

# VIRGINIA DEPARTMENT OF HEALTH

## Office of Licensure and Certification

### Division of Certificate of Public Need

#### Staff Analysis

September 18, 2024

#### **COPN Request No. VA-8773**

Loudoun Va PropCo

Leesburg, Virginia

Add 4 Nursing Home Beds by Relocation

#### **Applicant**

Loudoun VA PropCo, LLC is a Virginia limited liability company which owns Loudoun Center for Rehabilitation and Nursing, LLC d/b/a Loudoun Rehabilitation and Nursing Center (“Loudoun Nursing”), also a Virginia limited liability company. Loudoun VA PropCo, LLC does not own or operate any other health care facilities in Virginia. There is no overlapping ownership between Friendship Foundation (which is contributing the beds) and Loudoun VA PropCo, LLC. Inova Health Care Services, a Virginia nonstock corporation, is the landlord in the ground lease agreement with Loudoun VA PropCo, LLC as the tenant. Loudoun Nursing is in Planning District (PD) 8, Health Planning Region (HPR) II.

#### **Background**

PD 8 has 36 nursing facilities with 4,489 beds, according to DCOPN’s inventory. VHI published data for 30 of these facilities for 2022. These thirty nursing facilities reported 3,765 nursing facility beds to VHI, with an average utilization of 81.2% (**Table 1**). Of the six authorized facilities that did not report data to VHI in 2022, one is a new Continuing Care Retirement Community (“CCRC”) not yet open, and the other five were operational in 2022. These five are listed at the bottom of **Table 1** with the latest utilization available (2021 VHI data). These five had an average utilization in 2021 of 63.9%. Including the most recent data available from all 36 operational facilities, PD 8 occupancy was 78.8% (**Table 1**), meaning an estimated 952 nursing facility beds were unoccupied in PD 8 on any given day in 2022.

**Table 1. 2022 VHI Data, Nursing Home Utilization in PDs 8**

| Facility Name   | Facility Type | Total Licensed Nursing Beds | Total Patient Days | Licensed Bed Available Days | Occupancy Rate per Licensed Bed |
|---|---------------|-----------------------------|--------------------|-----------------------------|---------------------------------|
| <b>Planning District 8</b>  |               |                             |                    |                             |                                 |
| Alexandria Rehabilitation and Healthcare Center                           | Nursing Home  | 111                         | 33,151             | 37,074                      | 89.4%                           |
| Annandale Healthcare Center   | Nursing Home  | 222                         | 64,973             | 81,030                      | 80.2%                           |
| Annandale VA Opco LLC   | Nursing Home  | 132                         | 42,155             | 48,180                      | 87.5%                           |
| Ashby Ponds (C0084)   | CCRC          | 44                          | 13,669             | 16,060                      | 85.1%                           |
| Belmont Bay Rehabilitation and Healthcare Center                          | Nursing Home  | 120                         | 32,284             | 40,080                      | 80.5%                           |
| Birmingham Green  | Nursing Home  | 180                         | 51,074             | 65,700                      | 77.7%                           |
| Burke Health and Rehabilitation Center                                    | Nursing Home  | 120                         | 40,773             | 47,880                      | 85.2%                           |
| Cherrydale Health and Rehabilitation Center                               | Nursing Home  | 180                         | 64,612             | 71,820                      | 90.0%                           |
| Dulles Health and Rehab Center  | Nursing Home  | 166                         | 57,883             | 60,590                      | 95.5%                           |
| Dunn Loring VA Opco LLC   | Nursing Home  | 130                         | 38,989             | 47,450                      | 82.2%                           |
| Fairfax Nursing Center, Inc   | Nursing Home  | 200                         | 66,691             | 73,000                      | 91.4%                           |
| Falcon's Landing (C0004)  | CCRC          | 60                          | 9,760              | 21,900                      | 44.6%                           |
| Gainesville Health & Rehabilitation Center                                | Nursing Home  | 120                         | 38,632             | 43,800                      | 88.2%                           |
| Goodwin House - Alexandria (C0008)  | CCRC          | 80                          | 26,389             | 29,200                      | 90.4%                           |
| Goodwin House Baileys Crossroads (C0010)                                  | CCRC          | 72                          | 22,963             | 26,280                      | 87.4%                           |
| Greenspring Village, LLC  | CCRC          | 60                          | 18,688             | 21,900                      | 85.3%                           |
| Heritage Hall - Leesburg  | Nursing Home  | 164                         | 52,135             | 59,860                      | 87.1%                           |
| Jefferson, The  | Nursing Home  | 31                          | 9,560              | 11,315                      | 84.5%                           |
| Lake Manassas Health and Rehabilitation Center                            | Nursing Home  | 120                         | 45,848             | 47,880                      | 95.8%                           |
| Loudoun Nursing & Rehabilitation Center                                   | Nursing Home  | 100                         | 31,251             | 36,500                      | 85.6%                           |
| Manassas Health and Rehabilitation Center                                 | Nursing Home  | 120                         | 40,369             | 43,800                      | 92.2%                           |
| Mount Vernon Nursing & Rehabilitation Center                              | Nursing Home  | 130                         | 38,948             | 47,450                      | 82.1%                           |
| Potomac Falls Health & Rehab Center                                       | Nursing Home  | 150                         | 49,928             | 54,750                      | 91.2%                           |
| Regency Care of Arlington LLC   | Nursing Home  | 240                         | 50,198             | 87,600                      | 57.3%                           |
| SH OpCo The Fairfax, LLC (C0094)  | CCRC          | 56                          | 12,630             | 20,440                      | 61.8%                           |
| The Virginian (C0092)   | CCRC          | 81                          | 24,941             | 29,565                      | 84.4%                           |
| Vierra Falls Church   | Nursing Home  | 160                         | 6,932              | 58,400                      | 11.9%                           |
| Vinson Hall Retirement Community (C0026)                                  | CCRC          | 49                          | 15,407             | 17,885                      | 86.1%                           |
| Westminster at Lake Ridge (C0041)   | CCRC          | 60                          | 21,900             | 21,900                      | 100.0%                          |
| Woodbine Nursing & Rehabilitation Center                                  | Nursing Home  | 307                         | 99,453             | 112,055                     | 88.8%                           |
| <b>Planning District 8 Totals and Average as reported to VHI for 2022</b> |               | <b>3,765</b>                | <b>1,122,186</b>   | <b>1,381,344</b>            | <b>81.2%</b>                    |

(continued on next page)

| Facility Name   | Facility Type | Total Licensed Nursing Beds | Total Patient Days | Licensed Bed Available Days | Occupancy Rate per Licensed Bed |
|---|---------------|-----------------------------|--------------------|-----------------------------|---------------------------------|
| <b>2021 VHI data, Nursing Homes not reporting in 2022<sup>1</sup></b> |               |                             |                    |                             |                                 |
| Fountains at Washington House   | Nursing Home  | 77                          | 10,539             | 28,105                      | 37.5%                           |
| Hermitage in Northern Virginia (C0032)                                | CCRC          | 120                         | 7,100              | 43,800                      | 16.2%                           |
| Manor Care of Alexandria VA, LLC                                      | Nursing Home  | 96                          | 26,903             | 35,040                      | 76.8%                           |
| Manor Care of Arlington VA, LLC                                       | Nursing Home  | 161                         | 49,572             | 58,765                      | 84.4%                           |
| Manor Care-Fair Oaks of Fairfax VA, LLC                               | Nursing Home  | 155                         | 48,009             | 56,575                      | 84.9%                           |
| <b>Total, Nursing Homes not reporting in 2022</b>                     |               | <b>609</b>                  | <b>142,123</b>     | <b>222,285</b>              | <b>63.9%</b>                    |
| <b>PD 8 Estimated Nursing Home Occupancy</b>                          |               | <b>4,374</b>                | <b>1,264,309</b>   | <b>1,603,629</b>            | <b>78.8%</b>                    |

Source: VHI Data

Because Loudoun Nursing proposes to relocate beds from PD 5, 2022 VHI data are also provided for PD 5. All PD 5 facilities reported data in 2022. There were 2,419 nursing facility beds reported (of 2,494 in the DCOPN inventory) with an occupancy of 80.2% (**Table 2**). An estimated 494 nursing facility beds were unoccupied in PD 5 on any given day in 2022.

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<sup>1</sup> In addition, some PD 8 facilities under-reported their licensed beds.

**Table 2. 2022 VHI Data, Nursing Home Utilization in PD 5**

| Facility Name                                    | Facility Type | Total Licensed Nursing Beds | Total Patient Days | Licensed Bed Available Days | Occupancy Rate per Licensed Bed |
|--|---------------|-----------------------------|--------------------|-----------------------------|---------------------------------|
| <b>Planning District 5</b>                       |               |                             |                    |                             |                                 |
| Accordius Health at Roanoke LLC                  | Nursing Home  | 130                         | 18,284             | 39,780                      | 46.0%                           |
| Alleghany Health and Rehab                       | Nursing Home  | 105                         | 33,259             | 38,325                      | 86.8%                           |
| Berkshire Health and Rehabilitation Center       | Nursing Home  | 180                         | 63,231             | 71,820                      | 88.0%                           |
| Brandon Oaks (C0056)                             | CCRC          | 62                          | 15,450             | 22,630                      | 68.3%                           |
| Brian Center Health & Rehab. - Alleghany         | Nursing Home  | 89                          | 29,278             | 32,485                      | 90.1%                           |
| Brian Center Nursing Care - Fincastle            | Nursing Home  | 56                          | 18,375             | 20,440                      | 89.9%                           |
| Carrington Place at Botetourt Commons            | Nursing Home  | 90                          | 26,619             | 32,850                      | 81.0%                           |
| Friendship Health and Rehab Center - South       | Nursing Home  | 120                         | 41,080             | 43,800                      | 93.8%                           |
| Friendship Health and Rehab Center, Inc. (North) | Nursing Home  | 253                         | 72,174             | 92,345                      | 78.2%                           |
| Hermitage Roanoke (C0034)                        | CCRC          | 24                          | 3,717              | 8,760                       | 42.4%                           |
| Our Lady of the Valley                           | Nursing Home  | 70                          | 22,396             | 25,550                      | 87.7%                           |
| Pheasant Ridge Nursing & Rehab Center            | Nursing Home  | 101                         | 32,441             | 36,865                      | 88.0%                           |
| Raleigh Court Health and Rehabilitation Center   | Nursing Home  | 120                         | 42,982             | 47,880                      | 89.8%                           |
| Richfield Health Center-Roanoke                  | Nursing Home  | 116                         | 24,918             | 45,008                      | 55.4%                           |
| Richfield Recovery and Care Center               | Nursing Home  | 112                         | 36,110             | 40,880                      | 88.3%                           |
| Salem Health and Rehabilitation Center           | Nursing Home  | 240                         | 72,987             | 95,760                      | 76.2%                           |
| Snyder Nursing Home                              | Nursing Home  | 45                          | 12,660             | 16,425                      | 77.1%                           |
| South Roanoke Nursing Home                       | Nursing Home  | 98                          | 30,753             | 35,770                      | 86.0%                           |
| Springtree Health and Rehabilitation Center      | Nursing Home  | 120                         | 41,357             | 47,880                      | 86.4%                           |
| The Glebe, Inc. (C0064)                          | CCRC          | 32                          | 8,678              | 11,680                      | 74.3%                           |
| Virginia Veterans Care Center                    | Nursing Home  | 196                         | 56,001             | 71,540                      | 78.3%                           |
| Woodlands Health and Rehab                       | Nursing Home  | 60                          | 19,175             | 21,900                      | 87.6%                           |
| <b>Planning District 5 Sums and Average</b>      |               | <b>2,419</b>                | <b>721,925</b>     | <b>900,373</b>              | <b>80.2%</b>                    |

Source: 2022 VHI Data

The applicant invokes Code of Virginia § 32.1-102.3:7, the so-called “Bed Transfer Statute” for the proposed project which allows the transfer of nursing facility beds from a PD with a calculated surplus to one with a calculated shortage. Several such authorized projects were expected to be completed since 2022 data were reported to VHI. **Table 3** shows the impact of inter-PD transfers involving PDs 8 and 5.

**Table 3. Bed Transfers Involving PDs 8 and 5**

| COPN                                   | From | To    | # Beds | Impact on PD 8 | Impact on PD 5 |
|--|------|-------|--------|----------------|----------------|
| VA-04623                               | PD 8 | PD 10 | 16     | -16            | 0              |
| VA-04675                               | PD 2 | PD 8  | 30     | 30             | 0              |
| VA-04746                               | PD 5 | PD 8  | 25     | 25             | -25            |
| VA-04833                               | PD 5 | PD 8  | 30     | 30             | -30            |
| <b>Total Bed Change in PDs 8 and 5</b> |      |       |        | <b>69</b>      | <b>-55</b>     |

Source: DCOPN Records

Loudoun Nursing was previously a hospital-based nursing home for Inova Loudoun Hospital. Inova sold the nursing home to Loudoun VA PropCo, LLC in 2023. Prior to this transaction, Loudoun Nursing had an occupancy rate of 85.6% in 2022 (**Table 1**), slightly higher than the PD 8 average, but below the 90% threshold set forth in the State Medical Facilities Plan (SMFP). Friendship Health and Rehabilitation Center – North, from where the applicant proposes to relocate four beds, had an occupancy of 78.2%. (**Table 2**).

**Proposed Project**

Loudoun Nursing is an existing 100-bed nursing facility at 235 Old Waterford Road, NW, Leesburg, Virginia in PD 8. It proposes to add four nursing home beds, through the relocation of beds from Friendship Health and Rehabilitation Center-North, which is in PD 5. The proposal entails the remodeling/renovation of a portion of the facility to add two semi-private rooms to accommodate the four beds. In addition, four existing semi-private rooms will be converted to private rooms. This renovation will allow Loudoun Nursing to increase the number of private rooms at the facility from six to ten its overall bed count to 104. Loudoun Nursing also intends to expand its therapy gym, dining room, nurses station and renovate common areas.

**Table 4. Estimated Capital Costs for Loudoun Nursing Renovation**

|                                    |                     |
|------------------------------------|---------------------|
| Direct Construction Costs          | \$ 1,380,000        |
| Architectural and Engineering Fees | \$ 90,000           |
| Other Consultant Fees              | \$ 400,000          |
| <b>Total Capital Costs</b>         | <b>\$ 1,870,000</b> |

Source: COPN Request No. VA-8773

Projected capital costs of the proposed project are \$1,870,000, funded by the applicant such that no financing costs will accrue (**Table 4**). Should the project be approved the expected completion date is 12 months after receiving the COPN.

**Project Definition**

Section 32.1-102.1:3 of the Code of Virginia (the Code) defines a project, in part, as “[a]n increase in the total number of beds ...in an existing medical care facility described in subsection A.”

Section 32.1-102.1:3 of the Code defines a medical care facility, in part, as “[a]ny facility licensed as a nursing home, as defined in § 32.1-123.”

**Required Considerations -- § 32.1-102.3, of the Code of Virginia**

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable.

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

PD 8 is a large and fast-growing area of Virginia, estimated to grow to 2.8 million people, adding nearly 280,000 people between 2020 and 2030. This projected growth rate of 10.9% for PD 8 in the current decade is nearly twice the growth rate projected for Virginia at 5.8% (**Table 5**). Loudoun County, where the proposed project is located, has the highest growth rate of the localities in PD 8 at 24%. It is expected to have 18% of PD 8’s population by 2030 (**Figure 1**) and is projected to experience the highest growth in the number of people, over 100,000 between 2020 and 2030) including nearly 25,000 additional people over the age 65 (**Table 5** and **Figure 2**).

**Table 5. Population by Locality, PD 8**

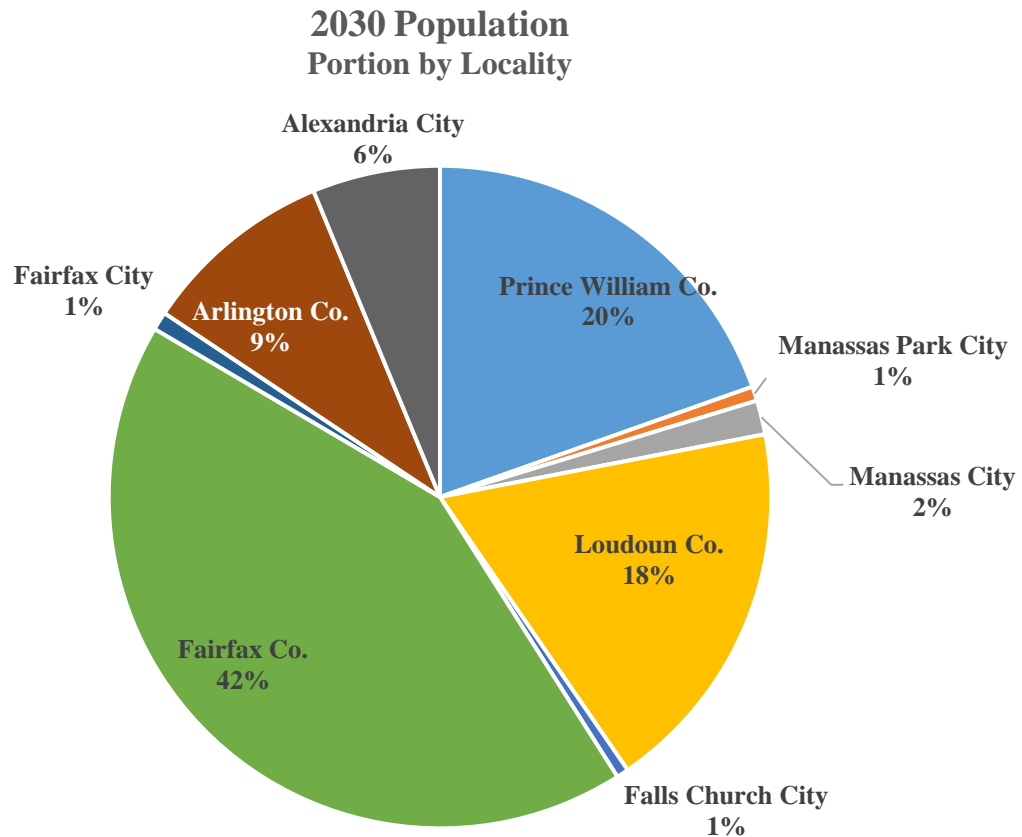
| Locality                   | 2020 Population  | 2030 Projected Population | Projected Growth 2020-2030 | Percent Growth 2020-2030 | 65+ 2020 Population | Projected 65+ 2030 Population | Projected Growth 65+ | Percent Growth 65+ |
|----------------------------|------------------|---------------------------|----------------------------|--------------------------|---------------------|-------------------------------|----------------------|--------------------|
| Arlington Co.              | 238,643          | 265,794                   | 27,151                     | 11.4%                    | 25,333              | 28,501                        | 3,168                | 12.5%              |
| Fairfax Co.                | 1,150,309        | 1,201,420                 | 51,111                     | 4.4%                     | 158,687             | 195,132                       | 36,445               | 23.0%              |
| Loudoun Co.                | 420,959          | 522,015                   | 101,056                    | 24.0%                    | 41,497              | 65,844                        | 24,347               | 58.7%              |
| Prince William Co.         | 482,204          | 554,344                   | 72,140                     | 15.0%                    | 50,522              | 76,112                        | 25,590               | 50.7%              |
| Alexandria City            | 159,467          | 176,403                   | 16,936                     | 10.6%                    | 18,758              | 22,941                        | 4,183                | 22.3%              |
| Fairfax City               | 24,146           | 25,358                    | 1,212                      | 5.0%                     | 3,871               | 4,726                         | 855                  | 22.1%              |
| Falls Church City          | 14,658           | 16,741                    | 2,083                      | 14.2%                    | 2,185               | 2,545                         | 360                  | 16.5%              |
| Manassas City              | 42,772           | 47,039                    | 4,267                      | 10.0%                    | 4,505               | 6,593                         | 2,088                | 46.4%              |
| Manassas Park City         | 17,219           | 19,876                    | 2,657                      | 15.4%                    | 1,343               | 2,162                         | 819                  | 61.0%              |
| <b>PD 8</b>                | <b>2,550,377</b> | <b>2,828,990</b>          | <b>278,613</b>             | <b>10.9%</b>             | <b>306,701</b>      | <b>404,555</b>                | <b>97,854</b>        | <b>31.9%</b>       |
| <i>Virginia, Statewide</i> | <i>8,631,393</i> | <i>9,129,002</i>          | <i>497,609</i>             | <i>5.8%</i>              | <i>1,395,291</i>    | <i>1,762,641</i>              | <i>367,350</i>       | <i>26.3%</i>       |

Sourced from United States Census Bureau at <https://data.census.gov/> and Weldon Cooper Center for Public Service, August 2023.

The older population utilizes nursing facility beds at a higher rate than the rest of the population and it is an important segment to examine. The number of people over 65 is expected to grow by nearly 98,000 people in PD 8 between 2020 and 2030, through in-migration and aging. This is 32% growth, compared to Virginia’s projected growth of 26.3% for the 65+ segment during the same period (**Table 5**). The growth rate in Loudoun County for the 65 and older population is 58.%, double that of the state, over 24,000 more people between 2020 and 2030 (**Table 5 & Figure 3**). At the same time the PD 8 population is growing rapidly, the utilization rate of nursing facilities is declining. The Health Systems Agency of Northern Virginia (HSANV) has

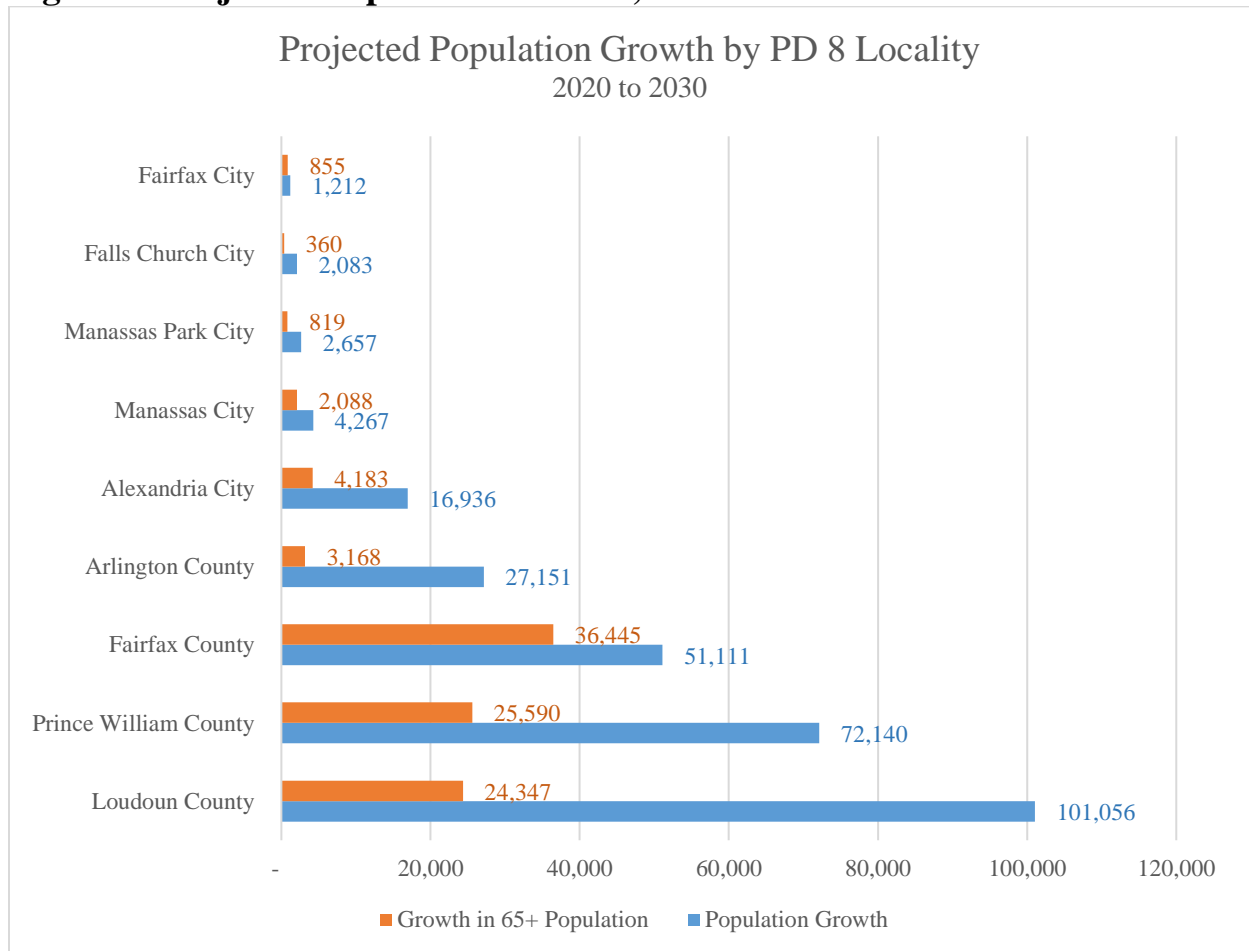
provided data with each of its recent assessments of nursing facility projects showing that nursing home use per thousand population over age 65 fell from about 25 per thousand in 1998 to about 9 per thousand in 2020.

**Figure 1. Portion of PD 8 Projected 2030 Population by Locality**



Sourced from United States Census Bureau at <https://data.census.gov/> and Weldon Cooper Center for Public Service, August 2023.

**Figure 2. Projected Population Growth, PD 8 Localities**



Sourced from United States Census Bureau at <https://data.census.gov/> and Weldon Cooper Center for Public Service, August 2023.

Poverty rates in PD 8 are lower in each locality than that of Virginia, with Loudoun’s being the lowest, indicating relatively few socio-economic barriers to address (**Table 6**).



**Table 6. 2022 Poverty Rates, PD 8**

| <b>Locality</b>       | <b>% in Poverty</b> |
|-----------------------|---------------------|
| Arlington County      | 6.8%                |
| Fairfax County        | 5.9%                |
| Loudoun County        | 3.8%                |
| Prince William County | 6.9%                |
| Alexandria city       | 9.0%                |
| Fairfax city          | 7.6%                |
| Falls Church city     | 4.1%                |
| Manassas city         | 9.1%                |
| Manassas Park city    | 8.9%                |
| <b>PD 8</b>           | <b>6.1%</b>         |
| <b>Virginia</b>       | <b>10.6%</b>        |

Source: US Census Bureau, Small Area Income and Poverty Estimates

Loudoun Nursing is centrally located in downtown Leesburg on the same campus as Inova Loudoun Hospital’s Cornwall campus and approximately 6.9 miles from its Lansdowne campus where the acute care hospital is located. It is directly off U.S. Route 15 and off the Route 56 Rust Idea Lee Complex route of the Leesburg local bus service.

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

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

DCOPN received a letter of support from Loudoun Nursing’s Medical Director expressing his encouragement to approve the additional bed capacity. The letter expressed the following:

- The ongoing health care services provided are top-notch, resulting in Loudoun Nursing being a distinguished skilled rehabilitation and long-term care facility in the area.
- The continued growing elderly population has a need for increased access to these services.
- Adding bed capacity at Loudoun Nursing will serve the community well.
- Approval of the proposed project will enable renovated space to continue to provide excellent medical care to the growing geriatric population.

Public Hearing

§ A public hearing was held September 9, 2024. Legal Counsel presented the proposed project. A summary of discussion points follows:

The Loudoun project is filed and accepted for review under the provision of the Virginia COPN statute (§ 32.1-102.3:7. Applications for transfer of nursing facility beds) that permits inter planning district transfers of surplus nursing home beds as an exception to the standard request for applications (RFA) planning process. This provision is commonly referred to as the “bed transfer statute.” There is a strong precedent for approval of the application. All the inter

planning district nursing projects filed under § 32.1-102.3:7 have been approved. The Commissioner of Health has considered, and ultimately rejected, HSANV's arguments against nursing home transfers to northern Virginia in accordance with § 32.1-102.3:7. The Virginia SMFP bed need methodology used by Virginia Department of Health officials is mandated and must be used by all parties until officially replaced. Occupancy of authorized bed capacity may not be a consideration in, or the reason for, denying a proposed bed transfer under § 32.1-102.3:7. The capital cost of the project is a modest \$1.9 million. The project would have positive health system effects in both the donor planning district (PD 5) and the recipient district (PD 8).

In response to questions, the presenter acknowledged the bed need methodology and formulae are dated, resulting in problematic bed need estimates. There has not been an RFA to add nursing home capacity in northern Virginia (PD 8). The nursing home request for applications, which is supposed to be updated and published annually, has been published only irregularly and is years in arrears. Loudoun PropCo disagrees with HSANV's view that the Commissioner is not bound to use the problematic nursing home use data and planning methodology currently relied on in the RFA process. William Mullins (counsel's law firm) was involved in the transaction resulting in \$400,000 payment for the licensing rights to the four beds that would be transferred. He is unaware of the specific reasons for the request for just four beds rather than a larger number given large and growing bed shortage in northern Virginia that the applicant has claimed.

Public notice was posted July 11, 2024 and the public comment period closed on August 26, 2024. Other than the single letter of support submitted with the application, there were no other comments on the proposal. There is no documented opposition to the proposed project.

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

The status quo is a reasonable alternative to the proposed project. As there is vacant nursing facility capacity available in PD 8, the addition of four beds does not change access there in any substantial way but merely benefits the applicant. Two previous projects have already taken 55 nursing home beds from PD 5 and moved them to PD 8 (**Table 3**) via the "Bed Transfer Statute" (COPN Nos. VA-04746 and VA-04833). The project is potentially harmful to PD 5, taking additional nursing home beds from an area that now has a higher occupancy than the PD to which the beds are proposed to relocate, and half the number of the unoccupied beds available on any given day.

**(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.**

At its September 9, 2024 meeting, the HSANV, the organization in HPR II designated by the Virginia Department of Health to serve as the Health Planning Agency for PD 8, voted ten in favor, one opposed to recommend denial of Loudoun Nursing's COPN Request number VA-8773 to add 4 nursing home beds by relocating them from PD 5. The HSANV based its recommendation on the HSANV staff report, their review of the request and several basic findings and conclusions, including:

- Northern Virginia (PD 8) has hundreds of unused nursing home beds, the largest nursing home bed surplus in Virginia. There is no public need or justification for a capital expense to develop new nursing home beds.
- The Loudoun argument that there is a quantified need for hundreds of additional nursing home beds in PD 8 is based on the flawed “calculated need” projections contained in the 2020 nursing home request for applications. That does not comport with reality, with common sense, or with the public interest.
- Contrary to the applicant’s assertion, adding nursing home beds at Loudoun, or elsewhere in the planning region, is not needed to improve access to care. The applicant’s contention that there is a shortage of nursing home beds in PD 8 is wrong.
- The project would be of economic benefit to the applicant but of no discernible public value or benefit.
- The potential service improvements cited by the applicant as benefits of the project are coincidental, not derivative of or dependent on the bed expansion proposed. They can be undertaken outside the COPN process, without expanding licensed bed capacity unnecessarily.
- The proposal is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan governing the expansion of nursing homes. Specifically, it conflicts with Section 12VAC5-230-620 of the plan.

**(iv) Any costs and benefits of the project.**

Total projected capital costs for the proposed project are \$1,870,000, funded entirely by the applicant so there are no financing costs involved in the proposed project. The estimated costs are high on a per-bed basis, but the proposal is for far fewer beds than is typical. The last six projects approved to add nursing facility beds at an existing facility (COPN Request Nos. VA-04822, VA-04833, VA-04842, VA-04854, VA-04837 and VA-4869) ranged from \$145,000 to \$335,000 per bed with an average of \$236,483 per bed in capital costs. The proposed capital cost is nearly twice the average cost per bed (\$467,500) but consistent with cost per square foot of recently authorized similar projects.

The applicant has described several benefits to the proposed project including Loudoun Nursing’s symbiotic relationship with Inova Loudoun Hospital and its providers. The proposal would result in four additional private rooms, since four existing semiprivate rooms will be converted to private rooms in addition to adding the proposed two semiprivate rooms (four beds). The applicant also asserts that the facility will have a state-of-the-art therapy gym and upgrade to its common areas following the planned renovation. DCOPN notes that these upgrades could be completed without a COPN.

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

The four proposed nursing home beds will be dually certified by Medicare and Medicaid.

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

**Figure 3** shows the most recent ratings on the Medicare.gov website for the applicant, Loudoun Nursing and **Figure 4** shows the ratings for Friendship Health and Rehabilitation Center (North) from where the applicant proposes to relocate the four nursing facility beds.

**Figure 3. Loudoun Rehabilitation and Nursing Center, CMS 5-Star Rating**

Overall rating



Much below average

The overall rating is based on a nursing home's performance on 3 sources: health inspections, staffing, and quality measures.

[Learn how Medicare calculates this rating](#)

Health inspections



Much below average

Staffing



Below average

Quality measures



Above average

Source: <https://www.medicare.gov/care-compare/details/nursing-home/495275/view-all?city=Leesburg&state=VA&zipcode=20176> last updated August 28, 2024. The latest health inspection was performed 12/1/2023.

**Figure 4. Friendship Health and Rehabilitation Center - North, CMS 5-Star Rating**

Overall rating



Above average

The overall rating is based on a nursing home's performance on 3 sources: health inspections, staffing, and quality measures.

[Learn how Medicare calculates this rating](#)

Health inspections



Above average

Staffing



Average

Quality measures



Average

[View Inspection Results](#)

[View Staffing Information](#)

[View Quality Measures](#)

Source: <https://www.medicare.gov/care-compare/details/nursing-home/495092/view-all?city=Roanoke&state=VA&zipcode=24014> last updated August 28, 2024. The latest health inspection was performed March 10, 2022.

**3. The extent to which the application is consistent with the State Medical Facilities Plan.**

Section 32.1-102.2:1 of the Code of Virginia calls for the State Health Services Plan Task Force to develop recommendations for a comprehensive State Health Services Plan (SHSP). In the interim, DCOPN will consider the consistency of the proposed project with the predecessor of the SHSP, the State Medical Facilities Plan (SMFP).

The State Medical Facilities Plan (SMFP) contains the criteria and standards for Nursing Facilities. They are as follows:

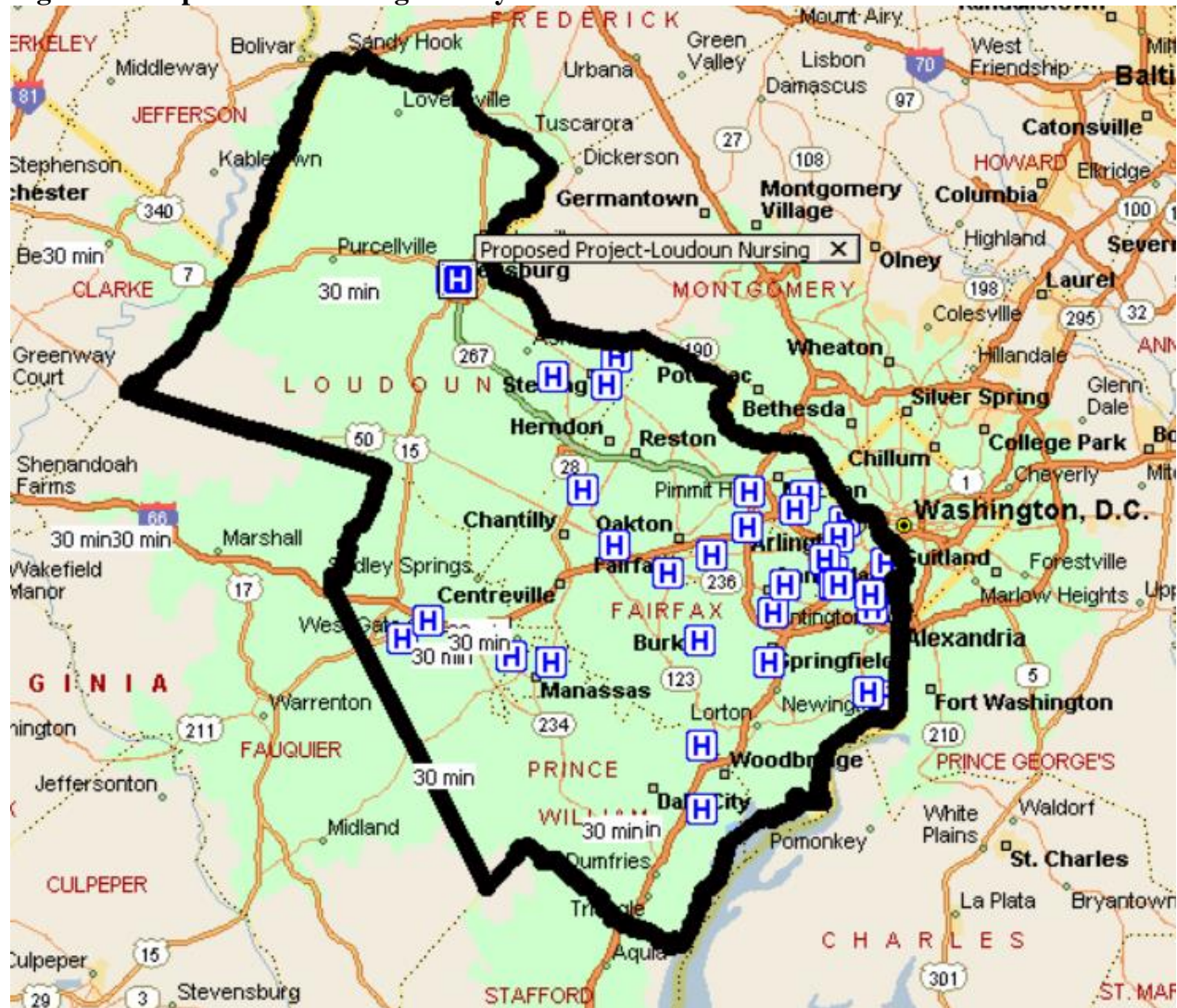
**Part VII. Nursing Facilities**

**12VAC5-230-600. Travel Time.**

- A. Nursing facility beds should be accessible within 30 minutes driving time one way under normal conditions of 95% of the population in a health planning district using mapping software as determined by the commissioner**

The heavy black line in **Figure 5** identifies the boundary of PD 8. The H symbols with white backgrounds indicate the locations of the nursing facilities in the planning district, while the H with the blue background marks Loudoun Nursing. The shaded green area is within the 30-minute drive time of existing nursing facilities in PD 8. With the entirety of PD 8 within a 30-minute drive time, of a nursing facility, excepting a small area of Loudoun County which will not be impacted by the beds the project requests to add, nursing facilities are already accessible to 95% of the population. The proposed project will not impact geographic accessibility.

Figure 5. Map of PD 8 Nursing Facility Locations



**B. Nursing facilities should be accessible by public transportation when such systems exist in an area.**

Loudoun Nursing is located directly off the Route 56 Rust Idea Lee Complex route of the Leesburg local bus service.

**C. Preference may be given to proposals that improve geographic access and reduce travel time to nursing facilities within a health planning district.**

The proposed project is not competing with another project. Accordingly, this standard is not applicable.

**12VAC5-230-610. Need for New Service.**

**A. A health planning district should be considered to have a need for additional nursing facility beds when:**

1. The bed need forecast exceeds the current inventory of beds for the health planning district; and
2. The average annual occupancy of all existing and authorized Medicaid-certified nursing facility beds in the health planning district was at least 93%, excluding the bed inventory and utilization of the Virginia Veterans Care Centers.

**EXCEPTION:** When there are facilities that have been in operation less than three years in the health planning district, their occupancy can be excluded from the calculation of average occupancy if the facilities had an annual occupancy of at least 93% in one of its first three years of operation.

**B.** No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid certified. This presumption of ‘no need’ for additional beds extends for three years from the issuance date of the certificate.

**C.** The bed need forecast will be computed as follows:

$$\text{PDBN} = (\text{UR64} \times \text{PP64}) + (\text{UR69} \times \text{PP69}) + (\text{UR74} + \text{PP74}) + \text{UR79} + \text{PP79}) + \text{UR84} + \text{PP84}) + \text{UR85} + \text{PP85})$$

Where:

- **PDBN = Planning district bed need.**
- **UR64 = The nursing home bed use rate of the population aged 0 to 64 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP64 = The population aged 0 to 64 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR69 = The nursing home bed use rate of the population aged 65 to 69 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP69 = The population aged 65 to 69 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR74 = The nursing home bed use rate of the population aged 70 to 74 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP74 = The population aged 70 to 74 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR79 = The nursing home bed use rate of the population aged 75 to 79 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP79 = The population aged 75 to 79 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR84 = The nursing home bed use rate of the population aged 80 to 84 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**

- **PP84 = The population aged 80 to 84 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**
- **UR85+ = The nursing home bed use rate of the population aged 85 and older in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.**
- **PP85+ = The population aged 85 and older projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.**

Health planning district bed need forecasts will be rounded as follows:

| <u>Health Planning District Bed Need</u> | <u>Rounded Bed Need</u> |
|--|-------------------------|
| 1-29                                     | 0                       |
| 30-44                                    | 30                      |
| 45-84                                    | 60                      |
| 85-104                                   | 90                      |
| 105-134                                  | 120                     |
| 135-164                                  | 150                     |
| 165-194                                  | 180                     |
| 195-224                                  | 210                     |
| 225+                                     | 240                     |

**EXCEPTION:** When a health planning district has:

- 1. Two or more nursing facilities;**
  - 2. Had an average annual occupancy rate in excess of 93% for the most recent two years for which bed utilization has been reported to VHI; and**
  - 3. Has a forecasted bed need of 15 to 29 beds, then the bed need for this health planning district will be rounded to 30.**
- D. No new freestanding nursing facilities of less than 90 beds should be authorized. However, consideration may be given to a new freestanding facility with fewer than 90 nursing facility beds when the applicant can demonstrate that such a facility is justified based on a locality's preference for such smaller facility and there is a documented poor distribution of nursing facility beds within the health planning district.**
- E. When evaluating the capital cost of a project, consideration may be given to projects that use the current methodology as determined by the Department of Medical Assistance Services.**
- F. Preference may be given to projects that replace outdated and functionally obsolete facilities with modern facilities that result in the more cost-efficient resident services in a more aesthetically pleasing and comfortable environment.**

Not applicable, the applicant is not proposing to establish a new nursing home service.

**12VAC5-230-620. Expansion of Services.**

**Proposals to increase an existing nursing facility's bed capacity should not be approved unless the facility has operated for at least two years and the average annual occupancy of**

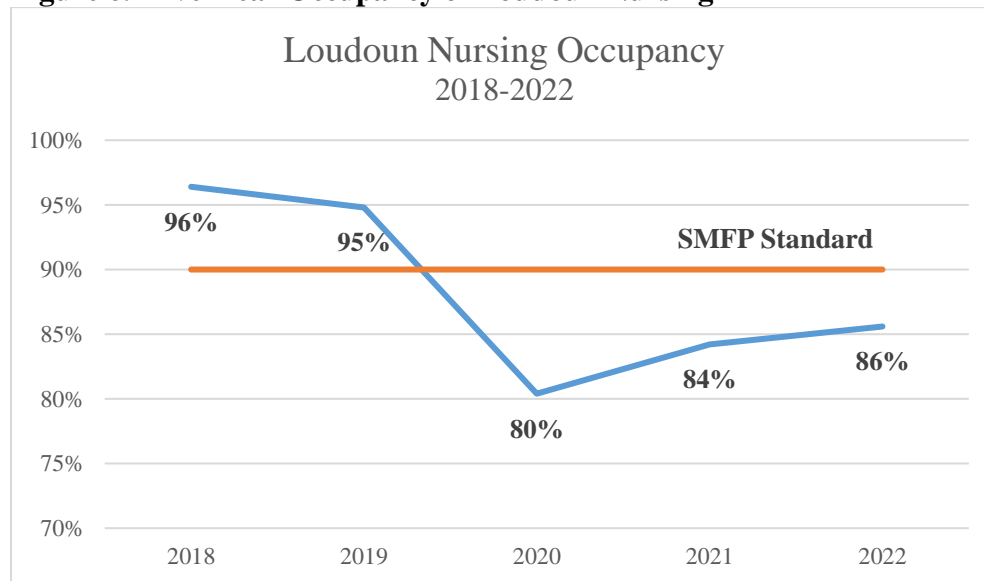


the facility’s existing beds was at least 90% in the relevant reporting period as reported to VHI.

**Note: Exceptions will be considered for facilities that operated at less than 90% average annual occupancy in the most recent year for which bed utilization has been reported when the facility offers short stay services causing an average annual occupancy lower than 90% for the facility.**

The occupancy of Loudoun Nursing has been below 90% for the last three years for which occupancy data are available (**Figure 6**). Occupancy at Loudoun Nursing was above 90% prior to the COVID pandemic in 2020. During that year, occupancy dropped to 80% and has since increased to 86% (**Figure 6**). The applicant does provide short-term rehab services as well as long-term care.

**Figure 6. Five-Year Occupancy of Loudoun Nursing**



There have been no Requests for Application issued for PD 8 in at least a decade. The applicant cites House Bill 2292, codified at §32.1-102.3:7 of the Code of Virginia, known generally as the “Bed Transfer Statute”, passed in 2013 General Assembly as authorization to apply for the transfer of nursing facility beds from one planning district to another in the absence of a Request for Applications. The Department of Planning and Budget 2013 Fiscal Impact Statement summarizes the bill:

The four specific requirements of the Bed Transfer Statute are:

- there is a shortage of nursing facility beds in the planning district to which the beds are proposed to be transferred
- the number of nursing facility beds in the planning districts from which beds are proposed to be moved exceed the need for such beds

- the proposed transfer of nursing facility beds would not result in the creation of a need for additional beds in the planning district from which the beds are proposed to be transferred
- the nursing facility beds proposed to be transferred will be made available to individuals in need of nursing facility services in the planning district to which they are transferred without regard to the source of payment for such services.

The third criterion of the statute considers the needs of the PDs from which nursing home beds are proposed to be transferred: “the proposed transfer of nursing facility beds would not result in the creation of a need for additional beds in the planning district from which the beds are proposed to be transferred.”

In the case at hand, COPN Request No. VA-8773, the applicant proposes to transfer nursing home beds to a facility in PD 8 with a lower occupancy (PD 8 at 78.8% occupancy, **Table 1**) than PD 5 from which the beds would relocate (PD 5 at 80.2% occupancy, **Table 2**). The proposed project would not correct a maldistribution of nursing facility beds. In fact, it has potential to create one. Approving an increase in the applicant’s licensed beds in PD 8 where occupancy is relatively low decreases it further causing all providers in that PD to vie for residents, while relocating beds from PD 5 with a higher occupancy can increase the difficulty finding placement for patients in a PD with a shrinking number of beds. PD 8 had about 952 vacant nursing facility beds on average in 2022 and PD5 has only 494 vacant nursing facility beds.

Though guidance from Delegate Robert Orrock’s letter of May 21, 2019 directs that the 93% occupancy threshold for a new service (12VAC5-230-610, above) not be applied under the “Bed Transfer Statute”, it does not indicate that the important supply/demand indicator of occupancy should be disregarded altogether or that relative occupancy across PDs should be ignored.

**12VAC5-230-630. Continuing Care Retirement Communities.**

**Proposals for the development of new nursing facilities or the expansion of existing facilities by continuing care retirement communities (CCRC) will be considered when:**

- 1. The facility is registered with the State Corporation Commission as a continuing care provider pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia;**
- 2. The number of nursing facility beds requested in the initial application does not exceed the lesser of 20% of the continuing care retirement community’s total number of beds that are not nursing home beds or 60 beds;**
- 3. The number of new nursing facility beds requested in any subsequent application does not cause the continuing care retirement community’s total number of nursing home beds to exceed 20% of its total number of beds that are not nursing facility beds; and**
- 4. The continuing care retirement community has established a qualified resident assistance policy.**

This provision is not applicable to the proposed project.

**12VAC5-230-640. Staffing.**

**Nursing facilities shall be under the direction or supervision of a licensed nursing home administrator and staffed by licensed and certified nursing personnel qualified as required by law.**

The applicant asserts that the facility is and will be staffed appropriately to comply with all regulatory requirements.

**Required Considerations Continued**

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

No significant change in institutional competition would result from the proposed project. As the proposal is not in a new location and an adequate number of nursing facility beds are already within a 30-minute drive of 95% of the population of PD 8, approval of the request would not increase access to nursing home services. Given the lower occupancy in PD 8 (78.8%), status quo would not decrease access.

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

Given the number of unoccupied nursing facility beds in PD 8 indicated by its low occupancy rate, the pending transfers of beds from PD 5 to PD 8 that are not yet operational, and the addition of nursing facility beds authorized but not yet operational (42 in a CCRC per COPN No. VA-04626), the proposed project is premature and would only contribute to reducing the occupancy rate still further. Though the occupancy of Loudoun Nursing is 85.6%, relatively high compared to the PD 8 average, it does not reach the 90% occupancy threshold and does not by itself constitute a public need.

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

Total capital costs for the proposal are low compared to other nursing facility projects, but on a per bed basis are nearly twice the average cost of similar recently approved projects. The proforma provided by the applicant (**Table 7**) indicates that the proposal will yield \$918,000 in each of the first two years of operation.

**Table 7. Proforma, Loudoun Nursing**

|                                |                      |                      |
|--------------------------------|----------------------|----------------------|
| <b>Total Net Revenue</b>       | <b>\$ 16,375,695</b> | <b>\$ 16,375,695</b> |
| Direct Patient Care Expenses   | \$ 7,592,933         | \$ 7,592,933         |
| Indirect Patient Care Expenses | \$ 5,104,756         | \$ 5,104,756         |
| Other Expenses                 | \$ 2,760,000         | \$ 2,760,000         |
| <b>Total Expenses</b>          | <b>\$ 15,457,689</b> | <b>\$ 15,457,689</b> |
| <b>Net Income Before Taxes</b> | <b>\$ 918,006</b>    | <b>\$ 918,006</b>    |

Source: COPN Request No. VA-8773

The total difference in personnel listed in the application at Table III-C from “existing” to “second year after completion” is 25 full time equivalent (FTE) staff members. It is not clear what the current vacancy rate is at the facility; however, the CMS star rating for Loudoun Nursing is “below average” in the staffing category.

- 7. The extent to which the project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) The introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services. (ii) The potential for provision of services on an outpatient basis. (iii) Any cooperative efforts to meet regional health care needs. (iv) At the discretion of the Commissioner, any other factors as may be appropriate.**

The proposal does not provide innovations in the delivery of health services, promote quality, or cost effectively not provide for care on an outpatient basis.

- 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. (ii) Any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.**

Not applicable. The applicant is not a teaching hospital associated with a public institution of higher education or a medical school in the area to be served.

**DCOPN Staff Findings and Conclusions**

The location of the project is in a highly populated and high-growth area of Virginia and the 65 and older cohort has especially high growth; however, utilization of nursing facilities per thousand 65+ population has been dropping steadily for many years. There are also 69 nursing facility beds authorized to be transferred to the PD 8 inventory and 42 CCRC beds to be added, for a total of 111 nursing facility beds already authorized but not in use in the PD. Fifty-five of the transferred beds are coming from PD 5 and approval of the proposed project would reduce the nursing facility inventory in PD 5 even further. The estimated occupancy in PD 8 is already slightly lower than that of PD 5. There are nearly twice as many unoccupied beds on a given day in PD 8 (952) than PD 5

(494). Though the size of the proposed project is not likely to impact existing providers significantly, neither would it improve accessibility or correct any maldistribution of beds.

Total capital cost of the proposed project is low, but per bed costs are relatively high compared to similar recently authorized projects. The proposal is financially feasible but given current low CMS ratings for staffing, recruiting more staff may prove challenging. Loudon Nursing's most recent overall CMS rating is one star, but the facility from where the beds are proposed to relocate received a four-star rating. The status quo is a reasonable and less costly alternative, and it would be prudent to implement and assess the impact of authorized changes in both PDs prior to approving more.

The proposed project is inconsistent with applicable standards and criteria of the State Medical Facilities Plan and the 8 Required Considerations of the Code of Virginia. Loudoun Nursing's occupancy has been below the 90% threshold set forth in the SMFP for the past three years. The HSANV voted to recommend denial of the proposed project.

### **DCOPN Staff Recommendations**

The Division of Certificate of Public Need recommends **denial** of Loudoun VA PropCo, LLC's COPN Request number VA-8773 to add four nursing facility beds through the relocation of beds from PD 5 to its campus in Leesville, Virginia for the following reasons:

1. The proposal to add four nursing facility beds through inter-PD transfer from PD 5 is inconsistent with the applicable standards and criteria of the State Medical Facilities Plan and the 8 Required Considerations of the Code of Virginia.
2. Utilization of the applicant facility is below the SMFP standard.
3. Occupancy in PD 8 is lower than that of the proposed contributing PD; the proposal does not correct a maldistribution of beds and may create one.
4. Multiple additional nursing facility beds are authorized but not yet implemented in PD 8, and a decrease in beds is authorized but not yet implemented in PD 5 from where the proposal would relocate more beds.
5. The status quo is a reasonable and less costly alternative, and it would be prudent to implement and assess the impact of authorized changes in both PDs prior to approving more.
6. Per bed capital costs of the proposed project are relatively high.
7. The latest overall CMS star rating for the applicant was one star and that of the contributing nursing facility was four stars.
8. HSANV recommended denial of the proposed project.