



COMMONWEALTH of VIRGINIA

Karen Shelton, MD  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

RECEIVED  
NOV 09 2023  
VDH/OLC

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

November 3, 2023

Emily W.G. Towey  
Hancock Daniel  
4701 Cox Road, Suite 400  
Glen Allen, Virginia 23060

RE: **COPN Request No. VA-8723**  
**Wellmont Health System d/b/a Norton Community Hospital**  
**Planning District 1**  
**Add one fixed CT scanner**

Dear Ms. Towey:

In accordance with Chapter 4, Article 1.1 of Title 32.1 of the Code of Virginia of 1950 (the Code), as amended, I reviewed the application and all supporting documents submitted by Wellmont Health System d/b/a Norton Community Hospital for Certificate of Public Need (COPN) Request No. VA-8723 and the documents pertaining to the Incomplete Determination by the Department of COPN (DCOPN) and subsequent procedural Informal Fact-Finding Conference (IFFC) outcome.

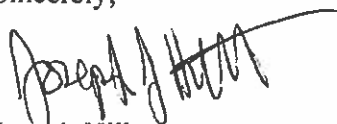
As required by the Code, I have considered all factors that must be taken into account in a determination regarding the above-referenced procedural IFFC, and I have concluded that **approval** of the request is warranted based on the language in §32.1-102.6(D) in conjunction with §32.1-102.6(A), supports the position that COPN law builds a mechanism to supplement an incomplete application. Additionally, with the exception of DCOPN's timeline to notify the applicant of their completeness determination, a reasonable reading of the COPN law and regulations are not necessarily in conflict; in particular, the last sentence of 12-VAC5-220-190, which allows an applicant to provide additional information to complete an application at least five days before a batch review cycle begins.

The fifth day prior to the relevant review cycle would fall on November 6, 2023; the applicant provided the missing signature prior to this deadline. As a result, I am authorizing Wellmont Health System d/b/a Norton Community Hospital's COPN Req. No. VA-8723 to be considered complete within the allowable deadline and to be included with the Batch Group D review cycle beginning November 10, 2023.

Ms. Emily W.G. Towey  
Wellmont Health System d/b/a Norton Community Hospital  
November 3, 2023  
Page 2

Should you have any additional questions or need further clarification, please feel free to contact DCOPN Director Erik Bodin at (804) 367- 1889 or by email at Erik.Bodin@VDH.Virginia.Gov.

Sincerely,



Joseph Hilbert  
Deputy Commissioner for Governmental and  
Regulatory Affairs,  
State Health Commissioner's Delegate

Enclosure

cc: Allyson Tysinger, Senior Assistant Attorney General, Commonwealth of Virginia  
Erik Bodin, Director, Division of Certificate of Public Need  
Vanessa MacLeod, Adjudication Officer

---

**Recommended Case Decision  
Certificate of Public Need (COPN)  
Request Number VA-8723  
Wellmont Health System d/b/a Norton Community Hospital  
Norton, Virginia  
Planning District (PD) 1  
Health Planning Region III  
Application to add one fixed CT scanner**

---

**I. Introduction**

This document is a recommended case decision, submitted to the delegate of the State Health Commissioner (hereinafter, "Commissioner") for consideration.<sup>1</sup> It follows full review of the administrative record pertaining to the above-captioned application's submission, as well as the convening of an informal fact-finding conference (IFFC)<sup>2</sup> conducted in accordance with the Virginia Administrative Process Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

**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,<sup>6</sup>

---

<sup>1</sup> Va. Code § 2.2-604.

<sup>2</sup> The IFFC was held on October 26, 2023. A certified reporter's transcript ("Tr.") of the IFFC is in the administrative record ("AR").

<sup>3</sup> Va. Code § 2.2-4000 *et seq.*

<sup>4</sup> Va. Code § 32.1-102.1:2 (A); (a "Certificate" or COPN).

<sup>5</sup> Va. Code §§ 32.1-102.1 and 32.1-102.3.

<sup>6</sup> I affirmatively and purposely have not reviewed the application for Norton's proposed project beyond the signature page for Section VI. The present recommendation addresses a discrete, preliminary, procedural issue only, and does not in any way touch the merits of the project proposed in the application.

written documents prepared by the applicant at and following the IFFC, and the documents prepared by the Division of Certificate of Public Need ("DCOPN").

Specific findings of fact are as follows:

1. On August 24, 2023, Wellmont Health System d/b/a Norton Community Hospital ("Norton") submitted a letter of intent to seek approval to add one CT scanner at Norton Community Hospital.<sup>7</sup>
2. Norton submitted their COPN application to DCOPN on October 2, 2023.<sup>8</sup>
3. The COPN application submission deadline for the November 10, 2023 Batch Group D review cycle was on October 2, 2023.<sup>9</sup>
4. DCOPN is comprised of the Virginia Department of Health's professional health facilities planning staff. On October 10, 2023, DCOPN acknowledged receipt of Norton's application, and notified Norton of the Authorizing Officer's missing signature in Section VI of the application.<sup>10</sup> DCOPN determined the application to be incomplete and unsuitable for review in the November 10, 2023 Batch Group D review cycle.<sup>11</sup>
5. On October 10, 2023, Norton submitted a copy of the Authorizing Officer's signature on Section VI of the application, dated October 1, 2023, and requested reconsideration.<sup>12</sup>
6. On October 12, 2023, DCOPN determined that Norton's application remained unsuitable for review despite the subsequent submission of the Authorizing Officer's signature on Section VI of the application.<sup>13</sup>
7. The administrative record for this IFFC proceeding closed on November 1, 2023.<sup>14</sup>

**A. The Proposed Application in Relation to the Statutory and Regulatory Procedures**

Regarding the administrative procedures for the review of COPN applications, the primarily relevant statutory language is found at Virginia Code § 32.1-102.6; and the current, relevant regulatory guidance is found in the Virginia Administrative Code (VAC) at 12 VAC 5-220-10 *et seq.*

In conformity with Virginia Code § 32.1-102.6(A), a COPN applicant "shall file a completed application for a certificate with the Department ... An application completed for review shall be considered complete when all relevant sections of the application form have responses. The applicant shall provide sufficient information to prove public need for the requested project exists without the addition of supplemental or supporting material at a later

---

<sup>7</sup> IFFC Exhibit ("Ex.") 1; AR Ex. 1.

<sup>8</sup> IFFC Ex. 1, 2; AR Ex. 1, 3.

<sup>9</sup> AR Ex. 2 at 2.

<sup>10</sup> IFFC Ex. 4; AR Ex. 4, 5.

<sup>11</sup> IFFC Ex. 4 at 1-2; AR Ex. 5.

<sup>12</sup> IFFC Ex. 3 at 3; AR Ex. 6 at 4.

<sup>13</sup> AR Ex. 8 at 1.

<sup>14</sup> Tr. at 42.

date . . . Nothing in this section shall prevent the Department from seeking, at its discretion, additional information from the applicant or other sources.”

Here, DCOPN determined that the only missing information in Norton’s application was one signature.<sup>15</sup> Based on this missing signature (albeit later submitted), DCOPN denied review of the application for the relevant batch review cycle.<sup>16</sup>

Norton requests consideration of its application in the Batch Group D review cycle beginning November 10, 2023 because it provided a copy of the signature within the timeframe for the provision of additional information.<sup>17</sup> Further, the applicant argues that DCOPN’s application of its discretion to seek additional information is applied disparately;<sup>18</sup> and should be exercised to allow for the submission of this signature.<sup>19</sup>

Pursuant to the fourth sentence in Virginia Code § 32.1-102.6(D), “[i]f the application is not determined to be complete within 40 calendar days from submission, the application shall be refiled in the next batch for like projects.”<sup>20</sup> The applicant argues this language allows applicants additional time, specifically 40 calendar days, to provide information to complete an incomplete application.<sup>21</sup> Yet, the first sentence of Virginia Code § 32.1-102.6(D) reads, “[t]he Department shall commence the review of each completed application upon the day which begins the appropriate batch review cycle. . . .” The appropriate review cycle begins on November 10, 2023. By contrast, 40 calendar days from submission falls on November 13, 2023. Given this discrepancy, the applicant’s interpretation of the fourth sentence is not in harmony with the instruction within the first sentence of the same subsection.

Nonetheless, this language in § 32.1-102.6(D) in conjunction with § 32.1-102.6(A), supports the position that the COPN law builds in a mechanism to supplement an incomplete application.

The relevant procedures for filing an application established by DCOPN are found in the Virginia Administrative Code. Per DCOPN’s currently available guidance found at 12 VAC 5-220-190,

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable and the application fee submitted. Additional information required to complete an application shall be submitted to the department and the appropriate regional health planning agency at least five

---

<sup>15</sup> AR. Ex. 4.

<sup>16</sup> AR Ex. 4, 8.

<sup>17</sup> AR Ex. 7, 9; Norton’s Proposed Findings and Conclusions of Law at 1.

<sup>18</sup> Tr. at 26-34.

<sup>19</sup> AR. Ex. 7 at 2.

<sup>20</sup> See also 12 VAC 5-220-230(B).

<sup>21</sup> AR. Ex. 7 at 1; Norton’s Proposed Findings and Conclusions of Law at 5.

days prior to the first day of a review cycle to be considered complete for review in the same review cycle. (See 12 VAC 5-220-200.)

Five days prior to November 10, 2023, the start of the relevant review cycle, is November 5, 2023.

DCOPN acknowledges that 12 VAC 5-220-190 is the currently available regulatory guidance and contends that the COPN regulations have not been updated to be consistent with the changes to the Virginia Code enacted in 2020.<sup>22</sup> With the exception of DCOPN's timeline to notify the applicant of their completeness determination,<sup>23</sup> I believe a reasonable reading of the COPN law and regulations are not necessarily in conflict; in particular, the last sentence of 12 VAC 5-220-190, which allows an applicant to provide additional information to complete an application at least five days before a batch review cycle begins. To the extent that there is a conflict, I believe that a reasonable melding of COPN law and regulations weighs in favor of preserving the applicant's rights.<sup>24</sup>

Five days prior to the relevant review cycle falls on November 5, 2023. Pursuant to 12 VAC 5-220-230(C), "... For the purposes of project review, any scheduled deadlines that fall on a weekend or state holiday shall be advanced to the next work day." As such, because November 5, 2023 falls on a Sunday, the operative date is moved to the next business day, which is Monday, November 6, 2023. Here, Norton provided the additional information (i.e., a copy of the signature for Section VI of the application) on October 10, 2023, long before the deadline for the provision of additional information.

Norton's Application should be included in the November 10, 2023 Batch Group D review cycle.

General and specific reference is hereby made to the administrative record, including, but not limited to exhibits and post-IFFC submissions.

### **B. Conclusion**

Based on the administrative record and in light of the discussion above, I conclude that a reasonable reading of the COPN law and regulations allows Norton to provide the additional information by November 6, 2023.

---

<sup>22</sup> Tr. at 39; DCOPN Post-IFFC Findings at 1-4.

<sup>23</sup> Pursuant to Virginia Code § 32.1-102.6(A), DCOPN shall determine completeness "within 10 calendar days on the date on which the document is received," not "15 days" as per the regulatory language in 12 VAC 5-220-190.


<sup>24</sup> Signature defects are not specifically addressed in the COPN law. In looking to how missing signatures are addressed in civil actions, signature defects may be cured within 21 days of when it is brought to the attention of the pleader or movant, and the related document will be valid and relate back to the date it was originally filed. Va. Code § 8.01-271.1(G). While this language is not determinative nor controlling, I find it supportive of a COPN applicant's ability to timely cure a signature defect in their application, particularly when the relevant COPN statute builds in a mechanism to supplement an incomplete application.

**IV. Recommendation**

Based on review of the evidence contained in the administrative record as a whole, Wellmont Health System d/b/a Norton Community Hospital's request to consider their COPN application complete within the allowable deadline and proceed with the Batch Group D review cycle beginning November 10, 2023 should be granted.

I recommend that Wellmont Health System d/b/a Norton Community Hospital's application be included in the Batch Group D review cycle beginning November 10, 2023.

Respectfully submitted,



Vanessa MacLeod, JD  
Adjudication Officer

*November 2, 2023*