



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

R. Christopher Lindsay
Chief Operating Officer

July 25, 2023

By Email

Elizabeth A. Breen, Esquire
Hunton Andrews Kurth
951 East Byrd Street
Richmond, Virginia 23219

**RE: Certificate of Public Need (COPN)
No. VA-04851
(Request No. VA-8685)
Maryview Hospital LLC d/b/a
Bon Secours Maryview Medical Center and
Town Center Imaging LLC (together, "Bon Secours")
Virginia Beach, Planning District (PD) 20
Health Planning Region IV
Establishment of a specialized center for
computed tomography (CT) and magnetic
resonance imaging (MRI) diagnostic services
through relocation of scanners**

Dear Ms. Breen:

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 a 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 the application in accordance with the Virginia Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*

Based on my review of the application and on the recommended decision of the adjudication officer, I am approving the application, with a condition addressing charity care. I find that this project will meet a public need.

The reasons for my decision include the following:

- (i) The Bon Secours 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) Approval of the project would provide for the reasonable reallocation of existing, authorized resources within PD 20;
- (iii) Notwithstanding the opposition to the project from two competing health systems, reasonable competition in the health care marketplace is generally promoted by the COPN Law, and approval of the project is not reasonably expected to adversely affect the utilization of any existing provider of CT or MRI services;
- (iv) The status quo is not a reasonable alternative to the project; and
- (v) The project is feasible; its capital costs are reasonable and would be covered without financing costs.

Sincerely,



Karen Shelton, MD
State Health Commissioner

Encl.: 2

cc (via email):
Sulola Adekoya, MD, MPH
Acting Director, Norfolk Health District
Caitlin Pedati, MD, MPH, FAAP
Director, Virginia Beach Health District
Deborah K. Wait
Virginia Health Information, Inc.
Allyson Tysinger, Esq.
Senior Assistant Attorney General
Douglas R. Harris, JD
Adjudication Officer
Erik O. Bodin, III
Director, Division of Certificate of Public Need

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED

THIS CERTIFIES THAT Maryview Hospital LLC, d/b/a Bon Secours Maryview Medical Center, and Town Center Imaging LLC, are authorized to initiate the proposal described herein.

NAME OF FACILITY: Bon Secours Imaging at Town Center

LOCATION: 4677 Columbus Street, Virginia Beach, Virginia 23462

OWNERSHIP AND CONTROL: Maryview Hospital LLC and Town Center Imaging LLC will maintain ownership of and control over the approved resources.

SCOPE OF PROJECT: Establishment of a specialized center for the provision of computed tomography (CT) imaging and magnetic resonance imaging (MRI) imaging with two (2) CT scanners and one (1) MRI scanner, all relocated from the former site of Bon Secours DePaul Medical Center, in accordance with specifications and representations made during the course of review and adjudication. The total authorized capital and financing cost of the project is \$3,534,581. The project is scheduled to be completed by July 30, 2025. The project is **CONDITIONED** to provide charity care (see Reverse).



Pursuant to Chapter 4, Article 11 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-04851
Date of Issuance: July 25, 2023
Expiration Date: July 24, 2024


Karen Shelton, MD
State Health Commissioner

CONDITION Placed on the Issuance of this Certificate:

This project is subject to the Bon Secours Hampton Roads Health System (BSHR) systemwide charity care condition attached to Certificate No. VA-04237, issued January 1, 2010. Provided that the charity care provided under the BSHR system-wide condition shall be valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. BSHR will accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. are available from Virginia Health Information. In addition to any right of BSHR to seek modification or adjustment described in the BSHR system-wide condition, to the extent BSHR expects its BSHR system-wide condition as valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. or any revised percentage to materially alter the value of its charity care commitment thereunder, it may petition the Commissioner for a modification of the BSHR system-wide condition to resolve the expected discrepancy.

BSHR will provide CT and MRI services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq.

(Reverse)

**Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8685
Maryview Hospital LLC d/b/a
Bon Secours Maryview Medical Center and
Town Center Imaging LLC (together, “Bon Secours”)
Virginia Beach, Planning District (PD) 20
Health Planning Region (HPR) IV
Establishment of a specialized center for
computed tomography (CT) and magnetic
resonance imaging (MRI) diagnostic services
through relocation of scanners**

This document is a recommended case decision submitted to the State Health Commissioner (hereinafter, “Commissioner”) for consideration and adoption. It follows full review of the record pertaining to the application captioned above, as well as the convening of an informal fact-finding conference (IFFC)¹ conducted in accordance with the Administrative Process Act² and Title 32.1 of the Code of Virginia.

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 described and proposed in the 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

Findings of Facts

1. Maryview Hospital LLC (“Maryview”) operates Bon Secours Maryview Medical Center, a comprehensive 346-bed, acute-care hospital with a main campus in Portsmouth. Bon Secours Hampton Roads Health System LLC is the only corporate member of Maryview; both are not-for-profit Virginia limited liability companies. Maryview is the sole corporate member of Town Center Imaging LLC.
2. Maryview and Town Center Imaging LLC (together, “Bon Secours” or the “applicants”) propose the construction and establishment of a specialized center for CT and MRI diagnostic

¹ The IFFC was held on April 3, 2023. A certified reporter’s transcript (“Tr.”) of the IFFC is in the administrative record. (A competing application, COPN Request No. VA-8678, submitted by Urology of Virginia, PLLC, was stipulated out of the proceedings and has since been approved.)

² Va. Code § 2.2-4000 *et seq.*

³ Va. Code § 32.1-102.1:2 (A); (a “Certificate” or COPN).

⁴ Va. Code § 32.1-102.1.

imaging through the relocation of two CT scanners and one MRI scanner (the "Bon Secours project"). The total capital costs of the Bon Secours project are \$3,534,581. These costs would be covered through accumulated reserves.

3. On March 21, 2023, DCOPN issued its staff report (the "DCOPN staff report") recommending that the Commissioner deny the Bon Secours project.

4. Following an informal fact-finding conference on the project held on April 3, 2023, the adjudicatory record on the application closed on May 18, 2023.

Deployment of Criteria of Public Need, Analysis and Conclusions

A. Discussion. Salient analysis and conclusions regarding the project and relating directly to the eight criteria of public need contained in the COPN Law (the "statutory considerations," appearing in bold type below),⁵ are set forth below in relation to each of the eight.⁶

1. The extent to which the proposed service or facility will provide or increase access to needed services for residents of the area to be served, and the effects that the proposed service or facility will have on access to needed services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.

The Bon Secours project would be readily accessible by developed highways and roadways. Public transportation by bus is within a short walking distance of the intended site, already developed for general ambulatory health services and hosting a Bon Secours outpatient rehabilitation clinic.⁷

Although the diagnostic resources Bon Secours seeks to relocate, for the purposes of this adjudicatory review, exist⁸ on the campus of a recently-closed, older hospital campus (*i.e.*, the site of Bon Secours DePaul Medical Center⁹) in the City of Norfolk, and would be relocated some 12 and a half miles to the east, specifically, to the City of Virginia Beach, allowing Bon Secours to partially reorient its diagnostic resources within its primary service area and collocate them with existing outpatient services, as proposed, is appropriate.

⁵ See Subsection B of Virginia Code § 32.1-102.3.

⁶ The DCOPN staff report may contain additional analysis, details and conclusions consistent with this recommended decision.

⁷ Bon Secours Proposed Findings and Conclusions at 2.

⁸ In letters, persons not a party to these proceedings sought to question whether the CT and MRI scanners remained in the PD 20 inventory. After review of the specific issue, I am satisfied that they are. See Bon Secours Proposed Findings and Conclusions at 11; IFFC Ex. 15.

⁹ As the Commissioner has recognized, for years DePaul Medical Center's operation has faced challenges due to its aged, outmoded, and out-of-date physical plant and facilities. In recent years, the hospital's campus experienced substantial declines in utilization over all service lines offered there. Any expectation of continued operation of these services at this former-hospital site is untenable and unreasonable to expect. Despite observations made in the DCOPN staff report to the contrary, no substantial evidence indicates that Bon Secours lacks commitment to the elderly population of Norfolk. See Bon Secours Proposed Findings and Conclusions at 9-10.

2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following:

(i) The level of community support for the project demonstrated by citizens, businesses, and governmental leaders representing the area to be served;

DCOPN received at least 57 letters in support of the Bon Secours project, including 28 from patients. DCOPN received a letter of opposition from Chesapeake Regional Healthcare and another from Sentara Healthcare.¹⁰

(ii) The availability of reasonable alternatives to the proposed service or facility that would meet the needs of the population in a less costly, more efficient, or more effective manner;

No reasonable alternative to the Bon Secours project presents the opportunity to redeploy existing, commonly sought diagnostic capacity to a site where Bon Secours already maintains a low-cost, ambulatory health service presence.

(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;

Not applicable, without prejudice to the applicant. No regional health planning agency exists for the purpose of reviewing projects proposed for location in HPR IV.

(iv) Any costs and benefits of the project;

The capital costs of the Bon Secours project are not unreasonable. The benefits of the project include the opportunity to redeploy vital diagnostic resources and collocate them with existing Bon Secours ambulatory health service.

(v) The financial accessibility of the project to the residents of the area to be served, including indigent residents; and

Bon Secours describes its financial assistance policies as “generous.”¹¹ Any Certificate issued to approve this project should include reference the existing system-wide condition requiring Bon Secours to provide a prescribed or derived level of charity care in PD 20.

(vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a project.

No additional factors relating to the review of this project are remarkable or appear to call for the exercise of the Commissioner’s discretion in identifying or evaluating them in relation to the proposed project.

¹⁰ See also Bon Secours Proposed Findings and Conclusions at 10-11.

¹¹ *Id.* at 13.

3. The extent to which the proposed project is consistent with the State Health Services Plan [i.e., *de facto*, the SMFP].¹²

The COPN law requires that “[a]ny decision to issue . . . a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan [“SMFP”]”¹³ The SMFP, found in the Virginia Administrative Code (VAC) at 12 VAC 5-230-10 *et seq.*, includes provisions generally applicable to a project involving CT and MRI capacity.

The Bon Secours project complies with provisions of the SMFP addressing staffing. Since the Bon Secours project is an inventory-neutral relocation of existing capacity, and not an addition to the inventory of scanners in PD 20, the provisions of the SMFP addressing need for a new service do not apply.

Sufficient and detailed evidence in the record supports the conclusion that the Bon Secours project would serve the public intents and purposes of this statutory consideration. The project is thereby 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.¹⁴

General and specific reference is made to the DCOPN staff report, the IFFC transcript, and the IFFC exhibits and post-IFFC filings of Bon Secours.¹⁵

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

The Bon Secours project is limited to the relocation of previously approved, COPN-regulated units of CT and MRI capacity. As such, the project is inventory neutral. No credible evidence in the record suggests that Chesapeake Regional Healthcare or Sentara Healthcare, the two other primary health systems in PD 20 alongside Bon Secours, would be adversely affected by approval of the Bon Secours project.

5. The relationship of the project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities.

The Bon Secours project is an inventory-neutral relocation of capacity to a site where Bon Secours already provides ambulatory health care services. It will not add CT or MRI capacity in PD 20, and will not add to the surplus of MRI capacity there.

¹² 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.

¹³ Va. Code § 32.1-102.3.

¹⁴ See *Roanoke Mem. Hosp. v. Kenley*, 3 Va.App. 599, 352 S.E.2d 525 (1987).

¹⁵ See Bon Secours Proposed Findings and Conclusions at 14-17.

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

DCOPN's review of Bon Secours' pro forma financial statement indicates that the proposed project is feasible. The project would be financially beneficial to the applicant, and the costs are reasonable.

Financial resources are available. While the availability of human resources is a challenge besetting health care in general, staffing requirements for the project are limited to 3.0 full-time equivalent (FTE) positions. The cost of capital, as that concept is understood to possible relate to analyses of public need, does not appear to be an issue needing consideration.

7. The extent to which the project provides improvements or innovations in the financing and delivery of health 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 services on an outpatient basis; (iii) Any cooperative efforts to meet regional health care needs; (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 serve (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 for citizens of the Commonwealth, including indigent or underserved populations.

Not applicable, without prejudice to the applicant.

B. Conclusion. Based on the findings of fact and in light of the discussion above gauging the project against the eight statutory considerations, I conclude that Bon Secours has demonstrated a public need for the proposed project.

V. Recommendation

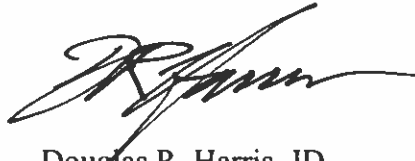
Based on review of the evidence contained in the administrative record as a whole, the Bon Secours project merits approval under the COPN Law. Bon Secours should receive a Certificate authorizing the project, issued with stated recognition of an existing charity care condition. The Bon Secours project would meet a public need.

In addition to conclusions drawn throughout this document, specific reasons for my recommendation include:

- (i) The Bon Secours 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) Approval of the project would provide for the reasonable reallocation of existing, authorized resources within PD 20;
- (iii) Notwithstanding the opposition to the project from two competing health systems, reasonable competition in the health care marketplace is generally promoted by the COPN Law, and approval of the project is not reasonably expected to adversely affect the utilization of any existing provider of CT or MRI services;
- (iv) The status quo is not a reasonable alternative to the project; and
- (v) The project is feasible; its capital costs are reasonable and would be covered without financing costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Harris', with a long horizontal flourish extending to the right.

Douglas R. Harris, JD
Adjudication Officer

July 20, 2023