



COMMONWEALTH of VIRGINIA

Karen Shelton, MD
State Health Commissioner

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October 30, 2023

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

RECEIVED

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VDH/OLC

RE: **COPN Request No. VA-8706**
HCA Services of Virginia
Planning District 15
Establish a specialized center for CT and MRI imaging

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:

1. The proposal for HDH to establish CT and MRI Services at Ashland ER and Imaging Center is inconsistent with the applicable standards of the SMFP and 8 Required Considerations of the Code of Virginia.

2. Underutilization of a CT service proximal to the proposed site demonstrates an additional CT would not expand access to HDH patients beyond the status quo.
3. There is a surplus of both CT and MRI scanners in PD 15.
4. There is documented opposition to the proposed project.
5. The proposed project is a duplication of services already available in the PD and would significantly decrease volumes of other providers of CT or MRI services in PD 15.
6. The project was in a competing cycle with a similar project which was preferred based on guidance from the Code of Virginia.
7. The status quo is more beneficial and a better alternative than the proposed project.

Sincerely,



Karen Shelton, MD
State Health Commissioner

Encl.
cc:

Thomas Franck, MD, MPH
Director, Chickahominy Health District
Deborah K. Waite
Virginia Health Information, Inc.
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Adjudication Officer
Erik Bodin,
Director, Division of Certificate of Public Need

**Recommended Case Decisions
Certificate of Public Need (COPN)
Request Numbers:**

**VA-8702
Bon Secours Memorial Regional Medical Center
Mechanicsville, Virginia
Planning District (PD) 15
Health Planning Region (HPR) IV
Establish a Specialized Center for CT and MRI Imaging**

**VA-8706
HCA Services for Virginia, Inc.
Ashland, Virginia
PD15
HPR IV
Establish a Specialized Center for CT and MRI Imaging**

I. Introduction

This document contains two recommended case decisions, submitted to the State Health Commissioner (hereinafter, "Commissioner") for consideration. It follows full review of the administrative record pertaining to the above-captioned applications, as well as the convening of an informal fact-finding conference (IFFC)¹ conducted in accordance with the Virginia Administrative Process Act² 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 endeavors described and proposed in these applications fall within the statutory definition of "project" contained in the COPN law, and thereby, require a Certificate to be issued before each respective project may be undertaken.⁴

¹ The IFFC was held on August 10, 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.

III. Statement of Facts

The factual basis underlying these recommendations consist of evidence in the administrative record, including, but not limited to, the applications giving rise to this review, the testimony of witnesses presented, and written documents prepared by the applicants at and following the IFFC, and the staff report on the proposed projects prepared by the Division of Certificate of Public Need ("DCOPN"). DCOPN is comprised of the Virginia Department of Health's professional health facilities planning staff.

Specific findings of fact are as follows:

VA-8702 – Bon Secours Memorial Regional Medical Center

1. Bon Secours Memorial Regional Medical Center ("Memorial Regional") is a Virginia, not-for-profit limited liability company. Bon Secours Richmond Health System is its sole member, also a Virginia, not-for profit limited liability company. The member and the company are both component entities of Bon Secours Mercy Health, Inc. health care system.
2. Memorial Regional proposes to expand its imaging department through the establishment of a specialized center for imaging with one Computed Tomography (CT) scanner and one Magnetic Resonance Imaging (MRI) scanner in a freestanding emergency department, the Bon Secours Ashland Emergency and Imaging Center.⁵
3. The Bon Secours Ashland Emergency and Imaging Center is proposed to be a site of the imaging department of Memorial Regional at 11400 North Lakeridge Parkway, Ashland, Virginia in Planning District (PD) 15, Health Planning Region (HPR) IV.
4. The total capital costs of the proposed project are \$17,119,892, which would be paid from accumulated reserves.⁶
5. The proposed opening date is October of 2025.
6. On July 19, 2023, DCOPN issued its staff report recommending conditional approval of this project.⁷
7. The administrative record on the proposed project closed on September 19, 2023.⁸

⁵ Memorial Regional COPN Application (Memorial Regional ("MR") AR Exhibit ("Ex.") 7); Memorial Regional COPN Application (MR AR Ex. 12).

⁶ Memorial Regional COPN Application Update at Section V (MR AR Ex. 12).

⁷ MR AR Ex. 19; HDH AR Ex. 12.

⁸ Tr. at 125.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

1. HCA Health Services of Virginia, Inc. is a Virginia stock corporation. HCA Health Services of Virginia d/b/a Henrico Doctors' Hospital ("HDH") would be the sole owner of the proposed Ashland ER and Imaging Center. The ultimate corporate parent of the proposed facility is HCA Healthcare, Inc. ("HCA").⁹
2. HDH proposes to establish a specialized center for CT and MRI imaging in a freestanding emergency department, Ashland ER and Imaging Center, which would be located at 10054 Sliding Hill Road, Ashland, Virginia in PD 15, HPR IV.
3. The total capital costs of the proposed project are \$39,008,000, which would be paid from accumulated reserves.¹⁰
4. The proposed opening date is October of 2026.
5. On July 19, 2023, DCOPN issued its staff report recommending denial of the proposed project.¹¹
6. The administrative record on the proposed project closed on September 19, 2023.¹²

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.¹³ 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 projects with the current regulatory language provided in the State Medical Facilities 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.

General and specific reference is hereby made to the administrative record, including, but not limited to DCOPN Staff Reports, exhibits, letters of opposition and support, and post-IFFC submissions.

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

⁹ HDH COPN Application at 3 (HDH AR Ex. 3).

¹⁰ HDH COPN Application at 48 (HDH AR Ex. 3).

¹¹ MR AR Ex. 19; HDH AR Ex. 12.

¹² Tr. at 125.

¹³ Va. Code § 32.1-102.3.

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.

PD 15 had a higher population growth rate than Virginia in the 2010 to 2020 decade, growing at a rate of 11.8% compared to Virginia which grew at 8.1% during the same time period.¹⁴ PD 15, in HPR IV in central Virginia, had a population just over 1 million in 2020.¹⁵ The projected growth for PD 15 is also expected to outpace that of Virginia between 2020 and 2030. The PD 15 projected growth rate is 8.6% while Virginia's is 5.6%.¹⁶

The location of each of the proposed projects is in Hanover County. Hanover County had a growth rate of 10.3% during the 2010 to 2020 decade and is projected to grow 7.5% between 2020 and 2030.¹⁷

The projected rate of change for the 65+ aged cohort is also projected to be higher in PD 15 than that of Virginia overall.¹⁸ The 65+ cohort for PD 15 is projected to see an increase of 29.9% between 2020 and 2030, while Virginia is projected to see growth of 27.4% in this age group during the same decade.¹⁹ The rate of growth rate projected for the 65+ cohort in Hanover County is much higher at 38.6%.²⁰ This is significant as this age group uses medical resources, including diagnostic services, at a rate much higher than the rest of the population.

Hanover County's poverty rate is 5.2%, the lowest of localities in PD 15.²¹

Greater Richmond Transit Company serves as public transportation for Richmond City as well as parts of Chesterfield and Henrico Counties.²² It does not serve Hanover County; however, Hanover Dash is a service in Hanover County for individuals 65+ or disabled who can pay a flat \$6.00 rate for a one-way ride for medical appointments and specific other needs.²³ Hanover Dash covers Hanover County and a 7-mile extension beyond the County's boundaries; the ride must begin or end within Hanover County's boundaries.²⁴

Currently, there are 60 COPN-authorized CT scanners in PD 15.²⁵ Five of these are used for CT simulation only and two are intraoperative scanners such that their restricted use should remove their volume from consideration.²⁶ Only the 53 diagnostic scanners are included in this

¹⁴ DCOPN Staff Report at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 2-3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 11.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ *Id.* at 5-6.

analysis. There are seven authorized CT sites in PD 15 that are in or with freestanding emergency departments.²⁷ Two of them are not yet operational.²⁸

Currently, there are 42 COPN-authorized diagnostic MRI scanners in PD 15.²⁹ VHI reported data on 34 fixed-site MRI scanners in PD 15 for 2021, the latest year for which such data are available.³⁰ Twenty-one of these were reported by acute care hospitals and 13 were in freestanding facilities.³¹ The hospital-based MRI scanners averaged 3,798 procedures per MRI scanner, 76% of the SMFP threshold, and freestanding scanners averaged 3,349 procedures per scanner, 67% of the SMFP threshold.³² In aggregate, MRI scanners in PD 15 reported volumes equal to 72.5% of the SMFP standard in 2021.³³

Residents in the vicinity of the proposed projects have more than adequate access to CT and MRI services.

VA-8702 – Bon Secours Memorial Regional Medical Center

The proposed project is located just off Interstate 95 at the intersection of Lewistown Road and North Lakeridge Parkway, easily accessible for travelers, residents and emergency vehicle from major highways, including I-95 and U.S. Route 1.

In 2022, Memorial Regional's CT utilization rate was at 178.6% of the SMFP standard, and the MRI utilization rate was at 105.8% of the SMFP standard.³⁴

The proposed site for Memorial Regional's CT and MRI services within its primary service area would improve access for Bon Secours patients located in the growing Hanover County and for the exceptionally high-growth senior population in Hanover County.³⁵

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

The proposed Ashland ER and Imaging Center will be located just off of Interstate 95 and approximately 3 miles from Interstate 295, making it easily accessible for travelers and residents in the area.

The proposed project's location is approximately eight minutes' drive away from HDH's Hanover Emergency Center, and within less than 20 minutes' drive time from three HDH hospitals. The drive times from the proposed site to the other HDH Hospitals in PD 15 are as follows:

- HDH-Parham Hospital: 11 minutes;
- HDH-Forest Hospital: 16 minutes; and

²⁷ *Id.* at 5,7.

²⁸ *Id.*

²⁹ *Id.* at 8-9.

³⁰ *Id.* at 7-8.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Memorial Regional Application, Section IV.A at 31-32 (MR AR Ex. 7).

³⁵ *Id.* at Tables IV.B.1.i, IV.B.2.v, IV.B.2.vi.

- HDH-Retreat Hospital: 16 minutes.³⁶

The proposed site for HDH's CT and MRI services is within HDH-Forest's primary service area. Currently, HDH-Forest operates one underutilized CT scanner in a freestanding emergency department in Hanover County at the Hanover Emergency Center, which is located approximately 4.2 to 6.7 miles,³⁷ a 7 minutes' drive,³⁸ from the proposed site (depending on the route). The Hanover Emergency Center CT operated at 46% of the SMFP threshold according to 2021 VHI data and has adequate capacity for additional HDH imaging patients.³⁹ There is no evidence Hanover Emergency Center, which opened in 2014, cannot accommodate HDH's existing patient population.

HDH patients already have the opportunity to utilize CT services of Hanover Emergency Center, yet it is underutilized.

In addition, there are 10 imaging centers not located at acute care hospitals within 17 minutes of the proposed HDH Ashland ER and Imaging Center, seven of which have MRI scanners as well as CTs.⁴⁰ HCA's Scott's Addition freestanding emergency department, set to open in late 2024, is about an 11 minutes' drive from the proposed project's location and 13 minutes from the Hanover Emergency Center.⁴¹

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;**

Potentially affected service providers have been notified and are aware of the proposal. Each proposed project received considerable community support, and some opposition. VCU Health System Authority opposed both projects.⁴² Bon Secours Health System opposes HDH's proposed project; and HCA opposes Memorial Regional's proposed project. National Nurses United submitted a letter of opposition to HDH's proposed project.⁴³

³⁶ DCOPN's Post-IFFC Proposed Findings of Fact Relevant to IFFCs for COPN Request Nos. VA-8702 and 8706 at 7.

³⁷ Bon Secours Richmond Health System Letter of Opposition at 1 (HDH AR Ex. 7); Bon Secours Memorial Regional Medical Center LLC's Closing Argument, Proposed Findings of Fact, Conclusions of Law and Recommendations at 3.

³⁸ DCOPN's Post-IFFC Proposed Findings of Fact Relevant to IFFCs for COPN Request Nos. VA-8702 and 8706 at 7.

³⁹ Bon Secours Richmond Health System Letter of Opposition at 1-2 (HDH AR Ex. 7).

⁴⁰ DCOPN's Post-IFFC Proposed Findings of Fact Relevant to IFFCs for COPN Request Nos. VA-8702 and 8706 at 7.

⁴¹ Tr. at 56.

⁴² VCU Health System Authority Letter of Opposition (HDH AR Ex. 10, MR AR Ex. 16).

⁴³ National Nurses United Letter of Opposition dated September 12, 2023.

(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;

VA-8702 – Bon Secours Memorial Regional Medical Center

Given the high utilization of Memorial Regional's CT and MRI scanners, status quo does not appear to be a viable option. Reallocating a scanner from another Bon Secours facility is not feasible.

In 2022, Memorial Regional's three existing CT units performed 39,652 CT scans, placing utilization at 178.6% of the SMFP utilization standard.⁴⁴ VHI data for 2021 shows high utilization of all Bon Secours' CT scanners operational at that time with the exception of Bon Secours Imaging Center Innsbrook (16% of the SMFP threshold). Bon Secours has already been authorized and reallocated that CT scanner to Bon Secours Imaging Center Reynolds Crossing, newly operational in April 2022.

Memorial Regional's 2 existing MRI units performed 10,588 MRI scans, placing 2022 utilization at 105.8% of the SMFP's utilization standard.⁴⁵

Due to the number of CT and MRI scans Memorial Regional performs on patients residing in Hanover County, its proposed project is likely to decant volumes from the hospital and not likely to reduce volumes of other existing providers significantly, all consistent with this SMFP standard. Adding CT or MRI services on the campus of Memorial Regional would not improve geographic accessibility in Hanover County, an area of Memorial Regional's primary service area (PSA) with high 65 and older population growth.

The proposed project is more beneficial than the status quo. No reasonable alternative to the proposed project exists.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HCA has two authorized CT scanners in PD 15 that are not yet performing CT scans. One of them, to be located at the Scott's Addition ER, was approved less than a year ago to address institutional need at HDH hospitals. Hanover Emergency Center, which has been in operation since 2014, is an HDH facility that offers CT services and is only a 7 minutes' drive from the proposed Ashland ER and Imaging Center. The CT volume breakdown presented in COPN Request No. VA-8644 shows Hanover Emergency Center performed 3,433 CT scans in 2021, 46.4% of the SMFP threshold.

Ample CT capacity already exists for HDH patients in an established and underutilized freestanding emergency department in Hanover County.

There is a surplus of MRI scanners in PD 15 and MRI volumes at HDH facilities are 43.5% of the SMFP threshold, not approaching demonstration of institutional need.

⁴⁴ MR IFFC Ex. 3 at 1.

⁴⁵ *Id.* at 2.

The status quo is more beneficial than the proposed project because it avoids unnecessary duplication of services.

(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;

VA-8702 – Bon Secours Memorial Regional Medical Center

The total capital costs of the proposed project are \$17,119,892, which would be paid from accumulated reserves.⁴⁶ The total costs for the project are reasonable in comparison to similar projects. For example, COPN No. VA-04823 was approved in PD 15 in January 2023 at a capital cost of \$16,855,536.⁴⁷

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

The total capital costs of the proposed project are \$39,008,000, which would be paid from accumulated reserves.⁴⁸ The total costs for the project are high. By comparison, these costs are nearly four times the costs of other similar projects. For example, COPN No. VA-04823 was approved in PD 15 in January 2023 at a capital cost of \$16,855,536 at nearly half the cost of the proposed project.⁴⁹ The capital costs are not reasonable with regard to the proposed project's relative benefit.

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

Both applicants appear to be committed to providing financial accessibility to patients in need.

VA-8702 – Bon Secours Memorial Regional Medical Center

Memorial Regional's services are available to anyone, regardless of their ability to pay or the source of payments. Bon Secours also offers reduced rates and free care to qualifying individuals and families. Memorial Regional provided a higher percentage of charity care than the mean for PD 15 in 2020.⁵⁰ The Pro Forma Income Statement for the proposed project proffers 2.1% charity care, higher than the latest HPR IV mean. Bon Secours has committed to a

⁴⁶ Memorial Regional COPN Application Update at Section V (MR AR Ex. 12).

⁴⁷ DCOPN Staff Report at 19-22.

⁴⁸ HDH COPN Application at 48 (HDH AR Ex. 3).

⁴⁹ DCOPN Staff Report at 20-21.

⁵⁰ *Id.* at 23.

charity care condition of 2.1% if its proposed project is approved.⁵¹ I believe that, if the project is approved, the charity care condition of at least 2.1% of patient revenue derived from CT and MRI services from the proposed project is appropriate.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HDH has provided assurances that CT and MRI services at the proposed facility will be accessible to all patients, regardless of financial considerations. In 2020, the most recent data available, HDH reported providing charity care at a rate of 1.06% of its gross revenues, which is slightly less than the average of HPR IV of 1.3%.⁵² The Pro Forma Income Statement for the proposed project proffers a charity care contribution equal to 1% of gross revenues derived from CT and MRI services at Ashland ER and Imaging Center in Years 1 and 2 of operation, less than the average HPR IV contribution.⁵³

I believe that, if the project is approved, the applicant should be subject to the most recently available HPR IV mean charity percentage (1.3%) of gross patient revenues derived from CT and MRI services.

(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 projects.

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

Each project proposes to establish a specialized center for CT and MRI imaging.

Regarding travel time,⁵⁴ PD 15 has considerable access to CT and MRI services according to the SMFP standard.

Regarding the need for a new fixed site or mobile service,⁵⁵ according to 2021 VHI data, the most recent available data, there were 42 CT scanners in PD 15 with an average utilization of 8,242 scans, exceeding the SMFP standard at 111% percent of the SMFP threshold.⁵⁶ Several CT scanners have been authorized in PD 15 since the latest VHI data were published.⁵⁷ The current DCOPN inventory accounts for 60 CT scanners, 53 of which are for diagnostic imaging use.⁵⁸

⁵¹ Bon Secours Memorial Regional Medical Center LLC's Closing Argument, Proposed Findings of Fact, Conclusions of Law and Recommendations at 20.

⁵² DCOPN Staff Report at 23.

⁵³ *Id.*; HDH COPN Application (HDH Ex. 3).

⁵⁴ 12 VAC 5-230-90; 12 VAC 5-230-140.

⁵⁵ 12 VAC 5-230-100.

⁵⁶ DCOPN Staff Report at 4.

⁵⁷ *Id.* at 26.

⁵⁸ *Id.* at 6.

Considering the SMFP standard of 7,400 scans for the relevant reporting period, the 346,165 scans performed in PD 15 in 2021 would represent 47 fully utilized CT scanners, six fewer than are currently authorized. In other words, PD 15 has a surplus of 6 CT scanners.

According to 2021 VHI data, the most recent available data, there were 34 fixed site MRI scanners in PD 15 with an average utilization of 3,626 scans, 72.5% percent of the SMFP threshold.⁵⁹ The current DCOPN inventory accounts for 42 diagnostic MRI scanners, 39 of them fixed site scanners.⁶⁰ Considering the SMFP standard of 5,000 procedures for the relevant reporting period,⁶¹ the 123,297 scans performed in PD 15 in 2021 would represent 24.6 (25) fully utilized MRI scanners, fourteen fewer than are currently authorized. In other words, PD 15 has a surplus of 14 MRI scanners.

Each proposed project seeks to expand an existing service, not establish a new fixed site or mobile service.

VA-8702 – Bon Secours Memorial Regional Medical Center

Memorial Regional's proposed project is evaluated as the expansion of an existing service under 12 VAC 5-230-110 and 12 VAC 5-230-160.

The proposed Memorial Regional project will increase geographical access to CT and MRI services.

According to 2021 VHI data, Memorial Regional's CT scanners performed an average of 12,231 CT scans per scanner, 165.3% of the SMFP guideline, demonstrating institutional need for additional capacity.⁶² In 2022, the applicant reports Memorial Regional's CT scanners performed an average of 13,217 CT scans per scanner, 179% of the SMFP guideline.⁶³ Memorial Regional is proposing a separate location, Bon Secours Ashland Emergency and Imaging Center at which to add one CT scanner to serve existing Bon Secours patients in its primary service area north of the main campus. The proposed project will primarily serve existing Bon Secours patients⁶⁴ and is unlikely to significantly reduce utilization of an existing provider.

In 2021, Memorial Regional's MRI scanners performed an average of 4,959 MRI scans per scanner, 99.2% of the SMFP threshold.⁶⁵ In its application, Memorial Regional reported 10,588 MRI scans in 2022, an average of 5,294 MRI scans per scanner, 106% of the SMFP threshold, demonstrating a need for additional capacity.⁶⁶ Memorial Regional is proposing a separate location, Bon Secours Ashland Emergency and Imaging Center at which to add one MRI scanner to serve existing Bon Secours patients in its primary service area north of the main campus, as allowed by this guideline. The nearest existing MRI provider site to the proposed site

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 9.

⁶¹ 12 VAC 5-230-150.

⁶² DCOPN Staff Report at 4, 27.

⁶³ MR IFFC Ex. 3 at 1; Tr. at 47.

⁶⁴ Tr. at 37.

⁶⁵ DCOPN Staff Report at 8.

⁶⁶ MR IFFC Ex. 3 at 2; Tr. at 48.

is Memorial Regional's main campus. The proposed project is unlikely to significantly reduce utilization of existing providers of MRI services.

Memorial Regional satisfies the requirements for consideration under the institutional need for expansion in 12 VAC 5-230-80 and has demonstrate a need for both CT and MRI services.

According to the current VHI efficiency comparison, Memorial Regional demonstrated higher levels of community support and lower costs than HDH.⁶⁷

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HDH requests COPN approval to establish Ashland ER and Imaging Center with one CT scanner and one MRI scanner to meet the needs of HDH's existing patients and as a first step to building an acute care hospital in Ashland over time.⁶⁸ With regard to the CT scanner, HDH's proposed project seeks to expand an existing service under 12 VAC 5-230-110. With regard to the MRI scanner, HDH's proposed project seeks to add a new fixed site service under 12 VAC 5-230-150.

Based on volumes provided in COPN Request No. VA-8644 requesting CT services at Scott's Addition ER, Hanover Emergency Center performed 3,433 (46% of SMFP standard) and West Creek had done 0 CT scans.⁶⁹ According to HDH's updated 2022 CT volumes, its three hospital-based and two outpatient CT scanners performed 50,655 CT scans that year on six CT scanners for an average of 8,443 scans per scanner, 114% of the SMFP threshold.⁷⁰ In October of 2022 HDH was authorized to relocate the CT scanner at West Creek (which had no CT volumes) to Scott's Addition ER to make use of an unutilized CT resource and address this HDH institutional need at Scott's Addition ER, expected to be operational in 2024.⁷¹

Hanover Emergency Center, performing at 46% of the SMFP, is an 8 minutes' drive to the proposed location; and the approved Scott's Addition Emergency Center, which should be operational in 2024, is within 10 miles,⁷² an 11 minutes' drive of the proposed location.

These numbers demonstrate a maldistribution of HDH's CT resources in PD 15. HDH's CT service need does not exceed its current service capacity to provide such a service because the Hanover County Emergency Center could meet the needs of HDH's existing patients near the proposed project's location. The proposed project's location is not geographically remote, especially considering its proximity to other HDH facilities. Duplicating the maldistributed Hanover County CT capacity four to six miles from an existing underutilized resource will not

⁶⁷ DCOPN Staff Report at 34; DCOPN's Post-IFFC Proposed Findings of Fact Relevant to IFFCs for COPN Request Nos. VA-8702 and 8706 at 8.

⁶⁸ HCA Health Services of Virginia, Inc. d/b/a HDH's Proposed Findings of Fact and Conclusions of Law at 1.

⁶⁹ Bon Secours Richmond Health System Letter of Opposition at 1-2 (HDH Ex. 7); HDH AR ex. 3; DCOPN Staff Report at 27.

⁷⁰ HDH COPN Application at 37-38.

⁷¹ DCOPN Staff Report at 27.

⁷² Bon Secours Memorial Regional Medical Center LLC's Closing Argument, Proposed Findings of Fact, Conclusions of Law and Recommendations at 4.

improve access or decant volumes from HDH's existing CT scanners but would establish a duplicative and unneeded service.

HDH's proposed project does not satisfy the requirements for consideration under the institutional need for expansion in 12 VAC 5-230-80 for CT services. To the extent HDH-Forest has CT patients originating from Hanover County, HCA could redirect such patients to the Hanover Emergency Center. Moreover, the Scott's Addition ER, which also will operate as a department of HDH-Forest once operational, also will offer CT services such that HDH-Forest CT patients also could be redirected to it.

HDH's application states that it is seeking the addition of MRI as a new fixed site service in PD 15. PD 15 has a calculated surplus of 14 MRI scanners under the relevant SMFP computation methodology.⁷³ There is no need for an additional MRI scanner in PD 15.

In 2021, HDH MRI scanners performed an average of 2,176 MRI scans on its four existing MRI scanners, 43.5% of the SMFP threshold. HDH-Forest, with which the proposed MRI scanner would presumably be licensed, performed 5,189 MRI scans on two scanners, 2,595 per scanner, or 51.9% of the SMFP standard.⁷⁴ HDH does not have an institution-specific need for additional MRI capacity. HDH does not satisfy the requirements for consideration under the institutional need for expansion in 12 VAC 5-230-80 for MRI services.

According to the current VHI efficiency comparison, HDH demonstrated lower levels of community support and higher costs than Bon Secours.⁷⁵

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.

PD 15 is served by multiple thriving providers of CT and MRI imaging services.

VA-8702 – Bon Secours Memorial Regional Medical Center

The proposed project is based on an alleged institutional need to improve access for existing patients of Memorial Regional. It would not foster beneficial institutional competition.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

The proposed project is partially based on an alleged institutional need to improve access for existing patients of HDH and a stated desire to place and grow services in Hanover County. It would not foster beneficial institutional competition.

⁷³ 12 VAC 5-230-150.

⁷⁴ DCOPN Staff Report at 8; Bon Secours Letter of Opposition at 2 (HDH AR Ex. 7).

⁷⁵ DCOPN Staff Report at 34.

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.

PD 15 is well served by hospital-based, freestanding and specialty physician-operated imaging services. There is a surplus of both CT scanners and MRI scanners in PD 15 with highest utilization occurring in acute hospital imaging services.

VA-8702 – Bon Secours Memorial Regional Medical Center

Memorial Regional is an acute care hospital within the Bon Secours Richmond Health System. In PD 15 there are four Bon Secours acute care hospitals and four outpatient imaging sites, two of which are freestanding emergency departments.

In 2021, the Bon Secours Richmond Health System's 12 CT scanners in PD 15 average 9,989 scans per scanner, or 135% of the SMFP threshold for CT.⁷⁶ Bon Secours Richmond Health System's 12 MRI scanners in PD 15 performed an average of 3,388 scans per scanner, or 67.8% of the SMFP threshold for MRI.⁷⁷

In 2022, the applicant reports Memorial Regional's CT scanners performed an average of 13,217 CT scans per scanner, 179% of the SMFP guideline.⁷⁸ Memorial Regional reported 10,588 MRI scans in 2022, an average of 5,294 MRI scans per scanner, 106% of the SMFP threshold.⁷⁹ These high utilization rates demonstrate a need for additional capacity for Memorial Regional.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HDH is part of HCA Health Services of Virginia, Inc., as are Chippenham, Johnston & Willis Hospitals within PD 15. There are also three affiliated freestanding emergency departments and two additional freestanding emergency departments authorized but not yet operational. In 2021, the system's 15 CT scanners in PD 15 average 8,894 scans per scanner, or 120% of the SMFP threshold for CT. Its 10 MRI scanners in PD 15 performed an average of 3,572 scans per scanner, or 71.4% of the SMFP threshold for MRI.

Hanover CT, located nearly 6 miles from the project site, has a CT utilization rate of 46.4% of the SMFP threshold. MRI volumes at HDH facilities are at 43.5% of the SMFP threshold. These low utilization rates do not demonstrate a need for additional capacity as per the project's proposal.

⁷⁶ DCOPN Staff Report at 4.

⁷⁷ *Id.* at 36.

⁷⁸ MR IFFC Ex. 3 at 1.

⁷⁹ *Id.* at 2.

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.

Regarding staffing, each applicant provided assurances that their respective CT and MRI services would be under the direction or supervision of one or more qualified physicians.

VA-8702 – Bon Secours Memorial Regional Medical Center

The projected costs of the proposed project are reasonable, and the applicant will fund the capital costs in their entirety with internal reserves. The Pro Forma projects a positive net income in excess of \$2 million each of the first two years following implementation of the proposed project.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

The Ashland ER and Imaging Center project's anticipated total capital cost is exceptionally high. The Pro Forma projects a positive net income each of the first two years following implementation of the proposed project.

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 projects do 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.

No additional factors relating to the review of these projects 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.

The proposed project is not proposed by a teaching hospital and is opposed by VCU,⁸⁰ an academic medical center with a teaching and research mission located near to the proposed projects' locations.

VA-8702 – Bon Secours Memorial Regional Medical Center

Memorial Regional is not associated with a teaching hospital or medical school but operates a school of nursing health professions and collaborates with colleges, universities and allied health schools to facilitate training.

Memorial Regional's proposed project addresses an institution-specific need, and, as such, is unlikely to negatively affect VCU.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HDH is not associated with a teaching hospital or medical school, but HCA Virginia Health System has 11 Graduate Medical Education (GME) programs and recently partnered with the Galen College of Nursing to open Galen's first Virginia campus in Richmond.

Because the proposed project does not address an institution-specific need and would cause a maldistribution and unnecessary duplication of HDH's resources within PD 15, it would likely negatively affect a teaching hospital or medical school in the area to be served and introduce directly harmful competition to VCU.

B. Conclusion

Residents in PD 15 have adequate access to CT and MRI services.

It is not prudent to approve both of these projects.

The Code of Virginia provides guidance when competing applications are received, in the form of factors for which to grant preference to one proposal over another.

From a planning perspective, the reason to duplicate these services is to address an institutional need by an existing provider to decant high volumes and provide a more convenient location for existing CT and MRI patients.

These factors favor Memorial Regional's project.

⁸⁰ VCU Health System Authority Letter of Opposition (HDH AR Ex. 10, MR AR Ex. 16).

VA-8702 – Bon Secours Memorial Regional Medical Center

The proposed Memorial Regional project will increase geographical access as well as financial accessibility in an area of PD 15 experiencing growth, particularly in the 65 and older cohort. Of the two competing proposals, Memorial Regional's expands geographic access to CT and MRI services within a 30-minute drive to the greatest extent. The proposed project will decant high utilization from the imaging services on Memorial Regional's campus.

The proposed location would be convenient to existing imaging patients of Memorial Regional that live north of its main campus within its primary service area, and its implementation is not likely to decrease volumes of existing providers. The project is wholly feasible financially and with regard to human resources with high likelihood of achieving projected volumes. It is more beneficial than the status quo.

Based on the administrative record and in light of the discussion above, I conclude that Memorial Regional has demonstrated an institutional need for the proposed project.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

HDH's proposal expands geographic access to CT and MRI services within a 30-minute drive to a lesser extent than Memorial Regional's. The applicant argues that Ashland ER and Imaging Center is intended to fill an institution-specific need for HDH's patients living in the norther part of its primary service area. However, the underutilized Hanover Emergency Center, an HDH freestanding emergency department, is only 4 to 6 miles away from the proposed project. Also, Scott's Addition site was approved in 2022 to fill HDH's institution-specific need. It is not practical to consider duplicating the existing capacity at these facilities within a few minutes' drive. The proposed project is unnecessary.

The proposed project is inconsistent with applicable criteria and standards of the SMFP and the Eight Required Considerations of the Code of Virginia with regard to a fixed CT site and a fixed MRI site. There is no demonstration of an institution-specific need for CT or MRI services as proposed by this project. Though the proposed is wholly feasible financially and with regard to staffing, its implementation would be a duplication of services in a PD where there is a surplus of both CT and MRI scanners.

IV. Recommendation

VA-8702 – Bon Secours Memorial Regional Medical Center

Based on review of the evidence contained in the administrative record, the proposed project merits conditional approval under the COPN law. Memorial Regional should receive a Certificate authorizing the project, issued with the stated charity care condition of 2.1% of Bon Secours Ashland Emergency and Imaging Center's gross patient revenue derived from CT and MRI services.

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

1. The proposal to expand CT and MRI Services of Memorial Regional through the establishment of Bon Secours Ashland Emergency and Imaging Center is generally consistent with the applicable standards of the SMFP and the 8 Required Considerations of the Code of Virginia.
2. The applicant has a history of service to Hanover County and proffers higher than average charity care for the proposed project.
3. The proposed project will increase geographic and financial accessibility in a growing area of PD 15, particularly in the population segment with higher utilization of imaging services.
4. The applicant has demonstrated an institution-specific need for both CT and MRI services and the proposed project will not significantly decrease volumes of existing providers.
5. The proposed project is feasible financially and with regard to human resources in the short and long terms.
6. The proposed project is more beneficial than the status quo.
7. The proposed project will not have a negative impact on the utilization, costs or charges of other providers of CT or MRI services in PD 15.
8. Memorial Regional's project has preference over competing applications in the current review, based upon guidance within the Code of Virginia for competing applications.

VA-8706 – HCA Services of Virginia, Inc. d/b/a Henrico Doctors' Hospital

Based on review of the evidence contained in the administrative record, the proposed project merits denial under the COPN law.

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

1. The proposal for HDH to establish CT and MRI Services at Ashland ER and Imaging Center is inconsistent with the applicable standards of the SMFP and the 8 Required Considerations of the Code of Virginia.
2. Underutilization of a CT service proximal to the proposed site demonstrates an additional CT would not expand access to HDH patients beyond the status quo.
3. There is a surplus of both CT and MRI scanners in PD 15.
4. There is documented opposition to the proposed project.
5. The proposed project is a duplication of services already available in the PD and would significantly decrease volumes of other providers of CT or MRI services in PD 15.

6. The project was in a competing cycle with a similar project, which was preferred based on guidance within the Code of Virginia.
7. The status quo is more beneficial and a better alternative than the proposed project.

Respectfully submitted,



Vanessa MacLeod, JD
Adjudication Officer

October 16, 2023