VIRGINIA DEPARTMENT OF HEALTH

Office of Licensure and Certification

Division of Certificate of Public Need

Staff Analysis

November 21, 2022

COPN Request No. VA-8657
Medical Facilities of America XI (11) LP, d/b/a Cherrydale Health and Rehabilitation Center
Addition of 30 Nursing Home Beds to an Existing Nursing Facility Planning District (PD) 8

Applicant

Medical Facilities of America XI (11) LP, d/b/a Cherrydale Health and Rehabilitation Center (Cherrydale) is the operator of the the existing nursing home and the proposed project, formed for the purpose of owning the long-term ground lease of 3710 Lee Highway, Arlington, Virginia, which is owned by The Arlington Health Center Commission, aka Arlington Hospital and Health Center Commission. Cherrydale is under the affiliated umbrella of Medical Facilities of America, as is the Salem Health and Rehabilitation Center.

Background

Division of Certificate of Public Need (DCOPN) records show that there are currently 36 nursing home facilities with 4,483 licensed nursing home beds located in PD 8 (Table 1). Virginia Health Information (VHI) data for 2020, the last year for which such data are available, showed that these facilities operated at a collective utilization of 73.16% that year (Table 1). Utilization calculation is net of beds that did not report utilization or are not yet open.

Specifically, occupancy at Cherrydale in 2020 was 79.1%, slightly above the overall occupancy for the PD. In perspective, a 79.1% occupancy means that on any given day, of the 180 licensed beds, 38 were unoccupied.

Table 1. PD 8 Nursing Home Bed Inventory and 2020 Nursing Home Bed Utilization

	Number of Beds	Resident Days	Available Days	Occupancy Rate
Annandale Healthcare Center	222	57,888	81,252	71.25%
Ashby Ponds	44	12,552	16,104	77.94%
Birmingham Green	180	60,007	65,880	91.09%
Burke Health & Rehabilitation Center	120	27,045	43,920	61.58%
Cherrydale Health & Rehabilitation Center	180	52,093	65,880	79.07%
Dulles Health and Rehab Center	166	51,647	60,756	85.01%
Dunn Loring VA OPCO LLC	130	30,405	47,580	63.90%
Envoy Health Care of Woodbridge	120	32,750	43,920	74.57%
Envoy Health of Alexandria	111	33,079	40,626	81.42%
Fairfax Nursing Center, Inc	200	50,150	60,600	82.76%
Falcon's Landing	60	15,290	21,960	69.63%
Fountains at Washington House, The	68	8,755	24,888	35.18%
Gainesville Health & Rehabilitation Center	120	36,703	43,920	83.57%
Goodwin House - Alexandria	80	33,511	29,280	114.45%
Goodwin House - Baileys Crossroads	73	22,785	26,718	85.28%
Greenspring Village	136	Not Reported		
Heritage Hall - Leesburg	164	46,342	60,024	77.21%
Hermitage in Northern Virginia	121	9,947	44,286	22.46%
Jefferson, The	31	6,247	11,346	55.06%
Lake Manassas Health and Rehab	120	37,850	43,920	86.18%
Leewood Healthcare Center	132	29,832	43,428	68.69%
Loudoun Nursing & Rehabilitation Center	100	29,428	36,600	80.40%
Manassas Health and Rehabilitation Center	120	38,055	43,920	86.65%
Manor Care of Alexandria VA, LLC	96	26,557	35,136	75.58%
Manor Care of Arlington VA, LLC	159	44,506	58,194	76.48%
Manor Care-Fair Oaks of Fairfax VA, LLC	155	42,826	56,730	75.49%
Mount Vernon Nursing & Rehabilitation Center	130	36,531	47,580	76.78%
Potomac Falls Health & Rehab Center	150	45,121	54,900	82.19%
Powhatan Nursing Home	160	16,498	58,560	28.17%
Regency Care of Arlington LLC	240	51,052	87,840	58.12%
SH OpCo The Fairfax LLC	56	13,325	20,496	65.01%
The Mather	42	Authorized, opening 2023		
The Virginian	81	21,565	29,646	72.74%
Vinson Hall	49	14,463	17,934	80.65%
Westminister at Lakeridge	60	Not Reported		
Woodbine Rehabilitation and Healthcare Center	307	48,150	56,488	85.24%
Total	4,483	1,082,955	,480,312	73.16%

Source: OLC and VHI Data

There are 21 nursing homes in PD 5, with 2,471 licensed nursing home beds. In 2020 VHI reported an overall occupancy rate for those beds as 81.85%. The 2020 occupancy of the 240 nursing home beds at the Salem Health and Rehabilitation Center was 86.49%, (Table 2), higher than the occupancy rate at Cherrydale, the intended recipient of 30 beds from the Salem Health and Rehabilitation Center. An average occupancy rate of 86.49% at the Salem Health and Rehabilitation Center means that on any given day 33 nursing home beds would be unoccupied at the facility.

Table 2. PD 5 Nursing Home Bed Inventory and 2020 Nursing Home Bed Utilization

Facility Name	Number of Beds	Resident Days	Available Days	Occupancy Rate
Accordius Health at Roanoke LLC	130	25,719	47,580	54.05%
Alleghany Health and Rehab	105	33,125	38,430	86.20%
Berkshire Health & Rehabilitation Center	180	58,075	65,880	88.15%
Brian Center Health & Rehab. - Alleghany	89	29,227	32,574	89.72%
Brian Center Nursing Care - Fincastle	56	18,081	20,496	88.22%
Carrington Place at Botetourt Commons	90	28,149	32,940	85.46%
Friendship Health and Rehab Center - South	120	40,385	43,920	91.95%
Friendship Health and Rehab Center, Inc.	253	82,818	92,598	89.44%
Hermitage Roanoke	24	4,148	8,784	47.22%
Our Lady of the Valley	70	21,984	25,620	85.81%
Pheasant Ridge Nursing & Rehab Center	101	32,757	36,966	88.61%
Raleigh Court Health & Rehabilitation Center	120	36,305	43,920	82.66%
Richfield Recovery and Care Center	280	66,480	102,480	64.87%
Salem Health & Rehabilitation Center	240	75,976	87,840	86.49%
Snyder Nursing Home	45	14,891	16,470	90.41%
South Roanoke Nursing Home	98	28,274	35,868	78.83%
Springtree Health & Rehabilitation Center	120	37,539	43,920	85.47%
The Glebe, Inc.	32	9,917	11,712	84.67%
Virginia Lutheran Homes, Inc.- Brandon Oaks	62	15,743	22,692	69.38%
Virginia Veterans Care Center	196	62,928	71,736	87.72%
Woodlands Health and Rehab	60	17,761	21,960	80.88%
Total	2,471	740,282	904,386	81.85%

Source: VHI Data

The applicant cites Code of Virginia §32.1-102.3:7, known generally as the Bed Transfer Statute, passed in 2013 session of Virginia General Assembly, as authorization to apply for the transfer of nursing facility beds from one planning district to another in the absence of a Request for Applications. The four specific requirements of the Bed Transfer Statute are:

- there is a shortage of nursing facility beds in the planning district to which the beds are proposed to be transferred
- the number of nursing facility beds in the planning districts from which beds are proposed to be moved exceed the need for such beds
- the proposed transfer of nursing facility beds would not result in the creation of a need for additional beds in the planning district from which the beds are proposed to be transferred
- the nursing facility beds proposed to be transferred will be made available to individuals in need of nursing facility services in the planning district to which they are transferred without regard to the source of payment for such services.

Based on the assessment of nursing home bed need for 2022;

- the is a projected nursing home bed need (shortage) of 284 nursing home beds in PD 8,
- there is a surplus (number of beds exceeds the need) of nursing home beds in PD 5,
- the transfer of 30 nursing home beds out of PD 5 would reduce the surplus to 254 beds, and decrease the overall occupancy of PD 5 nursing home beds (at the same total number of

resident days) to 82.86%, insufficient to create a need for nursing home beds to be added to PD 5 under the request for applications (RFA) process, and
- the applicant states the relocated beds will be certified for Medicare and Medicaid.

Therefore, the applicant's request qualifies for acceptance for review under Code of Virginia §32.1-102.3:7.

Code of Virginia §32.1-102.3:7 requires the State Health Commissioner (Commissioner) to accept requests to relocate existing nursing home beds from one PD to another when the four requirements are met, but leaves to the Commissioner's discretion whether the request be approved.

Proposed Project

Cherrydale proposes to add 30 licensed nursing home beds to its facility in PD 8 in Arlington, through the transfer of beds from the Salem Health and Rehabilitation Center, a Medical Facilities of America affiliated nursing home in PD 5. The applicant proposes to convert 30 of the existing 76 private resident rooms to semi-private rooms, a 40% reduction in private room availability. Given that most new nursing home construction and nursing home bed additions are increasing the availability of private resident rooms this move by the applicant is unusual. The trend toward private rooms improves opportunities for more effective infection control, as demonstrated during the recent COVID-19 pandemic, improves bed utilization opportunity by removing the need to cohort residents by gender and temperament, and satisfies a growing expectation from residents for private rooms. The applicant states that the proposed project would include accommodations for post-acute, short stay and rehabilitation services, meeting a growing demand for that service.

The total capital and financing costs of the proposed project are $13,364,238 (Table 3) and costs of the proposed project would be self-funded by the owner. The applicant projects that construction on the proposed project will begin within 16 months of COPN issuance and will be complete and that new beds will be serving patients within 36 months of COPN issuance.

Table 3. Capital and Financing Costs

Direct Construction Costs	$250,000
Equipment Not Included in Construction Contract	$250,000
Site Acquisition (extended ground lease)	$3,860,937
Total Capital Costs	**$4,360,937**

Source: COPN Request No. 8658

Project Definitions

Section 32.1-102.1:3 of the Code of Virginia (the Code) defines a project, in part, as "[a]n increase in the total number of beds or operating rooms in an existing medical care facility described in subsection A;" and "[r]elocation of beds from an existing medical care facility described in subsection A to another existing medical care facility described in subsection A." Section 32.1-102.1:3 of the Code defines a medical care facility, in part, as "[a]ny facility licensed as a nursing home, as defined in § 32.1-123."

Required Considerations -- § 32.1-102.3, of the Code of Virginia

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable.

Virginia Department of Health, Division of Certificate of Public Need staff concur with and adopt the analysis and recommendation of the Health Systems Agency of Northern Virginia, as found in the attached 3 November 2022 memorandum from Dean Montgomery[Executive Director] to the Health Systems Agency of Northern Virginia Board of Directors Project Review Committee and the attached 9 November 2022 letter from Dean Montgomery to Erik Bodin, Director of the Division of Certificate of Public Need.

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;**

The current inventory of nursing home beds in PD 8 is more than sufficient to meet the current demand for services, as demonstrated by a PD-wide nursing home occupancy rate of 73.16% (Table 1), despite a calculated nursing home bed shortage of 284 beds. Reducing the bed shortage in PD 8 will do nothing to improve access since at the reported occupancy rate for PD 8, a total of 1,139 of the 4,245 licensed PD 8 nursing home beds that reported to VHI for 2020, were unoccupied on any given day.

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;

DCOPN received four letters of support from Cherrydale's executive leadership and one letter of support from a physician who provides care to residents at Cherrydale.

DCOPN is not aware of any opposition to the proposed project.

Public Hearing
The proposed project is not competing with another project in this batch cycle and no request to conduct a public hearing for the proposed project was received by the HSANV or the DCOPN, so no public hearing was required for the proposed project.

(ii) the availability of reasonable alternatives to the proposed project that would meet the needs of the people in the area to be served in a less costly, more efficient, or more effective manner;

As no need exists for additional nursing home beds the alternative of maintaining the status quo is the preferred alternative.

(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;

At their 7 November 2022 meeting, the Health Systems Agency of Northern Virginia (HSANV), the organization in HPR II designated by the Virginia Department of Health to serve as the Health Planning Agency for PD 8, voted ten in favor and none opposed to recommend denial of Cherrydale's COPN Request number VA-8657 to add 30 nursing home beds. The HSANV base their recommendation on the HSANV staff report, their review of the request and the following eight basic findings and conclusions;

1. Northern Virginia (PD 8) has a large number of unused nursing home beds, the largest nursing home bed surplus in the state. There is no public need for additional nursing home beds, now or within the next five years,
2. Contrary to the applicant's assertion, adding nursing home beds at Cherrydale, or elsewhere in the planning region, would not improve access to care. There is no shortage of nursing home beds in planning district 8,
3. The Cherrydale argument that there is a quantified need for 284 additional nursing home beds in PD 8 in 2022 is based on the flawed "calculated need" projection contained in the 2020 nursing home request for applications,
4. The applicant is aware that the calculation Cherrydale relies on is spurious, grounded in inaccurate data and flowing from a discredited need determination methodology. Beyond being deficient and misleading, it invites abuse by those in position to gain from a problematic policy and process
5. The project would be of economic benefit to Cherrydale, and the new private equity owner of the facility, but of no discernible public value or benefit,
6. Recent and projected demand for nursing home services in Virginia Planning District 5, where the bed donor facility (Salem Health and Rehabilitation Center) is located, and Virginia Planning District 8, where the recipient facility (Cherrydale Health and Rehabilitation Center) is located, indicate that the beds proposed for transfer from PD 5 to PD 8, should remain in Planning District 5.
7. The potential service improvements cited by the applicant as benefits of the project are coincidental, not derivative of or dependent on the capital expenditure proposed. They can be undertaken outside the COPN process, without expanding licensed bed capacity unnecessarily. There is no planning or regulatory obstacle preventing the applicant from renovating and modernizing Cherrydale Health and Rehabilitation Center and Salem Health and Rehabilitation Center at a time of its choosing, and
8. The proposal is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan governing the expansion of nursing homes.

(iv) any costs and benefits of the proposed project;

As the relocation of beds to PD 8 will increase the number of nursing home beds in the PD, of which roughly 26% are generally unoccupied, the expenditure of any capital on the project can be considered an excessive expenditure. Additionally, the common benefit of expanding the number of private resident rooms cited in requests to increase the number of nursing home beds in a PD will

not be realized, in fact the proposed project, if implemented, would reduce the number of private resident beds.

(v) the financial accessibility of the proposed project to the people in the area to be served, including indigent people; and

The applicant states that the resulting 210 licensed nursing home beds proposed at Cherrydale would be dually-certified by Medicare and Medicaid

(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 not identified other factors relevant to the determination of public need for the proposed project.

3. The extent to which the proposed project is consistent with the State Health Services Plan;

Section 32.1-102.2:1 of the Code of Virginia calls for the State Health Services Plan Task Force to develop, by November 1, 2022, recommendations for a comprehensive State Health Services Plan (SHSP). In the interim, DCOPN will consider the consistency of the proposed project with the predecessor of the SHSP, the State Medical Facilities Plan (SMFP).

The State Medical Facilities Plan (SMFP) contains the criteria and standards for the addition of nursing beds. They are as follows:

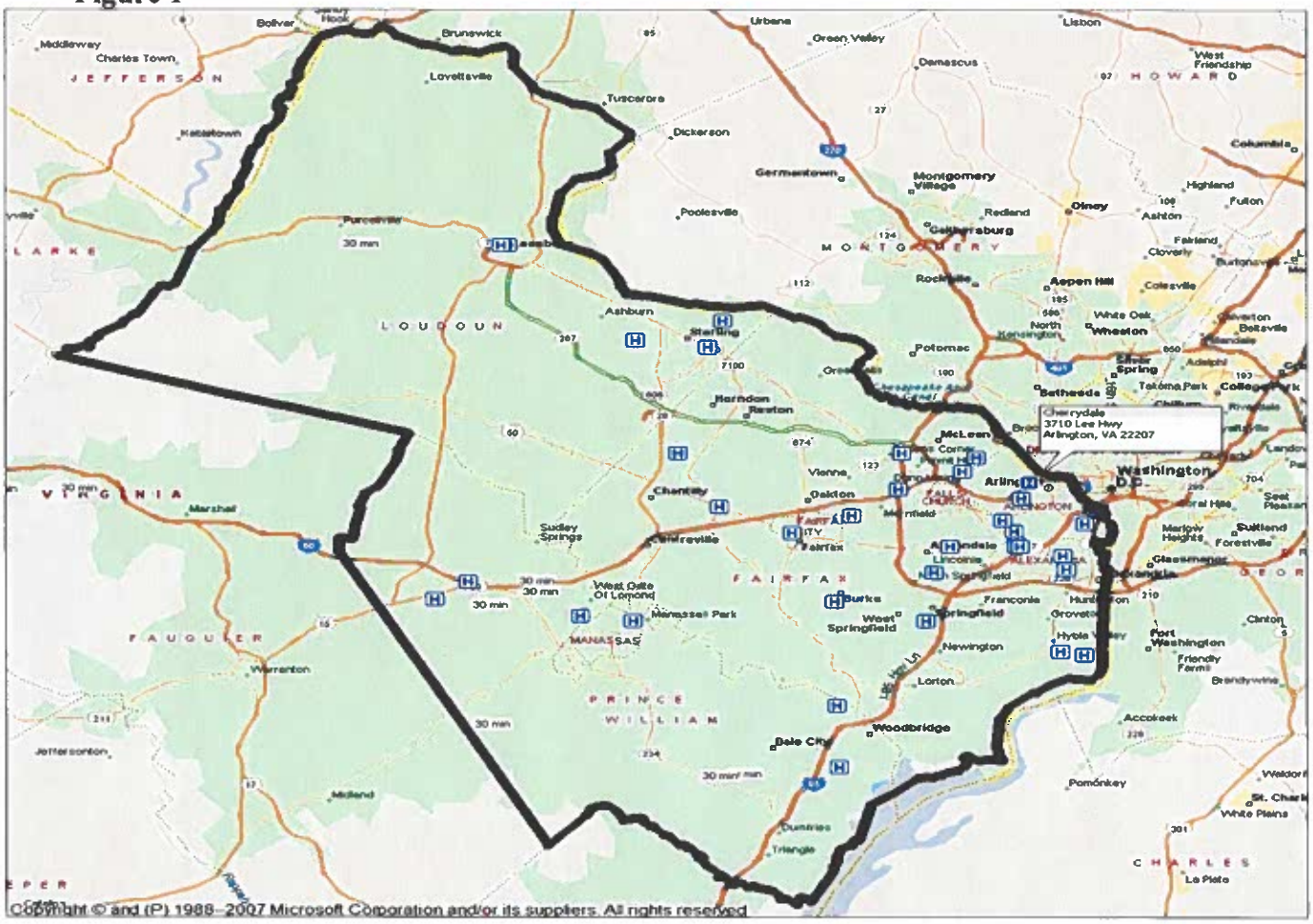
Part VII. Nursing Facilities

12VAC5-230-600. Travel Time.

A. Nursing facility beds should be accessible within 30 minutes driving time one way under normal conditions of 95% of the population in a health planning district using mapping software as determined by the commissioner

The heavy black line in **Figure 1** identifies the boundary of PD 8. The white H symbols indicate the location of the nursing home facilities in the planning district, with the blue one marking Cherrydale. The shaded green area is within the 30-minute drive time of existing nursing facilities in PD 8. With the entirety of PD 8 within a 30 minute drive time of a nursing facility, nursing facilities are already accessible to 100% of the population. The proposed project will not impact geographic accessibility.

Figure 1



B. Nursing facilities should be accessible by public transportation when such systems exist in an area.

The metropolitan areas of PD 8 have a robust public transportation system.

C. Preference may be given to proposals that improve geographic access and reduce travel time to nursing facilities within a health planning district.

The proposed project is not competing with another project. Accordingly, this standard is not applicable.

12VAC5-230-610. Need for New Service.

A. A health planning district should be considered to have a need for additional nursing facility beds when:

1. The bed need forecast exceeds the current inventory of beds for the health planning district; and

2. **The average annual occupancy of all existing and authorized Medicaid-certified nursing facility beds in the health planning district was at least 93%, excluding the bed inventory and utilization of the Virginia Veterans Care Centers.**
   EXCEPTION: When there are facilities that have been in operation less than three years in the health planning district, their occupancy can be excluded from the calculation of average occupancy if the facilities had an annual occupancy of at least 93% in one of its first three years of operation.

B. No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid certified. This presumption of 'no need' for additional beds extends for three years from the issuance date of the certificate.

C. The bed need forecast will be computed as follows:

PDBN = (UR64 x PP64) + (UR69 x PP69) + (UR74 + PP74) + UR79 + PP79) + UR84 + PP84) + UR85 + PP85)

Where:

- **PDBN = Planning district bed need.**
- **UR64 = The nursing home bed use rate of the population aged 0 to 64 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP64 = The population aged 0 to 64 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR69 = The nursing home bed use rate of the population aged 65 to 69 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP69 = The population aged 65 to 69 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR74 = The nursing home bed use rate of the population aged 70 to 74 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP74 = The population aged 70 to 74 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR79 = The nursing home bed use rate of the population aged 75 to 79 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP79 = The population aged 75 to 79 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR84 = The nursing home bed use rate of the population aged 80 to 84 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP84 = The population aged 80 to 84 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**

- **UR85+ = The nursing home bed use rate of the population aged 85 and older in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP85+ = The population aged 85 and older projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**

Health planning district bed need forecasts will be rounded as follows:

Health Planning District Bed Need	Rounded Bed Need
1-29	0
30-44	30
45-84	60
85-104	90
105-134	120
135-164	150
165-194	180
195-224	210
225+	240

EXCEPTION: When a health planning district has:

1. **Two or more nursing facilities;**
2. **Had an average annual occupancy rate in excess of 93% for the most recent two years for which bed utilization has been reported to VHI; and**
3. **Has a forecasted bed need of 15 to 29 beds, then the bed need for this health planning district will be rounded to 30.**

D. No new freestanding nursing facilities of less than 90 beds should be authorized. However, consideration may be given to a new freestanding facility with fewer than 90 nursing facility beds when the applicant can demonstrate that such a facility is justified based on a locality's preference for such smaller facility and there is a documented poor distribution of nursing facility beds within the health planning district.

E. When evaluating the capital cost of a project, consideration may be given to projects that use the current methodology as determined by the Department of Medical Assistance Services.

F. Preference may be given to projects that replace outdated and functionally obsolete facilities with modern facilities that result in the more cost-efficient resident services in a more aesthetically pleasing and comfortable environment.

Not applicable, the applicant is not proposing to establish a new nursing home service.

12VAC5-230-620. Expansion of Services.

Proposals to increase an existing nursing facility's bed capacity should not be approved unless the facility has operated for at least two years and the average annual occupancy of the facility's existing beds was at least 90% in the relevant reporting period as reported to VHI.

Note: Exceptions will be considered for facilities that operated at less than 90% average annual occupancy in the most recent year for which bed utilization has been reported when the facility offers short stay services causing an average annual occupancy lower than 90% for the facility.

The occupancy of Cherrydale was well below 90% during 2020, the latest year reported to VHI (Table 1). Occupancy at Cherrydale was 90.9% in 2019 and 92.9% in 2018, indicating an overall downward trend in occupancy, outside years that can be attributed to the effects of the COVID-19 pandemic. The applicant provides short-term rehab services as well as long-term care.

12VAC5-230-630. Continuing Care Retirement Communities.
Proposals for the development of new nursing facilities or the expansion of existing facilities by continuing care retirement communities (CCRC) will be considered when:

1. **The facility is registered with the State Corporation Commission as a continuing care provider pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia;**
2. **The number of nursing facility beds requested in the initial application does not exceed the lesser of 20% of the continuing care retirement community's total number of beds that are not nursing home beds or 60 beds;**
3. **The number of new nursing facility beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed 20% of its total number of beds that are not nursing facility beds; and**
4. **The continuing care retirement community has established a qualified resident assistance policy.**

This provision is not applicable to the proposed project, as the applicant is not a continuing care retirement community.

12VAC5-230-640. Staffing.
Nursing facilities shall be under the direction or supervision of a licensed nursing home administrator and staffed by licensed and certified nursing personnel qualified as required by law.

The applicant asserts that the facility is and will be staffed appropriately to comply with all regulatory requirements.

Required Considerations Continued

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 addition of still more nursing home beds to PD 8 would impact competition, but in adding capacity to an already over-bedded PD the impact would not be beneficial. As an adequate number of nursing home beds are already within a 30-minute drive of 100% of the population of PD 8, approval of the request would not increase access to nursing home 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;

Given the number of unoccupied nursing home beds in PD 8 indicated by the low occupancy rates (less than 90%) shown for all but two of the 36 existing PD 8 nursing homes (Table 1), any increase in the number of nursing home beds in PD 8 would contribute to reducing the occupancy rate still further.

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 project appears financially feasible, but at an overall cost to potentially all existing nursing home providers in PD 8. Occupancy rate is a factor in establishing nursing home care reimbursement, with payment reductions for lower occupancy facilities.

The applicant did not address the number of new staff FTEs that would be required for the proposed added 30 beds. A total number of staff, without delineating current and added, was provided. In general, recruiting professional health care staff is difficult.

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; and

The applicant is not proposing to introduce new technology that promotes quality, cost effectiveness, or both in the delivery of health care services. Nor is the applicant proposing the potential for provision of health care services on an outpatient basis. DCOPN did not identify any other factors, not addressed elsewhere in this staff analysis report, to bring to the Commissioner's attention regarding the determination of a public need for the proposed project.

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.
(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. The applicant is not a teaching hospital associated with a public institution of higher education or a medical school in the area to be served.

DCOPN Staff Findings and Conclusions

DCOPN concurs with, and adopts, the analysis and recommendation of the Health Systems Agency of Northern Virginia, as found in the attached 3 November 2022 memorandum from Dean Montgomery[Executive Director] to the Health Systems Agency of Northern Virginia Board of Directors Project Review Committee and the attached 9 November 2022 letter from Dean Montgomery to Erik Bodin, Director of the Division of Certificate of Public Need.

The applicant cites §32.1-102.3:7 of the Code of Virginia, as authorization to apply for the transfer of nursing facility beds from one planning district to another in the absence of a Request for Applications. The four specific requirements of the Bed Transfer Statute are met by the proposed project. An additional application has been submitted, also proposing the transfer of beds from PD 5 to another planning district. Should multiple inter- planning district transfers be approved in a short period of time, the effects of the bed decrease to the contributing planning district could not be assessed before another decrease occurs possibly to the detriment of the contributing planning district.

According to the Nursing Home Bed Need Forecast there is a calculated bed need in PD8 and a calculated surplus in PD 5; however, the utilization of the existing nursing home beds in PD 8 is very low, having shown a steady decline over at least the previous three years. Though the proposed project would not change the inventory of nursing facility beds statewide, shifting beds between planning districts must take into account the impact of the receiving and contributing planning districts.

Additionally, the trend in nursing homes is to increase private rooms. Not only do prospective residents prefer private rooms, but they enable room placement without consideration of matching roommates for gender or temperament and are more effective for infection control. The proposed project would reduce the number of private rooms at Cherrydale.

DCOPN Staff Recommendations

The Division of Certificate of Public Need recommends **denial** of Medical Facilities of America XI (11) LP, d/b/a Cherrydale Health and Rehabilitation Center's COPN Request to relocate 30 nursing home beds from PD 5 to PD 8 for the following reasons as expressed by the Health Systems Agency of Northern Virginia:

1. Northern Virginia (PD 8) has a large number of unused nursing home beds, the largest nursing home bed surplus in the state. There is no public need for additional nursing home beds, now or within the next five years,

2. Contrary to the applicant's assertion, adding nursing home beds at Cherrydale, or elsewhere in the planning region, would not improve access to care. There is no shortage of nursing home beds in planning district 8,

3. The Cherrydale argument that there is a quantified need for 284 additional nursing home beds in PD 8 in 2022 is based on the flawed "calculated need" projection contained in the 2020 nursing home request for applications,

4. The applicant is aware that the calculation Cherrydale relies on is spurious, grounded in inaccurate data and flowing from a discredited need determination methodology. Beyond being deficient and misleading, it invites abuse by those in position to gain from a problematic policy and process,

5. The project would be of economic benefit to Cherrydale, and the new private equity owner of the facility, but of no discernible public value or benefit,

6. Recent and projected demand for nursing home services in Virginia Planning District 5, where the bed donor facility (Salem Health and Rehabilitation Center) is located, and Virginia Planning District 8, where the recipient facility (Cherrydale Health and Rehabilitation Center) is located, indicate that the beds proposed for transfer from PD 5 to PD 8, should remain in Planning District 5,

7. The potential service improvements cited by the applicant as benefits of the project are coincidental, not derivative of or dependent on the capital expenditure proposed. They can be undertaken outside the COPN process, without expanding licensed bed capacity unnecessarily. There is no planning or regulatory obstacle preventing the applicant from renovating and modernizing Cherrydale Health and Rehabilitation Center and Salem Health and Rehabilitation Center at a time of its choosing, and

8. The proposal is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan governing the expansion of nursing homes.

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November 3, 2022

TO: **Board of Directors, Health Systems Agency of Northern Virginia**
Project Review Committee, HSANV

FROM: **Dean Montgomery**

SUBJECT: **Certificate of Public Need Application**
Medical Facilities of America XI (11) Limited Partnership
(d/b/a Cherrydale Health & Rehabilitation Center),
Add 30 Beds, COPN Request VA-8657

I. Proposal Summary

Cherrydale Health & Rehabilitation Center (Cherrydale), a 180 bed nursing home in Arlington County, seeks certificate of public need (COPN) authorization to expand by adding 30 licensed long term nursing care beds. If authorized the project would result in Cherrydale operating 210 beds. The projected capital cost is $4,360,937.

The project entails the transfer of licensed capacity from Salem Health & Rehabilitation Center (Salem), a 240 bed nursing home in Salem, Virginia.[1] Salem Health and Rehabilitation Center is licensed to operate 240 nursing home beds.

The general locations of Cherrydale and Salem are shown on Map 1. Current capacity and recent use of nursing homes in Northern Virginia is summarized in Table 1.[2]

Cherrydale justifies the proposal on the grounds that

- The proposal qualifies for submission, and consideration, outside the standard request for applications (RFA) planning process in accordance with a 2013 amendment to the Virginia COPN statute (HB 2292, enacted in 2013).
- The project is consistent with about a dozen similar proposals, two in Northern Virginia, that have obtained COPN authorization recently to move nursing home beds from one planning district to another outside the request for applications planning process.

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[1]Information on Cherrydale is available at https://cherrydalehealthrehab.com/
Information on Salem is available at https://salemhealthrehab.com/

[2] Cherrydale and Salem are former Medical Facilities of America nursing homes that were sold to private equity investors earlier this year.

- The proposal, which entails the "transfer" of 30 nursing home beds from southwest Virginia (PD 5) to Northern Virginia (PD 8), would not result in a net increase in the number of licensed nursing home beds statewide.
- The Virginia Department of Health, Division of Certificate of Public Need (DCOPN) has determined there are substantial numbers of unneeded (surplus) nursing home beds in Southwest Virginia, specifically in Planning District 5 (PD 5) where Salem Health & Rehabilitation Center is located. A thirty bed reduction in authorized capacity there would not affect access to nursing home services among residents of Planning District 5.
- The Virginia Department of Health, Division of Certificate of Public Need (DCOPN) has determined there is currently a need for several hundred additional nursing home beds in Northern Virginia, with a projected need for 284 beds in 2022.
- Relocating unneeded capacity in PD 5 to PD 8 would improve access to needed nursing care services in Northern Virginia.
- All beds would be certified for Medicare and Medicaid participation.

Because only minor physical changes at Cherrydale would be necessary, the additional capacity should be in service in less than a year, by the end of 2023 if the project is approved on schedule.

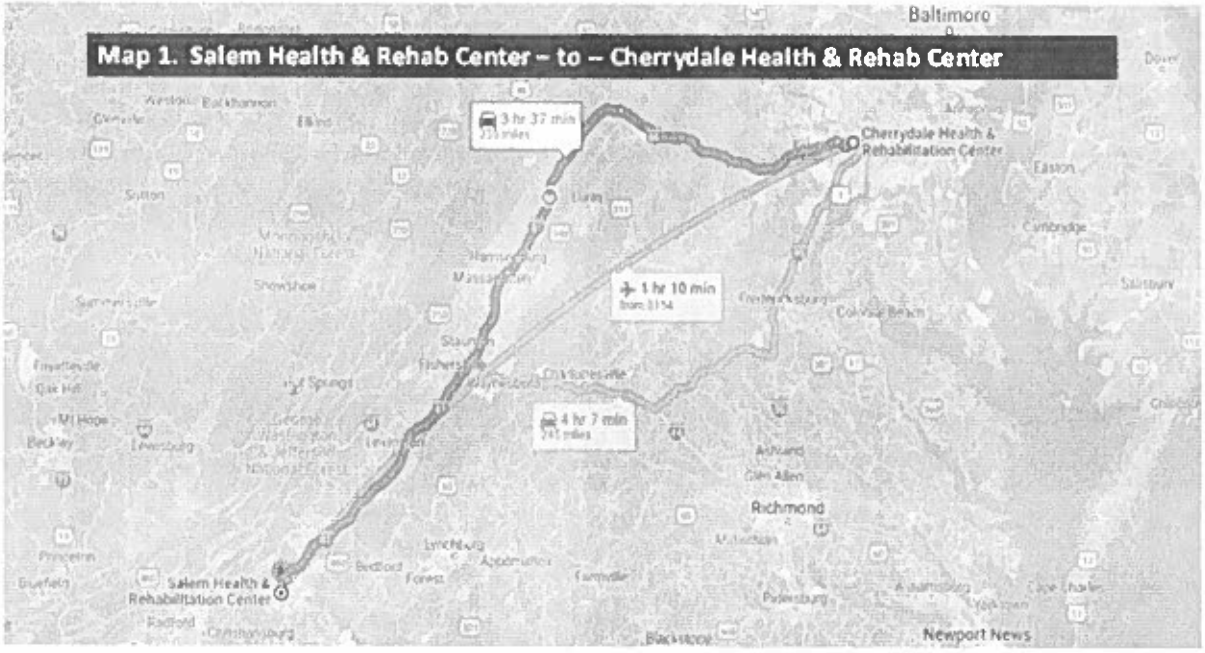

Table 1. Northern Virginia Nursing Homes Capacity and Use, 2020

Nursing Care Facility	Facility type	Licensed Beds	Patient Days (2020)	Available Days	Occupancy (Percent)
Annandale Healthcare Center (formerly Sleppy Hollow)	NF	222	57,888	81,252	71.2%
Ashby Ponds	NF-CCRC	44	12,552	16,104	77.9%
Birmingham Green	NF	180	60,007	65,880	91.1%
Burke Health & Rehabilitation Center	NF	120	27,045	43,920	61.6%
Cherrydale Health & Rehabilitation Center	NF	180	52,093	65,880	79.1%
Dulles Health and Rehab Center	NF	166	51,647	60,756	85.0%
Dunn Loring VA OPCO LLC (Formerly Iliff)	NF	130	30,405	47,580	63.9%
Envoy Health Care of Woodbridge	NF	120	32,750	43,920	74.6%
Envoy Health of Alexandria	NF	111	33,079	40,626	81.4%
Fairfax Nursing Center, Inc	NF	200	50,150	60,600	82.8%
Falcon's Landing	NF-CCRC	60	15,290	21,960	69.6%
Fountains at Washington House, The	NF-CCRC	68	8,755	24,888	35.2%
Gainesville Health & Rehabilitation Center	NF	120	36,703	43,920	83.6%
Goodwin House - Alexandria)	NF-CCRC	80	33,511	29,280	114.5%
Goodwin House - Baileys Crossroads	NF-CCRC	73	22,785	26,718	85.3%
Greenspriing Village [2]	NF-CCRC	136			
Heritage Hall - Leesburg[3]	NF	164	46,342	60,024	77.2%
Hermitage in Northern Virginia	NF-CCRC	121	9,947	44,286	22.5%
Jefferson, The	NF-CCRC	31	6,247	11,346	55.1%
Lake Manassas Health and Rehab	NF	120	37,850	43,920	86.2%
Leewood Healthcare Center[4]	NF	132	29,832	43,428	68.7%
Loudoun Nursing & Rehabilitation Center	NF	100	29,428	36,600	80.4%
Manassas Health and Rehabilitation Center	NF	120	38,055	43,920	86.6%
Manor Care of Alexandria	NF	96	26,557	35,136	75.6%
Manor Care of Arlington	NF	159	44,506	58,194	76.5%
Manor Care-Fair Oaks of Fairfax	NF	155	42,826	56,730	75.5%
Mount Vernon Nursing & Rehabilitation Center	NF	130	36,531	47,580	76.8%
Potomac Falls Health & Rehab Center	NF	150	45,121	54,900	82.2%
Powhatan Nursing Home	NF	160	16,498	58,560	28.2%
Regency Care of Arlington	NF	240	51,052	87,840	58.1%
SH OpCo The Fairfax	NF	56	13,325	20,496	65.0%
The Mather[1]	NF-CCRC	42			
The Virginian	NF-CCRC	81	21,565	29,646	72.7%
Vinson Hall (Navy-Marine-Coast Guard Residence)	NF-CCRC	49	14,463	17,934	80.6%
Westminister at Lake Ridge [2]	NF-CCRC	60			
Woodbine Rehabilitation and Healthcare Center	NF	307	48,150	56,488	85.2%
Northern Virginia Total		4,483	1,082,955	1,480,312	73.2%

Source; VHI, Annual Survey Licensing Reports, 2020

NF = Nursing Facility; NF-CCRC = Nursing Facility in a Continuing Care Retirement Community

[1] Authorized in 2018. Expected opening in 2023

[2] Operational data not reported

[3] 30 beds being added by inter planning district transfer

[4] 25 beds being added by inter plannig districg transfer

II. Discussion

A. Nursing Home Services in Northern Virginia

Northern Virginia has 36 authorized long-term care nursing care facilities, commonly referred to as nursing homes. These facilities are authorized to operate 4,529 beds, 4,483 of which were in service in 2020, the most recent year for which region wide operational data is available (Table 1). About two-thirds (24 of 36 facilities) are commercial nursing homes. They contain about 80% of the region's authorized beds. The other facilities, 12 of the 36 with 20% of the region's licensed capacity, are nursing care units located in continuing care retirement communities (CCRCs). All of the authorized commercial nursing facilities are operational. Eleven of the twelve facilities in continuing care retirement communities are operational. The most recently authorized CCRC nursing care facility, a 42-bed service that will be located in The Mather (Tysons area), is scheduled to open in 2023.

In 2020, the most recent year for which capacity and service volume data are available, the 35 facilities in service operated 4,483 beds.[3] Average occupancy of the thirty three facilities reporting service volumes was 73.2%, down sharply from and already low 83.3% in 2019.[4] In 2020 the region had, on average, about 1,200 unoccupied licensed nursing home beds daily.

Occupancy of CCRC nursing home beds is lower than that of commercial nursing homes. Average use of nursing home beds located in CCRCs was about 65% in 2020, down from 78% in 2019 (Table 1). Even with direct admissions from the community at many CCRC nursing facilities, there were, on average, more than 200 unoccupied nursing home beds daily in CCRCs in 2020.

Beyond the ravages of COVID-19 and the disproportionately high mortality among nursing home and assisted living residents, low and decreasing nursing home occupancy reflects the sustained decrease in local nursing home use rates over the last three decades. During this period declining age-specific nursing home use rates have more than offset demand generated by population growth and aging among the adult population at greatest risk of needing nursing home care, those 65 years of age and older (Chart 1). Though long running use rate decreases are inherently asymptotic, there is no indication that this trend is attenuating significantly or is likely to change soon. The factors and circumstances that contribute to low and decreasing use rates remain in place, e.g., favorable demography, an array of alternatives to nursing home care, a relatively healthy elderly population, and population growth largely from migration to the region.[5]

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[3] This count excludes the 30 bed increase authorized at Heritage Hall-Leesburg (HH-L) in 2019 and the 25 bed increase authorized at Leewood in 2021. Though not needed, these expansions were permitted under a provision of the Virginia COPN statute (*§ 32.1-102.3:7. Application for transfer of nursing facility beds)* that permits inter planning district transfers of surplus nursing home beds as an exception to the standard request for applications (RFA) planning process.

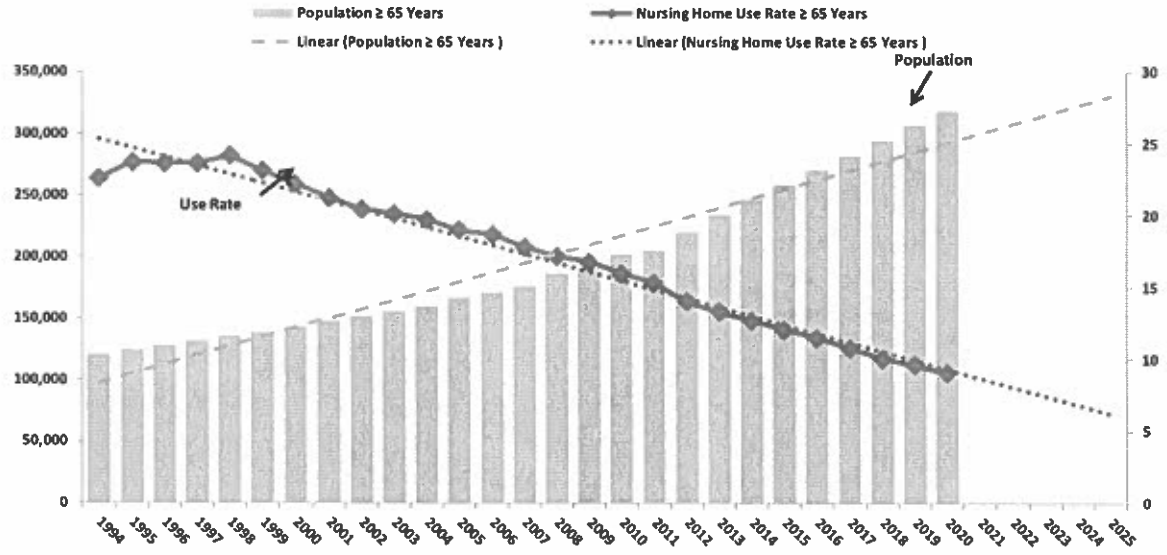
[4] The sharp region wide reduction in nursing home service volumes and occupancy in 2020 results from the large number of COVID-19 deaths among nursing home residents and related disruptions to nursing home admissions and service delivery patterns.

[5] Those moving to the region typically are younger than those at high risk of needing nursing home care. It is not clear how the COVID-19 epidemic will affect demand for, and use of, nursing home services over the long term. Most indications are that demand is likely to be constrained for some time.

These data suggest there is no public need for additional nursing homes or additional nursing home beds in Northern Virginia. The enduring trend of decreasing age specific nursing home use rates is likely to continue (Chart 1). Demand (measured as total number of nursing patient days of care provided) is likely to remain relatively stable year to year, with modest decreases in average regional occupancy as incidental capacity is added and operational efficiencies improve.

As has occurred over the last two decades, several local facilities are likely to seek authorization to relocate capacity within the planning region as they modernize and revitalize aging services. These projects usually have substantial merit, improving quality of and access to care, a stark contrast to interregional transfers of capacity that simply reallocate surplus capacity from one over built planning district and region to another.

Chart 1. Northern Virginia Nursing Home Use
Northern Virginia Residents in Northern Virginia Nursing Homes
Residents per 1,000 Population ≥ 65 Years, 1994 - 2020



Source: Virginia Nursing Home Patient Origin Surveys 1994, 1998, 2002, 2006 and 2014; VDH License Surveys 1995-1999. Virginia Health Information Licensure Surveys 2001 - 2020; U.S. Census 1990 -2020 Bridged Population July 1st Estimates; Calculations & Tabulations HSANV, 2022.

B. Nursing Facility Development in Virginia, Northern Virginia

Most long term care nursing facilities (nursing homes) in Virginia date from the late 1970s and the 1980s. Service development and growth was stimulated and has been sustained by the initiation and maturation of the Virginia Medicaid program, which is now the principal source of payment for nursing home care.[6] As was the case in most states, a reliable source of payment and entrepreneurial zeal, coupled with less

[6] Legislation authorizing the Medicaid program was enacted in 1965. Federal funds became available in 1966. The Virginia program was established in 1969, the 41st state to join the national program.

than effective planning and regulation, resulted in the creation of substantial excess nursing home capacity. By the late 1980s it became evident that the bed surplus could not be absorbed easily or quickly. The Virginia General Assembly imposed a moratorium on nursing home development in 1988.

The moratorium remained in place for eight years. It was replaced in 1996 with a prospective planning process that limits nursing home development to those areas where a specific need is identified and quantified in a published "request for applications" (RFA). Under this process, applications for nursing care facilities and beds may not be filed (i.e., will not be accepted) unless the Commissioner of Health has determined that beds are needed in a given planning regions—in one of Virginia's 22 planning districts[7]. Northern Virginia (PD 8) is one of these districts.

There are exceptions to the RFA process. The principal exception permits qualified continuing care retirement communities (CCRCs) to submit COPN proposals to develop, outside the RFA planning process, a number of nursing care beds equal to 20% of the number of residential units in the retirement community.[8] This favorable treatment is based on the belief that encouraging development of CCRCs is sound public policy, that onsite access to long-term nursing care is supportive of, if not essential to, efficient and effective CCRC operations, and that the nursing home beds developed are, at least in principle, dedicated to serving residents of the retirement community.[9] As a result of this preferential treatment, the majority of new nursing home beds authorized statewide over the last two decades have been those developed by CCRCs outside the RFA planning process. With the exception of three problematic inter planning district relocation projects, all of the net additional capacity developed in Northern Virginia over the last 25 years has been CCRC affiliated beds.

Since the RFA process was instituted, four new Northern Virginia CCRCs have received approval to develop nursing home beds: the Johnson Center at Falcon's Landing (Sterling, VA), Greenspring Village (Springfield, VA), Ashby Ponds (Ashburn, VA), and The Mather (Tysons). Another CCRC, Goodwin House, recently obtained COPN authorization to replace its dated nursing facility. The Mather, the most recently authorized CCRC nursing care facility, is expected to open in 2023.

Exceptions to the RFA planning process that apply to commercial nursing homes, such as Woodbine, include the relocation of a nursing facility within the planning district, the relocation of licensed beds from one facility to another within the planning district, the onsite modernization and/or replacement of dated facilities, and the replacement and relocation of facilities that are to be taken out of service. Five facilities (Annaburg Manor, Birmingham Green, Inova Cameron Glen, Inova Commonwealth, and Manor Care-Fair Oaks) have received approval to replace beds in new locations in PD 8. These changes have responded to evolving demographic patterns within the planning district.

C. Planning Guidance

The Virginia State Medical Facilities Plan (SMFP) does not address directly the question of replacement and relocation of nursing home beds. The most recent RFA, which contains problematic nursing home bed need projections for 2022, was issued as notice of no public need for additional nursing care capacity,

[7] The Northern Virginia health planning region (Health Planning Region II) is coterminous with Virginia Planning District 8. The terms Northern Virginia and PD 8 are used interchangeably here.
[8] The number of beds that may be authorized is limited to 60 if 20% of the residential units exceeds 60.
[9] Some also argue that the availability and use of CCRCs results in lower overall Medicaid program expenditures for nursing home care, provided retirement communities do not serve Medicaid patients. There is little empirical evidence to support this belief or assumption.

locally and statewide. It states, in part, "there is no need for additional nursing home beds . . . no planning district is identified by the standards of the SMFP as having a forecasted need for nursing home beds by 2022."[10]

D. Access Considerations

Expanding Cherrydale Health and Rehabilitation Center is not necessary to maintain or improve access to nursing care services. Long term nursing care services, and nursing home beds, are now plentiful and well distributed. There is substantial surplus (unused) nursing home capacity in both commercial and CCRC based nursing care facilities. There are substantially more surplus nursing home beds in Northern Virginia (PD 8) than in the Salem-Roanoke area (PD 5).

Increasing Cherrydale's licensed bed capacity and decreasing the licensed capacity of Salem by an equivalent amount will not alter, in a measurable or other meaning way, access to care in either community. The result would be a reallocation of unneeded capacity, and a wasteful capital expenditure.

The proposed transfer of licensed capacity is similar to the two other "transfers" that have been foisted on Northern Virginia recently, the reallocation of 30 beds from PD 2 to Heritage Hall-Leesburg and 25 beds from PD 5 to Leewood Healthcare Center both under the false assertion that additional nursing home beds are needed in PD 8.

E. Cost Considerations

The stated capital cost of the project is $4,360,937. The applicant notes that the majority of this is the cost of the remaining ground lease of the Cherrydale site ($3,860,937) which is owned by the Arlington Health Center Commission and leased to the operator. This expense will be incurred with or without the bed expansion. The actual direct expense is expected to be about $500,000 for minor renovation and furnishing of former patient rooms. These rooms were vacated when sixty (60) of Cherrydale's original 240 licensed beds were "transferred" to Prince William Health and Rehabilitation Center, a sister Medical Facilities of America facility authorized in Gainesville, VA (Prince William County) in 2013.

With the additional beds, Cherrydale projects annual occupancy of about 90% in the second year of operations, with no change in payer mix: 72% Medicaid, 17% Medicare, and 11% private pay (other insurance and out of pocket payment). This payer mix projections are roughly comparable to those found statewide.

Projected capital costs are modest, but wasteful in that the project is not needed and potentially damaging. With excess capacity region wide, any market share gain by Cherrydale would be at the expense of other service providers.

F. Health System Considerations

Cherrydale proposes to expand, to increase is licensed bed complement from 180 to 210 beds. The project entails the relocation of licensing authority for 30 beds from Salem Health & Rehabilitation Center in Salem Virginia to Cherrydale Health & Rehabilitation Center in Arlington, VA.

[10] *Notice of No Need for Certificate of Public Need Applications for Development of Additional Nursing Home Beds, The Virginia State Board of Health and the Virginia Department of Medical Assistance Services, 2020*, p. 2.

The project would reduce licensed nursing home capacity in Southwest Virginia (Salem, PD 5) by 30 beds and increase capacity in Northern Virginia (Arlington, PD 8) by an equivalent number. These changes, both of which would occur in former Medical Facilities of America facilities sold recently to unidentified private equity interests, may appear small, perhaps inconsequential. They are not. This proposal, similar projects that preceded it, and those in train are problematic in several important respects:

- The rationale for the project, and for the associated capital outlay, is that Virginia's Division of Public Need (DCOPN) has determined that there is a public need for several hundred additional nursing home beds in Northern Virginia (PD 8), specifically that an additional 284 beds are needed in 2022, and that hundreds more will be needed annually for years to come.

  There is no reliable data, or other indication, that this is true. The Request for Applications (RFA) used for planning and regulating nursing home development published for 2022, was issued as a notice of no public need. The relevant language reads:

  "The RFA for nursing home beds issued in 2019 is hereby issued as a notice that there is no need for additional nursing home beds. As shown in the preceding table, no planning district is identified by the standards of the SMFP as having a forecasted need for nursing home beds by 2022. No planning district in the Commonwealth currently meets the four-part test for qualification by:

  1) Having a positive formula-generated need projection, and;
  2) Having a median annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 93% or higher, and;
  3) Having an average annual occupancy percentage of Medicaid-certified nursing homes for the most recent reporting year of 90% or higher
  4) Having no uncompleted nursing home beds authorized within the last three years that will be Medicaid-certified."

  Source: Notice of No Need for Certificate of Public Need Applications for Development of Additional Nursing Home Beds, The Virginia State Board of Health and the Virginia Department of Medical Assistance Services, 2020, pp. 2-3. (Enclosed)

  The Cherrywood Health and Rehabilitation Center proposal is grounded in the "formula-generated need projection" element of the four pronged test for determining a need for additional beds. Application of the formula by DCOPN results in a "calculated" need for 284 additional beds in PD 8 (Northern Virginia) in 2022.

- The RFA bed need calculation performed by DCOPN in accordance with the request for applications (RFA) planning methodology is not dispositive and is not represented to be by DCOPN, the Commissioner of Health, or the Virginia Board of Health. As several of the more recent RFA notices show the nursing home bed need calculation is unreliable and, consequently, subject to misunderstanding and misuse. For example:

  - The RFA notice for 2015 found a *"calculated" need for 1,059 beds* in PD 8. No call for applications was issued because the region's average occupancy was 89.2%, well below the 93% planning standard. No RFA issued statewide. No potential applicant tried to take advantage of the purported need for more than 1,000 beds in PD 8.
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- The RFA notice for 2017 found a *"calculated" need for 976 beds* in Northern Virginia. No call for applications was issued because the region's average occupancy was 87.8%, substantially below the 93% planning standard. (Note: an RFA was issued for 30 beds in PD 18.) No potential applicant tried to take advantage of the purported need for nearly 1,000 beds in PD 8.

- The RFA notice for 2019 found a *"calculated" surplus of 259 beds* in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 88%. No RFA issued statewide.

- The RFA notice for 2020 found a *"calculated" surplus of 41 beds* in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 86.5%. No RFA issued statewide. No potential applicant tried to take advantage of the purported need for additional beds in PD 8.

- The RFA notice for 2021, found a *"calculated" need for 362 beds* in Northern Virginia. Northern Virginia had an average Medicaid occupancy was 86.0%. No RFA issued statewide. Heritage Hall-Leesburg took advantage of this situation and, though opposed by HSANV, obtained COPN approval to add 30 beds, "transferred" from a facility in southwest Virginia.

- The RFA notice for 2022, the most recent, finds a *"calculated" need for 284 beds* in Northern Virginia. The region's average Medicaid occupancy was 84.5%. No RFA issued statewide. Leewood took advantage of this situation and, though opposed by HSANV, obtained COPN approval to add 25 beds, transferred from a facility southwest Virginia.

These arithmetic gyrations, and conflicting bed need projections, result from calculations using the Virginia State Medical Facilities Plan (SMFP) bed need formula. Unfortunately, the formula being used incorporates outdated (2014) age-specific nursing home use rates, inconsistent population projections, and a methodology that is not compatible with a rapidly changing market characterized by sustained *use rate decreases*. Because a dated static use rate, rather than a trended rate, is used the calculation necessarily overstates projected future need and demand. The overstatement is greater in areas, such as Northern Virginia, where use rate decreases are more substantial and where population growth is high.

There has never been an RFA calling for additional nursing home beds in Northern Virginia. As decreasing use rates and falling average occupancy levels indicate there has been no need for additional capacity. That remains the case. All of the published RFAs showing a formula generated need for additional beds in PD 8 are evidence of a flawed methodology not a need for additional services or capacity.

It is evident that, contrary to the applicant's assertion and purported belief, there is no need for additional nursing home capacity in Northern Virginia in 2022. Similarly, there is no expectation, or reason to believe, that there will be a need for additional facilities or beds within the planning horizon, within the next five years.

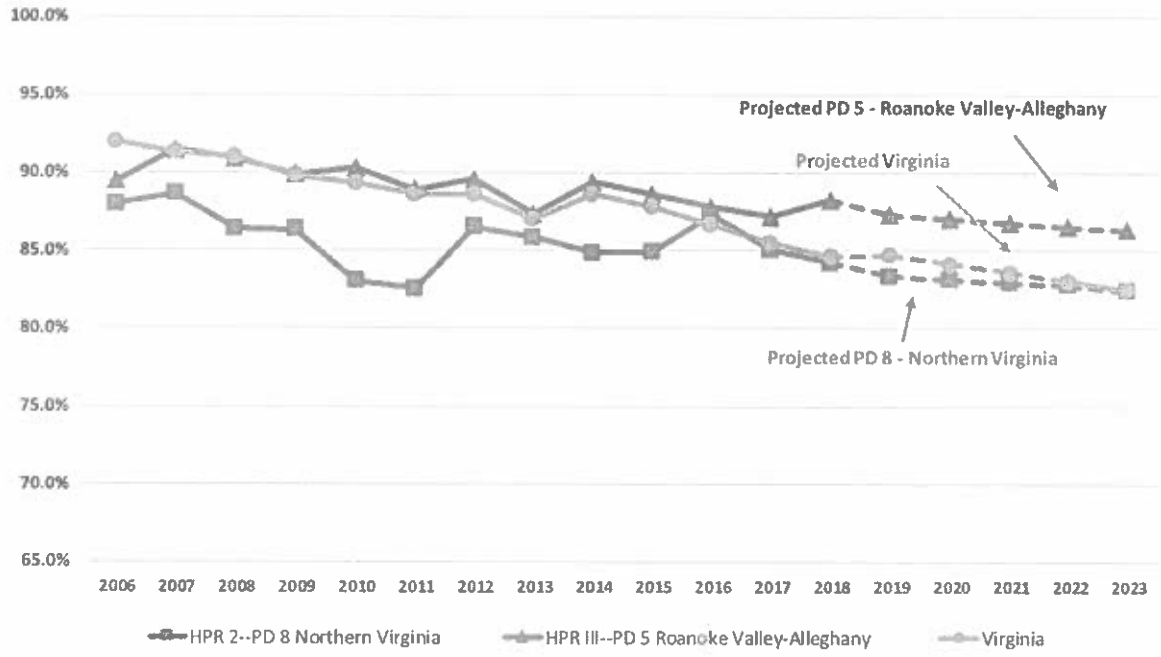
- There is excess capacity (surplus beds) in both PD 5 and PD 8. Aggregate and age-specific nursing home use rates are decreasing in both regions.

Use rates have long been much lower in Northern Virginia than statewide and in PD 5. They also continue to decrease far more rapidly in PD 8 than in PD 5. Over the last decade the PD 8 (Northern Virginia) use rate decrease (50.1%) was more than twice that of PD 5 (22.1%).

In recent years average nursing home occupancy has been higher in PD 5 than in PD 8, 87.1% in PD 5 in 2017 compared with 81.3% in PD 8 (Table 2). There is no evidence to suggest that this pattern will change soon. Projection of the longstanding PD 5 and PD 8 occupancy trends to the early 2020s suggests that average occupancy is likely to continue to be much higher in PD 5 than in PD 8 (Chart 2).

These longstanding and ongoing demand and service delivery trends do not support moving capacity from PD 5 to PD 8. They indicate that the Salem Health & Rehabilitation Center beds should remain in PD 5, not move to PD 8.

Chart 2. Average Virginia Nursing Home Occupancy Rates
Northern Virginia (PD 8), Roanoke Valley-Alleghany (PD 5) and Virginia
2006 - 2018 Occupancy Rates
2019 - 2023 Projected Occupancy (Dash Line)



Source: VHI Annual Licensure Surveys 2006 - 2018; Calculations & Tabulations HSANV, 2020

There is no evident public need or justification for relocating beds from PD 5 to PD 8. The public would be better served by keeping the beds in PD 5, where they are more likely to be used efficiently, than reallocating to Northern Virginia. Moreover, reducing the licensed capacity of Salem Health & Rehabilitation Center does nothing to improve its ability to attract patients in PD 5 which has much higher use rates and bed occupancy than Northern Virginia. Given low and decreasing use rates and occupancy levels in PD 8, adding beds to the region, whether by relocation from outside the region or from direct new construction, is not warranted. Market realities are such that adding unneeded capacity, and filling the new beds developed, will necessarily come at the expense of existing service providers.

The applicant's reasons for the project are evident and clearly stated. The application contains multiple referees to the desire to serve more private pay and Medicare patients. If successful, this would be of considerable economic value to the applicant, but this private economic interest does not constitute a public need or convey a community benefit.

III. Conclusions and Alternatives for Agency Action

A. Findings and Conclusions

Cherrydale Health and Rehabilitation Center proposes to expand by thirty beds, a capacity increase of about 17%, by means of a "transfer" of licensed capacity from Salem Health and Rehabilitation Center. This is permissible under existing law and regulation under specific circumstances and conditions. The request for applications (RFA) issued for 2022 contains a flawed nursing home bed need calculation that purports to show that 284 additional beds are needed in PD 8 (Northern Virginia). That RFA also contains an equally problematic finding of a 224 bed surplus in PD 5.

These calculations and findings notwithstanding, the RFA does not establish an actual public need for additional nursing home beds in any planning region. The principal reason for the negative finding statewide is that the RFA planning process examines four measures to determine whether there is a public need for additional capacity. In addition to the bed need calculation, average and median annual occupancy of existing Medicaid certified beds should exceed 90% and 93% respectively, and COPN authorized Medicaid certified beds not yet operational must be taken into account.

Low and decreasing use rates have resulted in lower occupancy levels statewide. Consequently, though the current RFA shows a "*calculated*" potential need for additional beds in nine planning districts, with the greatest need in Northern Virginia, there is no call for applications in any district. As in Northern Virginia, none of the districts with a "*calculated*" need meet the other requirements. Other than the flawed "*calculated bed need*" criterion, Northern Virginia does not meet any of the other three measures used to assess public need for nursing home beds. Average occupancy of all licensed beds, and of Medicaid certified beds are far below planning standards and continue to decrease. In addition, the 55 Medicaid beds authorized recently at Heritage Hall-Leesburg and Leewood are still being developed.

The problematic nature of the RFA bed need calculation is well known and understood by those familiar with the industry and with Virginia regulatory and licensing programs. It is unreliable and subject to misuse. The age-specific nursing facility use rates relied upon are dated and static. They become more problematic each year as actual use rates decrease, locally and statewide. In markets with secular negative use rate trends the calculation substantially overstates demand. This is especially true of Northern Virginia which is in the midst of a three decade decrease in aggregate and age specific rates. The older the base use rate applied, and the more distant the projection, the greater the error inherent in the bed need calculation.

Beyond these considerations, the proposal is deficient in a number of respects:

- Recent, current and projected nursing home service volumes and trends indicate that the capacity that would be relocated is more likely to be needed in PD 5 than in PD 8. Repositioning the 30 beds will not improve or enhance access in any meaningful way in either region.
- Because there are substantial numbers of unused (surplus) beds in both regions, the shift in licensed capacity will decrease marginally average occupancy in PD 8 and increase marginally average occupancy in PD 5. There is no discernible public benefit in this paper exercise.
- Though the project may be of considerable potential economic value to the private equity investors that now own Cherrydale, it offers no discernible value or benefit to the communities in which Cherrydale and Salem are located, or to the public generally.
- If the service volumes and case mix projected for the initial years following completion of the project are achieved, it will come at the expense of other local nursing care facilities with overlapping service areas.
- In a market with substantial and growing surplus capacity, the proposed $4.36 million capital expenditure is unnecessary and from a public payments perspective wasteful. Virtually all of the unnecessary capital expense would be defrayed with Medicare and Medicaid payments.
- The problematic nature and deficiencies of the RFA bed need calculation are widely known and discussed. They are well known and understand by the applicant.
- The policy and practice underling the reigning interpretation of the language in HB 2292 that pertains to the transfer for nursing home capacity across planning district boundaries is anticompetitive, favoring multi-facility Virginia operators, including private equity ventures, over other potential competitors.

B. Alternatives for Agency Action

1. The Health Systems Agency of Northern Virginia may recommend to the Commissioner of Health that a Certificate of Public Need authorizing the project be granted.

A favorable recommendation may be based on concluding that:

- Taken as a whole the project appears to be consistent with the provisions of House Bill, 2292, as interpreted and applied recently in several similar projects, which makes filing of the application permissible and subsequent approval of the project essentially mandatory.
- The capital outlay, approximately $4.36 million for thirty beds, is acceptable in that, ultimately, Cherrydale will offer a valuable service that is likely to be used by many.
- Potential negative effects on neighboring nursing homes, though potentially damaging in an environment of low operating margins, would not be destabilizing and are therefore acceptable.

2. The Health Systems Agency of Northern Virginia may recommend to the Commissioner of Health that a Certificate of Public Need authorizing the project not be granted.

A recommendation of denial of the project may be based on concluding that:

- There is no public need for additional nursing home capacity in Northern Virginia. Consequently, the capital expenditure that would be incurred is unnecessary and wasteful.

- Nursing home use rates and occupancy trends in PD 5 and PD 8 support keeping the beds that would be relocated in PD 5 where they are more likely to be needed and used more efficiently.
- The project would be of substantial economic benefit to Cherrydale Health and Rehabilitation Center, but of little, if any, public benefit or value.
- The project is not consistent with applicable provisions of the Virginia State Medical Facilities Plan.

IV. Checklist of Mandatory Review Criteria

1. Maintain or Improve Access to Care

The Cherrydale project is not necessary to maintain or improve access to nursing care services. Long term nursing care services, and nursing home beds, are well distributed region wide. There is surplus (unused) nursing home capacity in both commercial and CCRC based nursing care services in PD 8. Expanding an existing service, or relocating existing capacity, is not necessary to assure access.

Moving beds from Southwest Virginia to Northern Virginia, from PD 5 to PD 8, would not to improve or otherwise affect demand for or access to nursing care services. Both regions have more capacity than will be used efficiently over the next decade, including ample numbers of Medicare and Medicaid certified beds.

To the extent access to care would be affected by the change, moving beds from a planning district with a much higher indigenous use rate and higher bed occupancy rate to a district with a much lower, and decreasing, use rate and occupancy level would have negative effects.

2. Meet Needs of Residents

There is no demonstrated public need for additional nursing home capacity in the region. The long term nursing care needs of the region are being met. In addition to more than 4,500 licensed nursing home beds, the region has an even larger number of assisted living beds, and an array of home health, rehabilitation, and related health and social support services

Cherrydale relies solely on the spurious bed need projection published in the nursing home RFA issued for 2022 in asserting there is a public need, and therefore justification, for the project. The nature and value of this approach is suggested by the applicant's repeated failure (unwillingness) to provide its own estimate or projection of future demand and the number of beds actually needed.

Thought not likely, it is possible that, as a foreign (out of state) private equity accumulator of nursing homes, the applicant is not in a position to assess local needs and service trends. Adding capacity under these circumstances would be problematic and cannot be construed to be in the public interest.

3. Consistency with Virginia State Medical Facilities Plan

The proposal is not consistent with applicable provisions of COPN program regulations, including the State Medical Facilities Plan. Nor is it consistent with sound regional health planning policies and practices in Northern and Southwest Virginia.

Specifically, the proposal conflicts with the plain, unambiguous requirements of Section 12VAC5-230-620 of the SMFP which addresses directly the expansion of nursing homes. It reads in its entirety:

> "Proposals to increase existing nursing facility bed capacity should not be approved unless the facility has operated for at least two years and the facility's average annual occupancy of the facility's existing beds was at least 93% in the relevant reporting period as reported to VHI." **Virginia SMFP, p. 32.**

The project also conflicts with the substance and planning principles of **Section 12VAC5-230-610B** of the plan which specifies that:

> "No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid-certified. This presumption of 'no need' for additional beds extends for three years from the issuance date of the certificate," **Virginia SMFP, p. 30.**

The project is not responsive to, or consistent with, any provision or element of the SMFP that warrants or supports approval of the project.

4. Beneficial Institutional Competition while Improving Access to Essential Care

The project, which was filed shortly after Cherrydale was acquired by private equity investors. It appears to be entrepreneurial in nature.

To the extent the project would have competitive effects they are likely to be anticompetitive and negative. With decreasing use rates and declining average occupancy levels, adding unneeded capacity in PD 8 means that should the applicant attain its service volume projections, the increased caseloads would come at the expense of nearby nursing care facilities. The project would have no discernible general effect on access to nursing home care in PD 5 or PD 8, both of which have large numbers of unused nursing home beds.

5. Relationship to Existing Health Care System

The proposal is submitted as an exception to the regular nursing care facility planning process. The project is modest in that it calls for a 30 bed expansion of Cherrydale In response to a purported regional need for 284 beds.

Given low and falling use rates and decreasing average annual occupancy, if the increased caseloads the applicant projects are achieved the project would be likely to have negative service volume and associated economic effects on neighboring nursing homes

6. Economic, Financial Feasibility

The capital outlay proposed ($4.36 million) is unnecessary and from a taxpayer and public interest perspective wasteful. Nevertheless, as a private equity venture, shifting capacity to a market with a much larger private pay market is economically rational and likely to generate high annual rates of return over the life of the project.

The proposal is financially feasible and should be profitable.

7. Financial, Technological Innovations

The project does not entail innovative technologies, practices or economic elements distinct from those now widely seen in the region.

8. Research, Training Contributions and Innovations

The project does not have a significant research or training component that warrants special consideration.

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November 9, 2022

Erik Bodin, Director, DCOPN
Office of Licensure and Certification
Virginia Department of Health
9960 Mayland Drive, Suite 401
Richmond, VA 23233-1463

Dear Mr. Bodin:

The Health Systems Agency of Northern Virginia (HSANV) Board of Directors reviewed at its November 7, 2022 meeting the certificate of public need (COPN) application filed by Medical Facilities of America XI (11) L.P. seeking authorization to add 30 nursing home beds at Cherrydale Health & Rehabilitation Center (COPN Request # VA-8657). The Board voted ten in favor and none opposed to recommend denial of the application.

The Board bases the recommendation on its review of the application, on the agency staff report on the proposal, on the information and testimony presented at the November 7, 2022 board of directors meeting on the proposal, and on several basic findings and conclusions, including:

1. Northern Virginia (PD 8) has a large number of unused nursing home beds, the largest nursing home bed surplus in the state. There is no public need for additional nursing home beds, now or within the next five years.
2. Contrary to the applicant's assertion, adding nursing home beds at Cherrydale, or elsewhere in the planning region, would not improve access to care. There is no shortage of nursing home beds in planning district 8.
3. The Cherrydale argument that there is a quantified need for 284 additional nursing home beds in PD 8 in 2022 is based on the flawed "*calculated need*" projection contained in the 2020 nursing home request for applications.
4. The applicant is aware that the calculation Cherrydale relies on is spurious, grounded in inaccurate data and flowing from a discredited need determination methodology. Beyond being deficient and misleading, it invites abuse by those in position to gain from a problematic policy and process.
5. The project would be of economic benefit to Cherrydale, and the new private equity owner of the facility, but of no discernible public value or benefit.
6. Recent and projected demand for nursing home services in Virginia Planning District 5, where the bed donor facility (Salem Health and Rehabilitation Center) is located, and Virginia Planning District 8, where the recipient facility (Cherrydale Health and Rehabilitation Center is located, indicate that the beds proposed for transfer from PD 5 to PD 8, should remain in Planning District 5.

7. The potential service improvements cited by the applicant as benefits of the project are coincidental, not derivative of or dependent on the capital expenditure proposed. They can be undertaken outside the COPN process, without expanding licensed bed capacity unnecessarily. There is no planning or regulatory obstacle preventing the applicant from renovating and modernizing Cherrydale Health and Rehabilitation Center and Salem Health and Rehabilitation Center at a time of its choosing.
8. The proposal is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan governing the expansion of nursing homes.

Copies of the HSANV staff report on the application and minutes of the November 7, 2022 board meeting held on the proposal are enclosed.

If we can provide additional information, please let me know.

Sincerely,

Dean Montgomery
Executive Director

cc: Matt Cobb, Williams Mullen, Counsel, Cherrydale Health and Rehabilitation Center
Tom Fonseca, Chairperson, HSANV
Valerie Gresham Analyst, DCOPN, VDH
Frank Peck, Premier Consulting, Consultant, Cherrydale Health and Rehabilitation Center