the transfer of beds. The project would add a new wing to Eastern Healthcare's nursing facility and increase its complement of single occupancy rooms from 23 to 52. The total capital and financing costs of the proposed project are \$5,109,505.

Summary of DCOPN Staff Report

In a staff report dated July 19, 2022, prepared by the Department of Health's Division of Certificate of Public Need (DCOPN) on Eastern Healthcare'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 Eastern Healthcare'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.

Approval of Eastern Healthcare's project would allow an increase in the number of private nursing home beds in its facility, consistent with current preferences in care and enhancing its ability to care for residents with infectious diseases. The beds would be "dually certified," *i.e.*, available for Medicare and Medicaid reimbursement, making them fully accessible to meet public need. Relocation would situate the beds to address the needs of the more urban southern portion of PD 21.

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

⁵ The 15 nursing home beds to be relocated have recently been idled, they are not currently utilized as nursing home beds at Williamsburg Landing. (Williamsburg Landing intends to convert the vacated space within its physical plant to a memory care unit with assisted living licensed beds.) See Eastern Healthcare IFFC Exhibit 6, Letter P. Mellette to K. Beazley, Aug. 19, 2022, requesting variance to 12 VAC 5-371-100, allowing completion of the present COPN review process.

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

Adjudication Officer's
Recommendation
Page 3 of 5

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 at least two letters written in support of Eastern Healthcare's project and no letters opposing it. There are no reasonably or comparably-beneficial alternatives to the project. Denial of the project would effectively remove 15 nursing home beds from the PD 21 inventory; indeed, denial would exacerbate an existing shortage of nursing home beds in PD 21. A demonstrated and calculated need for these beds has already been determined through deployment of the computational methodology for determining such need in the SMFP.

The benefits of the project include a sizeable increase in the number of private beds at Old Dominion, and a modest redistribution of dually-certified beds to an area of higher population and existing socio-economic challenges, thereby promoting financial accessibility. DCOPN determined that the costs of the project are reasonable.

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 nursing home services.

Approval of Eastern Healthcare's project would relocate beds to a population center. It would not increase the number of nursing home beds in PD 21 but would relocate them within the planning district strategically.

Eastern Healthcare'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.¹⁰

⁷ No regional health planning agency currently exists to report on projects proposed in Health Planning Region (HPR) V, which includes PD 21.

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

Adjudication Officer's
Recommendation
Page 4 of 5

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.

Eastern Healthcare's project would modestly increase the number of private beds at Old Dominion, making that facility more competitive and bringing it in line with contemporary preferences in health care.

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.

Eastern Healthcare's project would meet a public need by relocating a modest number of beds from a facility that appears to be operating at 53 to 56 percent occupancy to a facility operating at 81 to 88 percent occupancy.¹¹

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.

Eastern Healthcare'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.

¹¹ Eastern Healthcare Proposed Findings and Conclusions at 11-12.

Adjudication Officer's
Recommendation
Page 5 of 5

Conclusion and Recommendation

As demonstrated by the evidence and analysis, Eastern Healthcare's project would meet a public need under the COPN Law. I recommend that the project be approved.

Specific reasons supporting this recommended decision include:

- (i) Eastern Healthcare'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 nursing home services is unlikely;
- (v) The project is consistent with numerous administrative precedents set over several years; and
- (vi) The project constitutes an appropriate and reasonable relocation, within a planning district, of existing resources, already shown to be needed according to a computational methodology by which nursing home bed need is determined.

Respectfully submitted,

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

November 18, 2022

Douglas R. Harris, JD