



COMMONWEALTH of VIRGINIA

Karen Shelton, MD
State Health Commissioner

Department of Health
P O BOX 2448
RICHMOND, VA 23218

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

July 27, 2023

Matthew M. Cobb, Esquire
Williams Mullen
200 South 10th Street, Suite 1600
Richmond, Virginia 23219

**RE: COPN Request No. VA-8674
Burke SNF, LLC
Addition of 68 relocated nursing home beds to an existing nursing facility through
relocation from Alexandria**

Dear Mr. Cobb:

This letter is in response to your correspondence dated June 9, 2023. In that letter, you requested reconsideration of my case decision in the above-captioned matter under Virginia Code § 2.2-4023.1. Because that case decision was not made under Virginia Code § 2.2-4020, the provisions of § 2.2-4023.1 are inapplicable. Nevertheless, I have considered your request for reconsideration.

I am vacating my previous decision and have reconsidered my determination of whether public need for the project referenced above has been demonstrated. I have again reviewed the application submitted and record compiled regarding the proposed project. I have considered all factors that must be taken into account in making determinations of public need with respect to this application in accordance with Virginia Code § 32.1-102.3.

In reconsidering this application and the record as a whole, I have re-reviewed the Adjudication Officer's recommendation and do not adopt it. More specifically, I find that an exception to the 90% minimum occupancy standard set forth in 12 VAC 5-230-620 should have been considered because Burke Health and Rehabilitation Center ("Burke") offers short stay services. Burke's annual occupancy rate between 2018 to 2022 averages to 82.27%, and the 2022 occupancy rate was 90.9%.¹

¹ IFFC Exhibit 3. Post-IFFC Exhibit 19.

Upon reconsideration and review of the record, I am approving the project proposed by Burke SNF, LLC. This project merits approval and should result in the issuance of a Certificate. It is necessary to meet a public need.

The reasons for approving the Burke SNF, LLC project includes, but is not limited to, the following:

1. The proposed relocation of 68 nursing facility beds within PD 8 to a central location in Fairfax County is in general compliance with 12 VAC 5-230-30:
 - a. The proposed relocation will result in the proper utilization of nursing home beds in a cost effective and quality manner;
 - b. The proposed relocation of the beds to an area with a greater population and fewer nursing homes will improve the geographic distribution of beds within PD 8;
 - c. Certifying the relocated beds for Medicare and Medicaid will result in increased access to skilled nursing and sub-acute therapy services for individuals without respect to their ability to pay;
 - d. The proposed project will reallocate resources to meet evolving community needs by relocating underutilized nursing home beds from the Fountains at Washington to Burke's nursing home; and
 - e. The proposed project relocating existing beds will not undermine or harm the financial viability of other nursing home providers nor result in an increase in nursing home beds in PD 8.
2. The capital cost of the project is reasonable.
3. Consideration of the factors contained in Virginia Code § 32.1-102.3 demonstrates public need.

This certificate is valid for the period July 27, 2023 through July 26, 2024. The total authorized capital cost of the project is \$12,914,000.

In accordance with Rule 2A:2 of the Rules of the Supreme Court of Virginia, any aggrieved party to an administrative proceeding choosing to appeal a case decision shall file, within 30 days after service of a case decision, a signed notice of appeal with "the agency secretary." Such notice should be sent to the Office of the State Health Commissioner, James Madison Building, Thirteenth Floor, 109 Governor Street, Richmond, Virginia 23219. Under the Rule, when service of a decision is "accomplished by mail," 3 days are added to the 30-day period.

Sincerely,



Karen Shelton, MD
State Health Commissioner

cc: Allyson Tysinger, Assistant Attorney General, Commonwealth of Virginia
Erik Bodin, Director, Division of Certificate of Public Need
Dean Montgomery, Executive Director, Health Systems Agency of Northern Virginia

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH

MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED

THIS CERTIFIES THAT Burke SNF, LLC is authorized to initiate the proposal as described below.

NAME OF FACILITY: Burke Health and Rehabilitation Center

LOCATION: 9640 Burke Lake Road, Burke, Virginia 22015

OWNERSHIP AND CONTROL: Burke SNF, LLC

SCOPE OF PROJECT: Add 68 licensed nursing home beds to Burke Health and Rehabilitation Center through the relocation of 68 beds from The Fountains at Washington House for a total complement of 188 dually-certified via Medicare & Medicaid nursing home beds at Burke Health and Rehabilitation Center; The Fountains at Washington House will subsequently cease all nursing home operations at its facility, including the use of the 68 licensed nursing home beds, upon issuance of this certificate. Capital costs authorized for this project total \$12,914,000. The project is expected to be completed by July 26, 2026.



Pursuant to Chapter 4, Article 1:1 of Title 32.1, Sections 32.1-102.1 through 32.1-102.12 of the 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 not 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-04854

Date of Issuance: July 27, 2023

Expiration Date: July 26, 2024

A handwritten signature in black ink, appearing to read "Karen Shelton".

Karen Shelton, MD, State Health Commissioner