



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

December 13, 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-04822
(Request Number VA-8645)
Woodbine Property 1, LLC
Alexandria, Virginia
Planning District (PD) 8
Health Planning Region II
Relocation of 97 nursing home beds from Hermitage of Northern Virginia to
Woodbine Rehabilitation and Healthcare Center**

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 and on the recommended decision of the adjudication officer, I am approving this application. The project proposed in the application will meet a public need.

Matthew Cobb, Esquire

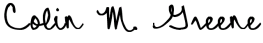
December 13, 2022

Page 2 of 2

The reasons for my decision include the following:

- (i) This project (the “Woodbine 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) No known opposition to the project exists;
- (iii) The board of directors of the Health Systems Agency of Northern Virginia recommends approval of the project;
- (iv) Harm to the utilization of any existing provider of nursing home services is unlikely;
- (v) The project is consistent with administrative precedents set over several years; and
- (vi) The project constitutes an appropriate and reasonable relocation, within a planning district, of existing, approved resources and an important increase in financial accessibility for residents of PD 8.

Sincerely,

DocuSigned by:

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

Encl.: 2

cc (via email):

David Rose, MD, MBA, FAAP

Director, Alexandria 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 Woodbine Property 1, LLC, is authorized to initiate the proposal described herein.

NAME OF FACILITY: Woodbine Rehabilitation and Healthcare Center

LOCATION: 2729 King Street, Alexandria, Virginia 22302

OWNERSHIP AND CONTROL: Woodbine Property 1, LLC, will maintain ownership of and control over the approved resources.

SCOPE OF PROJECT: Addition of 97 nursing home beds through relocation from Hermitage of Northern Virginia. 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 \$26,518,851. The project is scheduled to be completed by December 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 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-04822

Date of Issuance: December 13, 2022

Expiration Date: December 12, 2023

DocuSigned by:
Colin M. Greene
80186E196D924B6

Colin M. Greene, MD, MPH

**Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8645**

**Woodbine Property 1, LLC
Alexandria, Virginia
Planning District (PD) 8
Health Planning Region II
Relocation of 97 nursing home beds from Hermitage of Northern Virginia to
Woodbine Rehabilitation and Healthcare Center**

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. Woodbine Property 1, LLC d/b/a Woodbine Rehabilitation and Healthcare Center (“Woodbine”), is a Virginia limited liability company that owns Woodbine Rehabilitation and Healthcare Center (WRHC), which is a 307-bed nursing home facility. A separate, corporately-affiliated Virginia limited liability company of common ultimate ownership, Woodbine Operator, LLC, operates WRHC. Woodbine is one of three Virginia nursing care companies

¹ The IFFC was held on September 30, 2022. 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 6

acquired in 2020 by Tryko Partners, a Brick (locality), New Jersey-based private equity investment group. WRHC is located in the City of Alexandria.

2. Woodbine proposes to relocate 97 nursing home beds to WRHC from Hermitage of Northern Virginia ("Hermitage"). From 2016 to 2021, WRHC maintained an average occupancy level of 85.9 percent, while Hermitage was occupied at less than 23 percent in 2021.⁵ Both facilities are located in Alexandria, PD 8, and HPR II.⁶

3. The project Woodbine proposes (the "Woodbine project") would add a four-story building on the campus of WRHC. The total capital costs of the proposed project (the "Woodbine project") are \$26,518,851. The project will be self-funded by owning interests.

4. In consequential connection with review of the Woodbine project, Woodbine has entered into an agreement with Hermitage, whereby Hermitage forebears its rights to own and operate 97 beds if the proposed project is approved, thereby enabling the transfer and relocation. That instrument, a forbearance agreement, along with another item of record, *i.e.*, a regulatory variance granted to Hermitage by the Commissioner on July 18, 2022,⁷ as were arranged or otherwise initiated by Woodbine, allows the Woodbine project to be constituted appropriately and legally, as a going concern, in accordance with Virginia law, and ultimately, to be implemented pursuant to the COPN Law.

5. The regulatory variance is effective concurrent with the remaining span of annual licensing, *i.e.*, it is *effective until December 31, 2022*.⁸

Summary of HSANV and DCOPN Staff Reports

On August 8, 2022, the board of directors of Health Systems Agency of Northern Virginia (HSANV) voted seven in favor, none opposed, with one abstention, to recommend that the Commissioner approve the Woodbine project. HSANV based this recommendation on (i) the project being inventory-neutral, (ii) the project's ability to promote personal privacy and increase access for Medicare and Medicaid residents,⁹ and (iii) the consistency of the Woodbine project with the State Medical Facilities Plan (SMFP).

In a staff report dated September 19, 2022, prepared by the Department of Health's Division of Certificate of Public Need (DCOPN) on the Woodbine project (the "DCOPN staff report"), that division recommended that the Commissioner deny the project, citing the project's inability to comply with the SMFP, the existence of proposed alternatives to the Woodbine project, and the project's cost.

⁵ Table 1, DCOPN Staff Report at 1-2.

⁶ Va. Code § 32.1-102.3:7, the so-called "Bed Transfer Statute," is inapplicable to this project.

⁷ Woodbine IFFC Ex. 7 (Letter to M. Cobb from C. Greene, July 18, 2022).

⁸ If the Woodbine project is to proceed to realization, *an authorizing Certificate would need to be issued by the end of December*.

⁹ The 97 beds to be relocated from Hermitage were operated in a nonprofit nursing facility operated proximate with a nonprofit continuing care retirement community and are not certified for Medicare and Medicaid program participation and reimbursement.

Adjudication Officer's
Recommendation
Page 3 of 6

Factual Analysis

Salient analysis and conclusions regarding the Woodbine project and relating directly to the eight considerations of public need contained in the COPN law, appearing in bold type below,¹⁰ 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.

In direct effect, approval of the Woodbine project would make 97 beds available for certification to participate in Medicare and Medicaid reimbursement, upon federal certification. The project involves the construction of a new building on the campus of WRHC. Woodbine states that it would actively seek such dual certification, and that serving the Medicare and Medicaid patient community is “at the core of its mission.”¹¹ This definite increase in access would come about without an increase in the overall inventory of nursing home beds in PD 8, while relocating these beds approximately 3.5 miles from their current siting at Hermitage.

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 [i.e., Certificate] that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the proposed project; (v) the financial accessibility of the proposed project to people in the area to be served, including indigent people; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project.

DCOPN has received two letters of support for the Woodbine project¹² and no letters opposing it. There are no reasonable alternatives to the project. Denial of the project would effectively remove 97 nursing home beds from the PD 8 inventory and preclude the certification of 97 beds from Medicare and Medicaid certification.

HSANV, a regional health planning agency covering PD 8 (coterminous with HPR II), recommends that the Commissioner approve the Woodbine project for the reasons summarized above. Notwithstanding its positive recommendation, HSANV maintains that, on a given day, approximately 1,000 approved nursing home beds in PD 8 are unoccupied, demand for beds is likely to remain “relatively stable year to year, with modest decreases in average regional

¹⁰ See Subsection B of Virginia Code § 32.1-102.3.

¹¹ Woodbine Proposed Findings and Conclusions at 2.

¹² One letter was written by the medical director of WHRC, the other by an officer of a corporate entity that formerly owned Hermitage.

Adjudication Officer's
Recommendation
Page 4 of 6

occupancy as incidental capacity is added and operational efficiencies improve.” HSANV also shows concern that this project would transfer ownership of capacity from a nursing facility within a nonprofit continuing care retirement community to a private equity-owned and controlled commercial nursing home. Ultimately, HSANV questions whether Woodbine has demonstrated public need for its project.¹³

The benefits of the project include greater financial access for patients covered by Medicare and Medicaid, a sizeable increase in the number of private beds at WRHC, and a general update in the constructed housing of beds. The costs of the project are generally reasonable.

While each case decision made by the Commissioner is based on a unique set of facts and each project is distinct, administrative precedent for approval of the Woodbine project consists of 44 approvals of the transfer of nursing home beds within a planning district over recent years.

Another factor relevant to the Commissioner’s determination of public need involves the general recognition that, in reflection of a seeming trend of which the current project is a part, private equity investment groups have repeatedly found it promising to purchase nursing home bed capacity in Virginia.

3. The extent to which the proposed project is consistent with the State Health Services Plan [i.e., *de facto*, the SMFP].¹⁴

The COPN law requires that “[a]ny decision to issue . . . a [COPN] shall be consistent with the most recent applicable provisions of the [SMFP]”¹⁵ The SMFP, contained in the Virginia Administrative Code (VAC), includes provisions applicable to projects involving nursing home services.

Approval of the Woodbine project would relocate and improve beds without increasing the number of nursing home beds within PD 8.

The Woodbine 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.¹⁶

¹³ HSANV Proposed Findings and Conclusions at 3. HSANV observes further that the transfer of ownership involved in this proposed relocation reflects a cost of “approximately \$55,000 per bed.” *Id.*

¹⁴ 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.

¹⁵ Va. Code § 32.1-102.3 (B).

¹⁶ See *Roanoke Mem. Hosp. v. Kenley*, 3 Va.App. 599, 352 S.E.2d 525 (1987).

Adjudication Officer's
Recommendation
Page 5 of 6

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

The Woodbine project involves the construction of a new building and would increase the complement of private beds at WHRC from seven to 52,¹⁷ making WHRC more competitive and bringing it in line with contemporary preferences in nursing home design and 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.

The Woodbine project would position WHRC to meet a public need by relocating a sizeable number of beds from a facility of very low occupancy a facility operating at very high occupancy.¹⁸

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

The Woodbine 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.

Conclusion and Recommendation

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

¹⁷ Woodbine Proposed Findings and Conclusions at 7.

¹⁸ See FN 5, above.

Adjudication Officer's
Recommendation
Page 6 of 6

Specific reasons supporting this recommended decision include:

- (i) The Woodbine 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) No known opposition to the project exists;
- (iii) HSANV's board of directors recommends approval of the project;
- (iv) Harm to the utilization of any existing provider of nursing home services is unlikely;
- (v) The project is consistent with administrative precedents set over several years; and
- (vi) The project constitutes an appropriate and reasonable relocation, within a planning district, of existing, approved resources and an important increase in financial accessibility for residents of PD 8.

Respectfully submitted,

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

December 6, 2022

Douglas R. Harris, JD