COMMONWEALTH of VIRGINIA

Department of Health
P O BOX 2448
RICHMOND, VA 23218

Karen Shelton, MD
State Health Commissioner

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

September 29, 2023

Thomas J. Stallings,
McGuireWoods
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219

RE: **COPN Request No. VA-8687**
HCA Services of Virginia
Planning District 15
Establish a 60-bed, 4-OR, 1 Cath Lab, 1 CT, 1 MRI Hospital in Ashland, VA

Dear Mr. Stallings:

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

Based on my review of this application, and on the recommended decision of the staff and the adjudication officer, I am denying the application. The project proposed in the application is not consistent with applicable law.

The reasons for my decision include the following:

(i) The proposed project to establish a 60-bed, 1 Cath lab, 1 CT, 4 OR, and 1 MRI hospital, is not consistent with the COPN law and is not in harmony with the SMFP or public policies, interests, and purposes to which the SMFP and COPN law are dedicated;

(ii) Maintaining the status quo is a reasonable alternative to the project – it is more cost-effective and does not appear to have an adverse effect on the PD;

(iii) The project's capital costs are high and not reasonable in light of the proposed project's relative benefit;

(iv) There is known opposition to the proposed project; and

(v) The proposed project will likely have a negative impact on the utilization, costs, or charges of other service providers in PD 15, materially harming existing providers.

Sincerely,

Karen Shelton, MD
State Health Commissioner

Encl.
cc:

Thomas Franck, MD, MPH
Director, Chickahominy Health District
Deborah K. Waite
Virginia Health Information, Inc.
Allyson Tysinger, Esq.
Senior Assistant Attorney General
Vanessa MacLeod, JD
Adjudication Officer
Erik Bodin,
Director, Division of Certificate of Public Need

Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8687
HCA Health Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital
Ashland, Virginia
Planning District (PD) 15
Health Planning Region IV
Establish a 60-Bed, 4-OR, 1 CT, 1 MRI, and 1 Cardiac Catheterization Lab Hospital

I. Introduction

This document is a recommended case decision, submitted to the State Health Commissioner (hereinafter, "Commissioner") for consideration. It follows full review of the administrative record pertaining to the above-captioned application, as well as the convening of an informal fact-finding conference (IFFC)[1] conducted in accordance with the Virginia Administrative Process Act[2] and Title 32.1 of the Code of Virginia.

II. Authority

Article 1.1 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 this application falls within the statutory definition of "project" contained in the COPN law, and thereby, requires a Certificate to be issued before the project may be undertaken.[4]

III. Statement of Facts

The factual basis underlying this recommendation consists of evidence in the administrative record, including, but not limited to, the application giving rise to this review, the testimony of witnesses presented, and written documents prepared by the applicant at and following the IFFC, and the staff report on the proposed project prepared by the Division of Certificate of Public Need ("DCOPN").

---

[1] The IFFC was held on July 19, 2023. A certified reporter's transcript ("Tr.") of the IFFC is in the administrative record ("AR").
[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 and 32.1-102.3.

Specific findings of fact are as follows:

1. HCA Services of Virginia, Inc., d/b/a Henrico Doctors' Hospital ("HCA") would be the sole owner of the proposed medical care facility ("Ashland Hospital").[5] HCA Health Services of Virginia, Inc.'s ultimate corporate parent is HCA Healthcare, Inc.[6]

2. Ashland Hospital's proposed location is 10054 Sliding Hill Road, Ashland, Virginia, in Hanover County, in PD 15.[7]

3. Ashland Hospital would be operated as a campus of Henrico Doctors' Hospital ("HDH").[8]

4. The proposed project would not increase the inventory of beds, general purpose operating rooms, or cardiac catheterization labs in PD 15.[9] The 60 inpatient beds and 1 cardiac catheterization laboratory ("Cath lab") would be relocated from HDH-Retreat Doctors' Hospital ("Retreat"), also in PD 15.[10] The 4 general purpose operating rooms would be relocated from one or more other HCA facilities within PD 15.[11] The CT and MRI would be new inventory to the PD.[12]

5. The total capital cost of the proposed project is $233,633,000, which would be paid from HCA Healthcare, Inc. funds.[13]

6. DCOPN is comprised of the Virginia Department of Health's professional health facilities planning staff. On April 21, 2023, DCOPN issued its staff report recommending denial of this project.[14]

7. The administrative record on the proposed project closed on August 18, 2023.[15]

A. The Proposed Project in Relation to the Eight Statutory Considerations

The COPN law requires that any decision to issue a Certificate must consider the eight statutory factors enumerated in Virginia Code § 32.1-102.3(B) and consistency with the State Health Services Plan.[16] Virginia Code § 32.1-102.2:1 calls for the State Health Services Plan Task Force to develop recommendations for a comprehensive State Health Services Plan. Because the State Health Services Plan is still in development, I am considering consistency of the proposed project with the current regulatory language provided in the State Medical Facilities

[5] COPN Application at 3 (AR Exhibit 3).
[6] *Id.* at 4.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 26, 34–40, 48, 64-68.
[10] *Id.* at 9.
[11] *Id.*
[12] Tr. at 12-13.
[13] COPN Application at 75-76 (AR Exhibit 3).
[14] AR Exhibit 20.
[15] Tr. at 143.
[16] Va. Code § 32.1-102.3.

Plan (SMFP). The SMFP, found in the Virginia Administrative Code (VAC) at 12 VAC 5-230-10 *et seq.*, is the planning document adopted by the Board of Health, which includes methodologies for projecting need for medical facilities and services, as well as procedures, criteria, and standards of review of applications for projects for medical care facilities and services.

The eight statutory considerations provided by the COPN law appear in bold type below, with statements pertinent to the proposed project.

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 projected primary service area of the Ashland Hospital proposal is comprised of 43.7% Henrico County, 20.6% Hanover County, 7.5% Richmond City, 3.9% Caroline County, and 24.3% "other".[17] PD 15 has had more population growth than Virginia as a whole; PD 15 grew at a rate of 10.11% between 2010-2020.[18] The 2020-2030 projected population growth for PD 15 is 6.84%.[19] Seniors are more likely to use emergency services than younger individuals.[20] But the 2020-2030 projected population growth for the 65+ cohort is slower than the rest of Virginia.[21]

Ashland Hospital would be located less than 1 mile off of Interstate 95 and approximately 3 miles from Interstate 295, making it easily accessible for people in the area to be served.[22] GRTC Transit System, the Richmond area public transportation system, does not provide transport to the proposed location.[23] Hanover Dash, a flat $6.00 rate taxi service for persons over 65 or who have disabilities, is available to provide transport within Hanover County.[24]

Currently, there are 10 acute care hospitals from three different health systems in PD 15.[25] Five of these acute care hospitals are operated by HCA.[26] The proposed location for Ashland Hospital ranges from 9 to 30 minutes driving distance away from the existing hospitals.[27]

The proposed project proposes to move some of its services, 60 beds and a Cath lab, from HDH-Retreat Hospital, which is a generally underutilized hospital in PD 15. HDH-Retreat

---

[17] AR Exhibit 3.
[18] DCOPN Staff Report at 1 (AR Exhibit 20).
[19] *Id.*
[20] *Id.* at 11.
[21] *Id.*
[22] *Id.* at 10-12.
[23] *Id.* at 13.
[24] *Id.*
[25] *Id.* at 9.
[26] *Id.*
[27] VCU Health System Authority Letter of Opposition at 2 (AR Exhibit 14); DCOPN Staff Report at 9 (AR Exhibit 20); AR Exhibit 3.

Hospital would continue to provide acute care hospital services following the opening of the proposed Ashland Hospital. The drive times from the proposed site to the other HDH Hospitals in PD 15 are as follows:

- HDH-Parham Hospital: 16-20 minutes;
- HDH-Forest Hospital: 18-20 minutes; and
- HDH-Retreat Hospital: 15-19 minutes.[28]

The driving time from HDH-Retreat Hospital to the other HCA Hospitals in PD 15 are as follows:

- HDH-Forest Hospital: 17 minutes;
- HDH-Parham Hospital: 17 minutes;
- Chippenham Hospital: 12 minutes; and
- Johnston-Willis Hospital: 18 minutes.[29]

Although drive times are relevant to a public need analysis, traffic congestion is not dispositive of need, particularly when accessibility is well within the SMFP's drive time standard.

Establishing the proposed Ashland Hospital is not necessary to maintain or improve access to health care services in PD 15. The applicant has not demonstrated lack of access to their patients' preferred providers or to other providers in the service area.

2. The extent to which the proposed project will meet the needs of the 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;

The Executive Committee of the HDH Medical Staff unanimously voted in favor of the project.[30] The administrative record contains at least 24 letters of support from a variety of sources, including, but not limited to, payors, government representatives, healthcare providers, and a community organization.[31] The applicant also presented several supporters at the IFFC.

Potentially affected service providers have been notified and are aware of the proposal. The administrative record also contains letters of opposition from a Hanover County resident,[32] Bon Secours Memorial Regional Medical Center LLC,[33] and VCU Health System Authority.[34]

---

[28] DCOPN Staff Report at 35.
[29] *Id.* at 36.
[30] AR Exhibit 3.
[31] AR Exhibits 3-5, 7, 10-11, 19, 22; IFFC Exhibit 16; Tr. at 104-107.
[32] AR Exhibit 8.
[33] AR Exhibit 16 and Bon Secours Post-IFFC Letter of Opposition.
[34] AR Exhibit 14.

(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;

Maintaining the status quo is a reasonable alternative. The 10 existing hospitals in the area are sufficient to meet existing and anticipated public need. Adequate demand for the proposed project does not exist. For people in the area who choose HCA providers, PD 15 has 5 HCA hospitals. 3 of these 5 existing HCA hospitals are within a reasonable distance (16-20 minutes driving time) from the proposed project's location.

The Cath lab and 60 beds would be relocated from HCA's HDH-Retreat, an area with higher poverty rates (Richmond's poverty rate is 24.5%) to a county with lower poverty rates (Hanover County's poverty rate is 5.2%). Such a relocation could negatively impact access to services for the indigent persons in the area.

Maintaining the status quo is a cost-effective alternative and does not appear to have an adverse impact on PD 15.

(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 in HPR IV.

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

The estimated capital costs of the proposed project are $233,633,000, which would be funded through HCA's reserves.[35] The total costs for the project are high, but comparable to the recent costs of other acute care hospitals in Virginia. [36]

The capital costs are not reasonable with regard to the proposed project's relative benefit. Maintaining the status quo is more cost effective than the proposed project.

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

The PD 15 poverty rate is similar to the statewide poverty rate of 10.7%.[37] HCA has provided assurances that their proposed hospital services would be accessible to all patients, regardless of financial considerations. The Pro Forma Income Statement anticipates a charity care contribution equal to 1.6% of gross revenues derived from COPN regulated services at Ashland Hospital for Years 1 and 2.[38]

---

[35] COPN Application at 75-76 (AR Exhibit 3).
[36] DCOPN Staff Report at 56 (AR Exhibit 20).
[37] *Id.* at 2.
[38] AR Exhibit 3.

As noted above, per the proposal, the 60 beds and Cath lab would be moving from an area with higher poverty rates to an area with lower poverty rates, which could impact accessibility to the proposed project for the people in the area to be served.

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

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

The proposed project seeks to create a new hospital, not replace and close an existing hospital. Specifically, HCA proposes to establish a 60-bed, 4-OR, 1 Cath lab, 1 CT, and 1 MRI hospital in PD 15. The proposed project, albeit involving some relocated resources, requires the applicant to demonstrate public need for a new hospital.

While certain SMFP provisions and threshold standards do not apply to this application, they are useful as illustrative guides of the PD's public need.

The proposed project seeks to relocate 60 beds from HDH-Retreat Hospital. 54 beds would be medical-surgical and 6 would be ICU beds.[39] In 2021, HDH-Retreat Hospital staffed 78 of their 227 licensed inpatient beds.[40] Relocating 60 of HDH-Retreat Hospital's 227 beds would leave Retreat with 167 beds for its ongoing operations.[41]

Pursuant to 12 VAC 5-230-520, "Inpatient beds should be within 30 minutes driving time one way under normal conditions of 95% of the population of a health planning district using a mapping software as determined by the commissioner." This standard is generally met in PD 15. PD 15 is home to 10 acute care hospitals.[42] HCA operates five hospitals in PD 15, three of which are identified HDH sites: Retreat, Parham, and Forest. The three existing HDH hospitals are within a 15 minutes driving time from the proposed location. The proposed location is approximately 15-30 minutes' driving distance from three different health systems and 10 different hospitals.[43] Of note, Bon Secours Memorial Regional Medical Center is 8 miles away from the proposed project's location, roughly a 9 minutes driving distance. Patients may utilize multiple driving routes to access these hospitals,[44] including interstate highways I-95, I-295 and

---

[39] COPN Application at 9, 19 (AR Exhibit 3).
[40] DCOPN Staff Report at 9 (AR Exhibit 20).
[41] Tr. at 109.
[42] AR Exhibit 3; DCOPN Staff Report at 8 (AR Exhibit 20).
[43] VCU Health System Authority Letter of Opposition at 2 (AR Exhibit 14).
[44] The proposed location is a 9 minutes drive to Bon Secours Memorial Regional Medical Center ("Memorial Regional"), and Bon Secours Richmond Community Hospital is an 18 minutes drive away from Memorial Regional. DCOPN Staff Report at 27 (AR Exhibit 20). HCA's new free-standing diagnostic imaging center is about a 15 minutes drive from the proposed location. *Id.* at 28.

I-64 as well as several other routes.[45] The majority of the service area has access to a variety of hospitals within 30 minutes travel time, demonstrating that PD 15's current hospital accessibility complies with the SMFP's accessibility standard.

Using 12 VAC 5-230-520 as a guide, the projected occupancies for the proposed project do not comply with the utilization requirements set forth in this standard. Regulatory guidance identifies "underutilized" to mean less than 80% average annual occupancy for medical/surgical beds, and less than 65% average annual occupancy for intensive care beds. The average occupancy rate per licensed bed in HPR IV was 56.75% in 2021.[46] There are three HDH hospitals[47] north of the James River, within a 30 minutes drive from the proposed Ashland Hospital site. Each of these HDH hospitals are underutilized. In 2021, HDH-Forest, HDH-Parham, and HDH-Retreat hospitals did not staff 43.8% of their existing acute care beds.[48] Additionally, in 2021, the aforementioned three HDH hospitals' utilization rate averaged 38.7%[49] to 39.66%[50].

HDH-Retreat Hospital beds are underutilized. HDH-Retreat Hospital only staffs 78 of their 227 beds, indicating that there is not an existing need for the currently licensed beds. Using 12 VAC 5-230-550 and 12 VAC 5-230-560 as guides, there is a calculated surplus of 247 beds in PD 15, but a calculated need for 85 ICU beds.[51] Relocating underutilized beds would perpetuate the PD's surplus without significant benefit to the area. The applicant indicates that the severe medical cases are to be transported from the proposed hospital to one of the other HDH hospitals when the patients are stabilized,[52] minimizing the need for ICU beds at the proposed site.

The inpatient utilization rate at HDH-Retreat is the lowest occupancy rate of any acute care hospital in PD 15 and the third lowest in the entire Commonwealth of Virginia.[53] HDH-Retreat's 2021 occupancy rate per licensed bed was 14.09%.[54] The applicant states their proposed project is designed to serve patients who already choose HDH for their healthcare.[55]

The proposal's average annual occupancy for their 54 medical-surgical beds is projected to be 70.4% and 71.8% for Years 1 and 2, respectively.[56] The 6 ICU beds are projected to be at 57.3% and 58.5% occupancy for Years 1 and 2, respectively.[57] HCA's utilization projections are not reflective of historical data, making it unclear where the projected HDH patients would come

---

[45] VCU Health System Authority Letter of Opposition at 4 (AR Exhibit 14); DCOPN Staff Report at 41 (AR Exhibit 20); Tr. at 59, 134.
[46] DCOPN Staff Report at 9 (AR Exhibit 20).
[47] HDH-Forest, HDH-Parham, and HDH-Retreat hospitals.
[48] VCU Health System Authority Letter of Opposition at 2-3 (AR Exhibit 14).
[49] *Id.*
[50] DCOPN Staff Report at 9 (AR Exhibit 20).
[51] DCOPN Staff Report at 43 (AR Exhibit 20).
[52] *Id.* at 48-49; Tr. at 89.
[53] VCU Health System Authority Letter of Opposition at 3 (AR Exhibit 14); DCOPN Staff Report at 9 (AR Exhibit 20).
[54] DCOPN Staff Report at 9 (AR Exhibit 20).
[55] Ashland Hospital Proposed Findings at 45, 95.
[56] COPN Application at 16-17 (AR Exhibit 3); DCOPN Staff Report at 43 (AR Exhibit 20).
[57] *Id.*

from. However, even if these projections were accurate, each category of the relocated beds would fail to meet the minimum utilization requirements set forth in the SMFP.

Hospitals are plentiful and well distributed in PD 15. A sizeable portion of the PD-15 acute care hospital beds lie empty on any given day. Many are not staffed. Retaining these beds is not necessary to ensure access to health care services for the people in the area to be served. Given the proximity to existing providers and low utilization rates, relocation of beds is unlikely to improve access to or meet the needs of the area to the served.

The applicant seeks to establish Cath lab services at the proposed Ashland Hospital by relocating HDH-Retreat Hospital's one, existing Cath lab (which reported 0% utilization in 2021). The COPN law, including the SMFP considerations, applies to Cath labs.

Pursuant to 12 VAC 5-230-280, "Cardiac Catheterization services should be within 60 minutes driving time one way under normal conditions of 95% of the population of the health planning district using mapping software as determined by the commissioner." Cath lab services are available within a 60 minutes drive time for the entire PD 15 population.[58] The applicant argues their patients need better access to a Cath lab, making it important to consider the travel time from HDH-Retreat Hospital's Cath lab to other HCA hospitals ranges from 12-18 minutes.[59] The proposed location would offer similar travel times to the status quo, with a range of 18-20 minutes drive time to other HDH hospitals.[60] Relocation of this Cath lab would not alter access with regard to the driving distance criteria.

PD 15 has 26 Cath labs, with an average utilization rate of 50.73% per lab or 609 diagnostic equivalent procedures per lab in 2021.[61] HDH has two hospitals with Cath labs in PD 15.[62] HDH-Retreat has one Cath lab, with a 0% utilization rate, and HDH-Forest has 5 Cath labs, with 46.58% utilization rate.[63] HDH-Parham Hospital does not have a Cath lab. Relocating HDH-Retreat Hospital's one and only Cath lab would leave Retreat Hospital without any Cath labs.

Retreat's Cath lab, proposed for relocation, has not been utilized within the last 12 months.[64] The utilization rate of Cath labs in PD 15 averaged 50.73%, or 609 DEPs per laboratory in 2021.[65] Given the proximity to existing providers and low utilization rates, relocation of a Cath lab is unlikely to improve access to or meet the needs of the area to the served.

HCA seeks to add a new CT scanner to PD 15. The proposed project would require the approval of a new CT scanner in PD 15. Pursuant to 12 VAC 5-230-100(A),

---

[58] DCOPN Staff Report at 31 (AR Exhibit 20).
[59] *Id.* at 36.
[60] *Id.* at 35.
[61] *Id.* at 6.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*

> No new fixed site or mobile CT service should be approved unless fixed site CT services and approved CT scanner during the relevant reporting period and the proposed new service would not significantly reduce the utilization of existing providers in the health planning district. The utilization of existing scanners operated by a hospital and serving an area distinct from the proposed new service site may be disregarded in computing the average utilization of CT scanners in such health planning district.

96.1% of the PD 15 population has access to CT services within a 30 minutes driving distance.[66] Current DCOPN inventory accounts for 59 CT scanners, with 52 available for diagnostic imaging.[67] Of those 52 scanners, 4 scanners were either not operational or did not report data in 2021.[68] In 2021, the utilization of 48 scanners would be approximately 7,212 procedures per unit, or 97.5% utilization per scanner.[69] If the utilization is determined using the 59 total scanners, minus the aforementioned 4, the utilization would be 6,294 procedures per unit or 85.1% utilization per unit.[70] PD 15's acute care hospitals' CT scanners utilization rate in 2021 averaged 111% of the SMFP utilization threshold. In 2021, HDH's three hospitals collectively performed 50,283 procedures for 6 CT units, operating at 113.3% capacity per unit. HCA has a seventh unit relocating within this PD. Using the 2021 volumes, each of the 7 units would average 7,184 procedures, or 97.1% utilization.

CT utilization volume is likely to increase. As volume increases, there are two additional not-yet-operational scanners to assist with the volumes.[71] Assuming the projected population growth for PD 15 for 2020-2030 is 6.84% and that such growth would affect the CT growth rate similarly, the calculation would yield 7,104 procedures per CT scanner or an average of 96% of the SMFP standard.[72]

The addition of one CT scanner in PD 15 would not be adverse to the area.

Pursuant to 12 VAC 5-230-140, "MRI services should be within 30 minutes driving time on way under normal conditions of 95% of the population of the health planning district using a mapping software as determined by the commissioner." This standard is generally met in PD 15. Approximately, 94.79% of the PD is within 30 minutes driving time of existing MRI services.[73] This project would not add any meaningful coverage within the PD.

Pursuant to 12 VAC 5-230-150,

> No new fixed site MRI services should be approved unless fixed site MRI services in the health planning district performed an average of 5000

---

[66] *Id.* at 26.
[67] *Id.* at 27.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* at 29.

> procedures per existing and approved fixed site MRI scanner during the relevant reporting period and the proposed new service would not significantly reduce the utilization of existing fixed site MRI providers in the health planning district. The utilization of existing scanners operated by a hospital and serving an area distinct from the proposed new service site may be disregarded in computing the average utilization of MRI scanners in such health planning district.

In 2021, of the acute care hospitals reporting to VHI, there were 21 fixed and 1 mobile MRI units with an average utilization rate per unit of 76.0% of the SMFP threshold of 5,000 procedures.[74] For the freestanding MRI units, 13 fixed and 2 mobile units yielded an average utilization rate of 67.0%.[75] For PD 15 as a whole, the average utilization was 72.5% per scanner (not including VCU's one pediatric and one MRI-equipped linear accelerator as they are exclusive to specific populations and not available to all patients.)[76]

MRI scanners at HCA's existing hospitals are underutilized.[77] There does not appear to be a need for an additional MRI scanner in PD 15.

The proposed project seeks to relocate 4 ORs from an unknown origin (or multiple points of origin) within HCA's PD 15 inventory.[78]

Pursuant to 12 VAC 5-230-490, "Surgical services should be available within 30 minutes driving time one way under normal conditions for 95% of the population of the health planning district using mapping software as determined by the commissioner." This standard is generally met in PD 15. Currently, 94.79% of PD 15's population is within the SMFP's 30 minutes driving time standard, and 5.21% of the population is outside of this standard.[79] The proposed location could add an additional 0.21% of the population.[80]

The applicant has not definitively stated which HCA hospital the relocated ORs would originate from, which limits the ability to analyze the impact of the proposal with regard to PD's need. Approving this aspect of the application would set a precedent, in which applicants would not have to give full project details to the Commissioner to make a decision. Omitting relevant information would prevent the Commissioner from making an informed analysis and decision.

As no definitive OR origin information was provided by the applicant, I will speculate that the ORs would likely originate from one or more of the HDH hospitals within PD 15. PD 15 has 198 general purpose ORs, 150 of which are at acute care hospital settings.[81] In 2021, the average utilization rate for all general purpose ORs in PD 15 was 127%; and the average

---

[74] *Id.* at 30.
[75] *Id.*
[76] *Id.*
[77] Tr. at 113.
[78] COPN Application at 49 (AR Exhibit 3).
[79] DCOPN Staff Report at 37 (AR Exhibit 20).
[80] *Id.*
[81] *Id.* at 7.

utilization for general purpose ORs in the outpatient setting was 116.5%.[82] The average HDH utilization rate in PD 15's ORs is 62.4%.[83] For 2021, HDH Parham ORs operated at 57.6% capacity; HDH Retreat operated at 68.0% capacity; HDH Forest operated at 61.6.% capacity; HCA's Chippenham Hospital operated at 122.5% capacity, and HCA's Johnston-Willis Hospital operated at 96.3% capacity per unit. The average HCA utilization rate, considering the five HCA hospitals within PD 15, is 81.2%. However, it appears unlikely that the ORs would be relocated from HCA's Chippenham or Johnston-Willis hospitals.

The applicant prefers to retain flexibility with their OR origin choice, but represented that if they had to choose, they would select 2 ORs from HDH-Forest and 2 ORS from HDH-Retreat.[84] As stated above, HDH-Forest ORs, roughly 18-20 minutes drive time from the proposed location, operated at 61.6% capacity; and HDH-Retreat, roughly 15-19 minutes drive time from the proposed location, operated at 68.0% capacity in 2021. Relocating ORs that are 15-20 minutes away with 61-68% utilization rates is unlikely to improve the distribution of surgical services with PD 15.

HCA has not demonstrated an institutional need for its proposed project. None of the HDH hospitals in PD 15 have capacity constraints that justify the establishment of a new hospital.[85]

HCA raised the issue of Emergency Medical Services' (EMS) transport times. The SMFP does not provide guidance on the requirements for EMS to access hospitals. The Hanover County Fire and EMS letter averaged their 2022 patient transport times to be approximately 17 minutes.[86] A 17 minutes drive time is below the SMFP's 30 minutes threshold. Several EMS providers voiced their interest in reducing their patient transport times.[87] Some of this reduction in travel time would likely be the result of redirecting patients to the closest location from the patient's origin. Despite DCOPN's request for data regarding travel times, most EMS providers were unable to quantify how much the proposed project would reduce the average times an EMS unit is on a call.[88] Hanover County EMS asserted that the proposed hospital would reduce their drive time by 5 minutes.[89]

With a calculated surplus of 247 beds in PD 15, relocating beds with little to no utilization would create a strain on existing resources without a significant benefit to the area. Per COPN law, the relocation of underutilized beds should not materially harm existing providers.[90] The computational methodologies[91] for determining the total numerical need for hospital beds in a PD, as a whole, provide useful, perhaps essential, information for considering

---

[82] DCOPN Staff Report at 8, 40 (AR Exhibit 20).
[83] *Id.*
[84] Tr. at 111-112; Ashland Hospital Proposed Findings at 4.
[85] HCA does not provide data relating to volumes anticipated to remain at the three HDH hospitals – Retreat, Parham, and Forest – if Ashland Hospital were to become established.
[86] AR Exhibit 19.
[87] Tr. at 30, 44, 47-52.
[88] AR at Exhibits 3, 10, 18, 22; Tr. at 51.
[89] IFFC Exhibit 4; Tr. at 26-28.
[90] *See* 12 VAC 5-230-570(B).
[91] 12 VAC 5-230-530 through -560.

a project proposing the relocation of existing hospital beds within that PD. The relocation of underutilized hospital beds to a brand-new hospital, as proposed, is not practical or needed, and presents harm to existing hospitals. No credible analysis or persuasive argument is offered to support the assertion that Ashland Hospital would not harm other hospitals in PD 15.

The proposed Ashland Hospital project is not consistent with the SMFP and has not demonstrated a need for its proposal. Existing resources in the area are underutilized and sufficient to meet public need. General and specific reference is hereby made to the DCOPN Staff Reports and letters of opposition.

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.

HCA is not a new competitor in PD 15. Rather, it is an established provider, with five existing hospitals in PD 15, three of which are HDH hospitals. PD 15's acute care hospital beds are underutilized. The proposed establishment of a fourth HDH hospital would not introduce an element of beneficial competition nor offer a new choice of acute care services for the people in the area to be served. Relocating HDH-Retreat Hospital's underutilized 60 beds and Cath lab to the proposed Ashland Hospital, 11.1 to 12.7 miles, will not notably increase access to health care services nor foster healthy institutional competition.

Approval of the proposed project would likely further reduce utilization of the existing HDH hospitals and redirect patient away from other existing providers, resulting in material harm to the existing health care system.

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.

HCA argues that Ashland Hospital would better serve existing HDH patient seeking care.[92] However, no reliable evidence demonstrates an institution-specific need for the proposed project. In 2021, HDH-Forest, HDH-Parham, and HDH-Retreat hospitals did not staff 43.8% of their existing acute care beds.[93] HDH patients appear to have sufficient access to the three existing, underutilized HDH hospitals in PD 15. There are no capacity constraints that would justify the proposed project's relocation of underutilized beds. Approval of the project would reduce utilization of already underutilized services of other HDH locations.

The proposed project would likely negatively impact PD 15's existing providers. The proposed project's service area would overlap with all Richmond area hospitals.[94] Approval of the proposed project would likely further reduce utilization of the existing HDH hospitals and redirect patient away from other existing providers, resulting in harm to the existing health care

[92] COPN Application at 9 (AR Exhibit 3).
[93] VCU Health System Authority Letter of Opposition at 2-3 (AR Exhibit 14).
[94] IFFC Exhibit 4.

system. If EMS plans on transporting patients who live closer to the proposed Ashland Hospital to reduce their transport time,[95] it is likely those patients would be re-routed from other systems.

The imaging aspects of this project will be available for outpatient use, which will come at a higher cost to patients and insurance companies than if patients were to use an outpatient imaging clinic.

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.

Financial resources are available. The total capital cost of the proposed project is $233,633,000, which would be paid from HCA Healthcare, Inc. funds.[96]

The proposed project, compared to current building trends, is high in terms of both direct construction and total capital costs.[97] The cost to build the proposed Ashland Hospital is roughly $100 more per square footage of construction than the highest end of average hospital construction costs per square foot nationally for 2022.[98] But these costs are comparable to the costs of other acute care hospitals within Virginia.[99]

Ashland Hospital would be a campus of HDH and would, as a result, have the same medical staff, Chief of Staff, and Chief Medical Officer as all HDH campuses.[100] There would likely be an additional need to hire nearly 300 full-time staff members. Despite the shortage in healthcare staffing,[101] HCA represents that it does not anticipate difficulty staffing the hospital and would relocate staff from other HCA and HDH locations, and retain new graduates.[102]

7. The extent to which the proposed 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 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.

The proposed project does not provide any improvements or innovations in the financing or delivery of healthcare services through the introduction of new technology that would promote quality, cost effectiveness, or both in the delivery of healthcare services.

The proposed project's property is not currently zoned for hospital use.

---

[95] Response to Completeness Review Questions/Discussion Points at 2-3 (AR Exhibit 12).
[96] COPN Application at 75-76 (AR Exhibit 3).
[97] DCOPN Staff Report at 54-56 (AR Exhibit 20).
[98] *Id.* at 53-56.
[99] *Id.* at 56.
[100] Response to Completeness Review Questions/Discussion Points at 4 (AR Exhibit 12).
[101] DCOPN Staff Report at 50 (AR Exhibit 20).
[102] COPN Application at 22 (AR Exhibit 3); Tr. at 13, 103, 114.

No additional factors relating to the review of this project are clearly remarkable or appear to call for the exercise of the Commissioner's discretion in identifying or evaluating them in relation to the proposed projects as gauged under this item under the seventh statutory consideration.

8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served (i) the unique research, training, and clinical mission of the teaching hospital or medical school, and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care services for citizens of the Commonwealth, including indigent or underserved populations.

HCA Virginia Health System partners with colleges and universities as well as other initiatives and programs for health professional training.[103]

The proposed project is not proposed by a teaching hospital and is likely to negatively affect a teaching hospital or medical school in the area to be served. In particular, the proposed project is opposed by VCU,[104] an academic medical center with a teaching and research mission located near to the proposed hospital's location. The proposed project would likely introduce directly harmful competition to VCU.

B. Conclusion

Based on the administrative record and in light of the discussion above, I conclude that HCA has not demonstrated a public need for the proposed project. HCA has not demonstrated any existing barriers to access to care for HDH patients residing in the proposed service area that Ashland Hospital would address.

IV. Recommendation

Based on review of the evidence contained in the administrative record, the proposed project does not merit approval under the COPN law. The proposed Ashland Hospital does not meet a public nor institution-specific need.

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

(1) The proposed project to establish a 60-bed, 1 Cath lab, 1 CT, 4 OR, and 1 MRI hospital, is not consistent with the COPN law and is not in harmony with the SMFP or public policies, interests, and purposes to which the SMFP and COPN law are dedicated;

(2) Maintaining the status quo is a reasonable alternative to the project – it is more cost-effective and does not appear to have an adverse effect on the PD;

---

[103] Ashland Hospital Proposed Findings at 45; Tr. at 99-103.
[104] VCU Health System Authority Letter of Opposition (AR Exhibit 14).

(3) The project's capital costs are high and not reasonable in light of the proposed project's relative benefit;

(4) There is known opposition to the proposed project; and

(5) The proposed project will likely have a negative impact on the utilization, costs, or charges of other service providers in PD 15, materially harming existing providers.

Respectfully submitted,

Vanessa MacLeod, JD
Adjudication Officer

September 19, 2023