

VIRGINIA DEPARTMENT OF HEALTH

Office of Licensure and Certification

Division of Certificate of Public Need

Staff Analysis

May 20, 2024

COPN Request No. VA-8752

Middle Virginia Surgicenter, LLC

Ashland, Virginia

Establish an outpatient surgical hospital with three operating rooms

COPN Request No. VA-8753

Virginia Eye Institute, Inc.

Richmond, Virginia

Add one operating room

Applicants

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

Middle Virginia Surgicenter, LLC (MVSC) will have 100% ownership of the outpatient surgical hospital. Surgicare of Middle Virginia, LLC is the sole member of MVSC. HCA Healthcare, Inc. is MVSC's ultimate corporate parent. MVSC does not have any subsidiaries. The proposed project would be located in Ashland, Virginia in HPR IV, PD 15.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

Virginia Eye Institute, Inc. (VEI) is a Virginia stock corporation formed in 1987. VEI does not have any subsidiaries. VEI is located in Richmond, Virginia in HPR IV, PD 15.

Background

According to Division of Certificate of Public Need (DCOPN) records, there are 205 operating rooms (ORs) located in PD 15, of which 151 are within acute care hospitals, and 54 are within Outpatient Surgical Hospitals (OSHS). Of the 205 ORs, 12 are dedicated cardiac ORs and 4 are trauma ORs, which are explicitly excluded from the general purpose OR (GPOR) need calculation in the State Medical Facilities Plan (SMFP). Of the remaining 189 GPORs, 19 additional ORs are restricted use ORs, which are not specifically excluded from the GPOR need calculation in the SMFP. Therefore, for purposes of the GPOR need calculation in the SMFP, DCOPN will consider a GPOR inventory of 189 GPORs (**Table 1**).

Table 1: PD 15 COPN Authorized GPOR Inventory

Facility	Total ORs	Dedicated Cardiac ORs	Restricted Use ORs	Trauma OR	Unrestricted GPORs
Acute Care Hospitals					
Bon Secours Memorial Regional Medical Center	8	1	--	--	7
Bon Secours Richmond Community Hospital	3	--	--	--	3
Bon Secours St. Francis Medical Center	13	--	--	--	13
Bon Secours St. Mary's Hospital	23	2	--	--	21
Chippenham Hospital	14	4	--	1	9
Henrico Doctors' Hospital - Forest	21	2	--	1	18
Henrico Doctor's Hospital - Parham	11	--	--	--	11
Henrico Doctor's Hospital - Retreat	5	--	--	--	5
Johnston-Willis Hospital	16	--	--	--	16
VCU Health System	37	3	--	2	32
Total ORs in Acute Care Hospitals	151	12	0	4	135
Facility	Total ORs	Dedicated Cardiac ORs	Restricted Use ORs	Trauma OR	Unrestricted GPORs
American Access Care of Richmond	2	--	2 (Vascular)	--	--
Bon Secours Memorial Ambulatory Surgical Center	5	--	--	--	5
Boulders Ambulatory Surgery Center	4	--	--	--	4
Cataract and Refractive Surgery Center	1	--	1 (Ophthalmic)	--	--
Colon & Rectal Endoscopy Specialists & Surgery Center, LLC	1	--	1 (Colorectal)	--	--
MEDRVA Stony Point Surgery Center	5	--	--	--	5
MEDRVA Surgery Center at West Creek	2	--	--	--	2
MEDARVA Surgery Center at Chesterfield	2	--	1 (Ophthalmic)	--	1
MOHS Surgery Center of Richmond Dermatology	1	--	1 (Mohs)	--	--
Skin Surgery Center of Virginia	2	--	2 (Skin Cancer)	--	--
St. Francis Ambulatory Surgery Center	2	--	--	--	2
St. Mary's Ambulatory Surgery Center	4	--	--	--	4
Urosurgical Center of Richmond	3	--	3 (Urosurgical)	--	--
VCU Health Courthouse Landing Pavilion	4	--	--	--	4
VCU NOW Center	6	--	--	--	6
VCU Medical Center-Pediatric Outpatient Surgery	2	--	--	--	2
Virginia ENT Surgery Center	1	--	1 (ENT)	--	--
Virginia Eye Institute	5	--	5 (Ophthalmic)	--	--
VSA Vascular Center	2	--	2 (Vascular)	--	--
Total ORs in OSHs	54	0	19	0	35
Grand Total	205	12	19	4	170

Source: DCOPN Records

Proposed Projects

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

MVSC proposes to establish an OSH with three GPORs at 10054 Sliding Hill Road, Ashland, Virginia. Two GPORs will be relocated from Retreat Doctors’ Hospital (RDH) and one GPOR will be relocated from Henrico Doctors’ Hospital – Forest (HDH-Forest). The projected capital costs of the proposed project total \$20,836,808, approximately 40% of which represent direct construction costs. The entirety of the capital costs will be funded using the internal resources of HCA Healthcare, Inc. (**Table 2**). Accordingly, there are no financing costs associated with this project.

Table 2. MVSC Projected Capital Costs

Direct Construction Costs	\$8,371,000
Equipment Not Included in Construction Contract	\$3,850,000
Site Acquisition Costs	\$7,886,808
Off-Site Costs	\$243,000
Architectural and Engineering Fees	\$486,000
Total Capital Costs	\$20,836,808

Source: COPN Request No. VA-8752

Construction is anticipated to begin 20 months after COPN approval and is expected to be completed 32 months after COPN approval. The applicant anticipates an opening date 33 months after COPN approval.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

VEI has expressed an institutional need to expand. The applicant proposes to add one GPOR dedicated to ophthalmologic surgery to its current complement of five GPORs at the VEI Surgery Pavilion. The applicant explains that VEI was originally constructed to house six ORs. The sixth OR space is currently divided into two procedure rooms, which house three lasers. One of the lasers will move to an off-site clinic location and the other two lasers will be relocated within the building. After the relocation of the lasers, VEI will remove the partition and restore the space to its originally intended use as a GPOR.

The projected capital costs of the proposed project total \$2,906,021.06 (**Table 3**). The landlord will fund the construction costs associated with the renovations, which will be passed through to VEI in the form of rent, which will be paid as an operational expense. VEI will also incur financing costs directly associated with purchasing the equipment to operate the GPOR.

Table 3. VEI Projected Capital Costs

Direct Construction	\$234,000
Equipment Not Included in Construction Contract	\$485,681.47
Site Acquisition Costs	\$2,128,799.59
Off-Site Costs	\$0
Architectural and Engineering Fees	\$0
Conventional Loan Financing	\$57,540
Total Capital Costs	\$2,906,021.06

Source: COPN Request No. VA-8753

Construction is expected to begin on the proposed project in April 2025 and is expected to be completed in November 2025. The applicant anticipates an opening date in February 2026.

Project Definitions

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

§32.1-102.1 of the Code of Virginia defines a project, in part, as the “[e]stablishment of a medical care facility.” A medical care facility includes “[a]ny facility licensed as a hospital, as defined in Section 32.1 – 123.”

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§32.1-102.1:3 of the Code of Virginia (the Code) defines a project, in part, as “An increase in the total number of...operating rooms in an existing medical care facility described in subsection A.” Medical care facilities are further defined, in part, as “Any facility licensed as a hospital, as defined in § 32.1-123.”

The Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations at 12VAC5-220-220 requires that applications for the same or similar services which are proposed for the same planning district shall be considered as competing applications. As both COPN requests involve surgical services in PD 15, they are deemed to be competing requests.

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 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;**

Table 4 shows projected population growth in PD 15 through 2030. As depicted in **Table 4**, at an average annual growth rate of 1.01%, PD 15’s population growth rate from 2010-2020 was well above the state’s average annual growth rate of 0.77%. Overall, the planning district was projected to add an estimated 108,937 people in the 10-year period ending in 2020—an approximate 11% increase with an average increase of 10,894 people annually. In the 10-year period ending in 2030, the planning district is projected to add an estimated 108,303 people – an approximate 10% increase with an average increase of 10,830 people annually.

Regarding the 65+ age group for PD 15, Weldon-Cooper projected a more rapid increase in population growth (an approximate 48% increase from 2010 to 2020 and approximately 30% from 2020 to 2030). Weldon-Cooper further projects that statewide, the 65+ age cohort population will increase at a rate of approximately 38% from 2010 to 2030 and approximately 27% from 2020 to 2030.

Table 4. Population Projections for PD 15, 2010-2030

Locality			2010 - 2020		2020 - 2030		
	2010	2020	% Change	Avg Ann % Change	2030	% Change	Avg Ann % Change
Charles City	7,256	6,982	-3.78%	-0.38%	6,941	-0.59%	0.06%
Chesterfield	316,236	353,841	11.89%	1.10%	396,647	12.10%	1.15%
Goochland	21,717	23,547	8.43%	0.79%	26,702	13.40%	1.27%
Hanover	99,863	109,244	9.39%	0.88%	119,360	9.26%	0.89%
Henrico	306,935	332,103	8.20%	0.77%	363,259	9.38%	0.90%
New Kent	18,429	23,474	27.38%	2.39%	28,104	19.72%	1.82%
Powhatan	28,046	29,909	6.64%	0.63%	33,440	11.81%	1.12%
Richmond city	204,214	232,533	13.87%	1.28%	245,483	5.57%	0.54%
Total PD 15	1,002,696	1,111,633	10.86%	1.01%	1,219,936	9.74%	0.93%
PD 15 65+	116,609	172,249	47.72%	3.88%	224,417	30.29%	2.68%
Virginia	8,001,024	8,655,021	8.17%	0.77%	9,331,666	7.82%	0.76%
Virginia 65+	976,937	1,352,448	38.44%	3.22%	1,723,382	27.43%	2.45%

Source: U.S. Census, Weldon Cooper Center Projections (June 2019) and DCOPN (interpolations)

According to regional and statewide data regularly collected by Virginia Health Information (VHI), for 2021, the most recent year for which such data is available, the average amount of charity care provided by HPR IV facilities was 1.0% of all reported total gross patient revenues (Table 5).

Table 5. HPR IV Charity Care Contributions: 2021

2021 Charity Care Contributions at or below 200% of Federal Poverty Level			
HPR IV	Gross Patient Revenues	Adjusted Charity Care Contribution	Percent of Gross Patient Revenue
Encompass Health Rehab Hosp of Petersburg	\$26,851,240	\$1,046,165	3.9%
Bon Secours Southern Virginia Regional Medical Center	\$193,424,382	\$6,462,541	3.3%
Sentara Halifax Regional Hospital	\$305,216,000	\$5,567,790	1.8%
Bon Secours St. Francis Medical Center	\$1,075,574,864	\$15,314,171	1.4%
Bon Secours Southside Regional Medical Center	\$2,000,593,397	\$27,695,403	1.4%
Bon Secours Richmond Community Hospital	\$991,036,257	\$11,039,087	1.1%
CJW Medical Center	\$8,975,939,621	\$87,710,457	1.0%
Henrico Doctors' Hospital	\$5,763,604,659	\$52,734,748	0.9%
VCU Health System	\$6,809,570,615	\$61,295,221	0.9%
Bon Secours St. Mary's Hospital	\$2,358,088,813	\$20,998,912	0.9%
TriCities Hospital	\$1,324,643,208	\$9,600,576	0.7%
Sheltering Arms Institute	\$137,252,572	\$970,918	0.7%
Bon Secours Memorial Regional Medical Center	\$1,614,325,924	\$9,753,218	0.6%
Community Memorial Hospital	\$343,583,756	\$1,572,169	0.5%

2021 Charity Care Contributions at or below 200% of Federal Poverty Level			
HPR IV	Gross Patient Revenues	Adjusted Charity Care Contribution	Percent of Gross Patient Revenue
Encompass Health Rehab Hosp of Virginia	\$25,150,781	\$107,359	0.4%
Southside Community Hospital	\$383,098,711	\$1,431,006	0.4%
Cumberland Hospital for Children and Adolescents	\$39,513,361	\$0	0.0%
Select Specialty Hospital - Richmond	\$141,742,321	\$0	0.0%
Total Inpatient Hospitals:			18
HPR IV Inpatient Hospital Median			1.1%
HPR IV Total Inpatient \$ & Mean %	\$32,509,210,482	\$313,299,741	1.0%

Source: VHI (2021)

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Geographically, MVSC will be located less than one mile off Interstate 95 at 10054 Sliding Hill Road, Ashland, Virginia. MVSC is not accessible by public transportation.

Regarding socioeconomic barriers to access to the applicant’s services, although MVSC is a limited liability company without historical charity care to review, its ultimate corporate parent is HCA Healthcare, Inc., which operates six hospitals in HPR IV. These facilities provided charity care ranging from 0.7% to 1% in 2021, the latest year for which such data are available. Pursuant to § 32.1-102.4B of the Code of Virginia DCOPN must now place a charity care condition on every applicant seeking a COPN. Accordingly, should the State Health Commissioner (Commissioner) approve the proposed project, DCOPN recommends a charity care condition of no less than the 1.0% HPR IV average, in addition to any new requirements as found in the revised § 32.1-102.4B of the Code of Virginia.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

Geographically, the VEI Surgery Pavilion is located at 402 Westhampton Station, Richmond, Virginia. The facility is located off Huguenot Road, which is accessible from the Powhite Parkway and Chippenham Parkway.

Regarding socioeconomic barriers to access to the applicant’s services, pursuant to § 32.1-102.4B of the Code of Virginia DCOPN must now place a charity care condition on every applicant seeking a COPN. Accordingly, should the State Health Commissioner (Commissioner) approve the proposed project, DCOPN recommends a charity care condition of no less than the 1.0% HPR IV average, in addition to any new requirements as found in the revised § 32.1-102.4B of the Code of Virginia.

The VEI Surgery Pavilion is one of two freestanding ophthalmic OSHs in PD 15 (the other is the Cataract and Refractive Surgery Center). VEI’s utilization has not reached the SMFP volume threshold but the applicant asserts that volumes are increasing. The applicant is currently operating from Monday-Thursday 6:45 a.m. to 5:30 p.m. According to the applicant, patients are waiting up to eight weeks before they are able to have needed surgeries. Additionally, when

emergencies arise, fitting emergency cases into the schedule requires postponing or moving other scheduled case. VEI expanded its Short Pump office in March 2024 to accommodate additional patients at that location and also plans to onboard three new surgeons. VEI asserts that given these factors, and the high utilization of its ORs, VEI's surgical case growth is currently constrained.

DCOPN is not aware of any other distinct and unique geographic, socioeconomic, cultural, transportation, or other barriers to care that this project would address.

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

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

DCOPN received five letters of support for the proposed project. Collectively, these letters articulate several benefits of the project, including:

- Timely access to health care services for [Hanover residents] is a priority for [the Hanover County] Board of Supervisors.
- It would be the goal of Hanover County to work with Middle Virginia Surgicenter, LLC and [Hanover] citizens on this project through a significant local public input process as part of a comprehensive rezoning.
- The proposed OSH location is just off Exit 86 on Interstate 95, making it highly accessible for residents and for travelers passing through Hanover County as well. The Atlee Station Corridor, named for the road that runs adjacent to the Middle Virginia Surgicenter site, has been the County's highest growing corridor over the past 20 years.
- Establishing this outpatient surgical hospital with three relocated operating rooms in Ashland will enhance the existing options and will improve care and access for many Hanover County residents.
- Through relocating existing operating rooms from HCA Virginia's hospitals to an outpatient surgical hospital in Ashland, HCA Virginia will improve access without increasing the inventory of COPN approved resources. This project will improve the distribution of existing resources and lower costs for patients.
- This project will offer patients who already choose HCA Virginia a lower costs option for high-quality surgical services at a location closer to their homes.
- Many patients will travel further from their homes to be seen at the health system they know and trust. Improving access to a patient's preferred provider and health system encourages patients to receive necessary medical care sooner and avoid prolonging care, which can lead to

worse medical conditions, more complications later on, and higher costs to the patient and system.

DCOPN received one letter of opposition from Bon Secours Richmond Health System (Bon Secours' Opposition Letter), dated April 24, 2024. The Bon Secours Opposition Letter discussed:

- Just as the Commissioner determined there was no public need for HCA's two prior projects, denying COPN Request Nos. VA-8687 and VA-8706, there similarly is no public need for the proposed HCA OSH in Ashland.
- Beyond a vague, unsupported assertion that HCA Virginia facilities in 2022 performed 4,389 relevant outpatient surgical cases "on patients who live closer to the Middle Virginia Surgicenter than any other HCA location," HCA provides no patient origin data to validate its claim that HCA is already providing care to substantial numbers of HCA patients who reside in the Ashland area.
- In the present review, MVS LLC also notably declines to provide any information about the methodology or assumptions it used to develop its Ashland OSH surgical projections. As a result, there is no way to verify that the zip code level surgical projections for the Ashland OSH that are included [with the application] are actually reflective of existing HCA patients who are already choosing HCA facilities consistent with HCA's assertion.
- As outpatient surgical patient origin data is not available from VHI, absent HCA's provision of the relevant patient origin data, there is no way to evaluate the veracity of HCA's claims. But an evaluation of inpatient surgical (i.e. surgical DRG) patient origin data, which is available from VHI, confirms that HCA facilities are not currently providing surgical care to significant numbers of patients residing in the Ashland area. For example, HCA projects that its Ashland OSH will perform 539 surgical cases in year one on patient originating from zip code 23116 (representing 20% of the Ashland OSH's year one projected surgical volume). However, for the most recent 12-month period for this data is publicly available (Q4 2022 through Q3 2023), the existing HCA PD 15 facilities together performed just 190 inpatient surgical cases on patients originating from the same zip code.
- The same goes for zip code 23111; HCA projects that Ashland OSH will perform 522 surgical cases in year one on patients originating from this zip code (representing 19% of the Ashland OSH's year one projected surgical volume) but for the most recent 12-month period (Q4 2022 through Q3 2023), the existing HCA PD 15 facilities performed an aggregate of just 199 surgical cases on patients originating from the same zip code.
- As was true of HCA's prior COPN applications to establish the Ashland Hospital and the Ashland FSED, its latest COPN application to establish the Ashland OSH is an undeniable play to expand HCA's footprint north of the James River in OD 15 for the purpose of effecting market share gains. But unlike its prior proposals that offered up some sense of urgency of access to emergency services, outpatient surgical services are not typically provided on an

emergent basis. So there is even less reason here to make public need determinations on the basis of improved access times.

- [Ashland] patients are well served already by other existing providers, including Bon Secours Memorial Regional Medical Center, from whom the Ashland OSH would redirect surgical volume.

On April 30, 2024, MVSC responded to the Bon Secours Opposition Letter. The MVSC response discussed:

- As set forth in detail in the application and confirmed by the many letters of support, the Middle Virginia Surgicenter project is fully consistent with [12VAC5-230-500 B].
- First, the project will improve the distribution of surgical services within PD 15. This improved distribution can be clearly seen by the PD 15 operating room map at Attachment IV.H.1 of the application.
- Second, the project will result in the provision of surgical services at a lower cost to surgical patients than in the hospital setting. As an outpatient surgical hospital, Middle Virginia Surgicenter will be able to offer the same surgical services in a more cost-effective manner.
- Third, the project will optimize the number of operations in PD 15 that are performed on an outpatient basis by converting hospital operating rooms to ambulatory surgery operating rooms.
- Bon Secours claims that Middle Virginia Surgicenter should be denied because COPN Request Nos. VA-8687 and 8706 were denied. That argument is meritless. Each COPN project must be evaluated against the SMFP standards applicable to that particular project. The fact that the Commissioner determined that the Ashland Hospital project was not consistent with the SMFP standards for new hospitals has no bearing on whether the Middle Virginia Surgicenter application is consistent with 12VAC5-230-500.B.
- In 2022, HCA PD 15 facilities performed 639 outpatient surgical cases on the 2024 Medicare-approved ASC procedure list on patients residing in ZIP Code 23111. Applying HCA's PD 15 2017-2022 compound annual growth rate ("CAGR") in outpatient surgical cases on the 2024 Medicare-approved ASC procedure list of 1.73% to the 639 2022 cases from ZIP Code 23111 yields a projected 696 cases by 2027, the year before Middle Virginia Surgicenter's projected first full calendar year of operation (2028). The application conservatively projected that 75% of these patients would seek care from Middle Virginia Surgicenter, equating to the projected 522 cases from ZIP Code 23111. The pattern is the same for the other ZIP Codes comprising Middle Virginia Surgicenter's projected service area, including ZIP Code 23116.
- Moreover, the data demonstrating substantial numbers of area patients seeking outpatient surgery from HCA is corroborated in the letters of support for the project.

Public Hearing

Section 32.1-102.6 B of the Code of Virginia directs DCOPN to hold one public hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city in the case of competing applications; or in response to a written request by an elected local government representative, a member of the General Assembly, the Commissioner, the applicant, or a member of the public. COPN Request No. VA-8752 is competing with COPN Request No. 8753 in this batch cycle. DCOPN conducted a public hearing on April 22, 2024. A total of 16 individuals attended the public hearing. The project was presented by the CEO of HDH, a Hanover County administrator and a surgeon from HDH, who discussed:

- The proposed project is consistent with the relocation standard of the SMFP. It will provide a better distribution of services, will provide the same services at a lower cost, and will increase the number of surgeries performed on an outpatient basis.
- The project is inventory neutral.
- The Atlee Station corridor is the fastest growing area of Hanover County.
- Improved access encourages patients to seek care sooner.
- The OSH will better serve existing patients who live closer to Ashland.

One person from the Bon Secours Richmond Health System expressed opposition to the project. The opposition discussed:

- The proposed OSH will be located in the same location as the proposed Ashland Hospital.
- The project is an attempt by HCA to gain market share and will negatively impact Bon Secours Memorial Regional Hospital.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

DCOPN received two letters of support for the proposed project from doctors at VEI. Collectively, these letters articulate several benefits of the project, including:

- The VEI ASC is the only location where the VEI surgeons can perform their surgeries given the surgeons' needs for specialized equipment and staff.
- VEI's five existing operating rooms are highly utilized, which is presenting operational challenges and compromising VEI's ability to meet its patients' needs in an expedient manner.
- A sixth operating room will provide more capacity for the practice to grow and expand to meet the community's need for ophthalmic care.
- The sixth operating room will allow VEI to continue to provide the high-quality, cost-effective and efficient care to which its community has become accustomed.

DCOPN did not receive any letters in opposition to the proposed project.

Public Hearing

Section 32.1-102.6 B of the Code of Virginia directs DCOPN to hold one public hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city in the case of competing applications; or in response to a written request by an elected local government representative, a member of the General Assembly, the Commissioner, the applicant, or a member of the public. COPN Request No. VA-8752 is competing with COPN Request No. 8753 in this batch cycle. DCOPN conducted a public hearing on April 22, 2024. A total of 16 individuals attended the public hearing. There were no speakers other than two physicians from VEI, who presented the project and discussed:

- The substantial growth of the practice and the needs of its patients.
- The specialized equipment and teams needed at the VEI Surgery Pavilion.
- VEI's high patient satisfaction.
- The low construction costs because the building is already built to have a sixth operating room.
- The institutional need and the current scheduling difficulties.
- The high amount of Medicare and Medicaid patients that VEI serves.

(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;

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

While it can be argued that maintaining the status quo is a reasonable alternative to the proposed project, the applicant has demonstrated that the proposed project is inventory neutral and would improve the geographic distribution of surgical services in PD 15. As can be observed in **Figure 1**, the majority of surgical services are concentrated in the central portion of the PD, close to the Richmond metropolitan area. As shown in **Figure 1**, the location of the proposed project is farther north than any other surgical service in the PD. Furthermore, the applicant intends to move underutilized inventory – (two GPORs from RDH and one GPOR from HDH-Forest). As shown in **Table 10**, in 2022 RDH operated at 51.3% utilization and HDH – Forest operated at 59.4% utilization. Considering the inventory left at those hospitals after implementation of the proposed project (3 at RDH and 16 at HDH – Forest) and 2022 operating room hours, RDH would operate at 86% and HDH – Forest would operate at 63%, representing a better use of surgical services. For these reasons, the status quo is not a preferable alternative to the proposed project.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

The status quo is a reasonable alternative to the proposed project. The applicant asserts that there are no reasonable alternatives that are more favorable than the proposed project, and that the

addition of one GPOR is necessary to address VEI's institutional need. Regarding alternatives, the applicant states:

There is no reasonable alternative to the project. VEI has an institutional need for additional OR capacity. No other facility in PD 15 can meet this need. VEI's surgeons require specialized equipment that is not available in other ORs. The other two facilities at which ophthalmic surgeries are performed are highly utilized. Regardless, VEI's physicians are not on staff at these facilities; therefore, they cannot operate there. VEI's project is the most efficient, least cost and most effective way to meet VEI's institutional need for additional surgical capacity. VEI also considered opening the ASC on Fridays to create additional capacity. After significant study, VEI determined that this is not a reasonable alternative because of the logistical challenges, increased staffing requirements, lack of anesthesiology coverage, and disruption of maintenance schedules:

- First, if surgeries are scheduled on Fridays, post-operative care would need to occur on Saturdays. This is not only logistically challenging but also undesirable for patients. Many patients prefer to recover at home during the weekends, and scheduling post-operative care on Saturdays could disrupt this preference. Additionally, weekend scheduling could potentially delay necessary care if complications arise, as staffing is typically reduced on weekends.
- Second, opening the facility on Fridays would require a significant increase in staffing. VEI would need 15 Pre-Operative/Post-Anesthesia Care RNs, 5 OR RNs, 5 certified surgical technicians, and 1 central sterile technician. Additionally, opening on Fridays would not just mean hiring more staff, but also managing their schedules, training, and benefits, which would add to the operational costs. In contrast, adding a sixth OR from Monday to Thursday would only necessitate 6 additional staff members to work within the systems already established during those days of the week, making it a more cost-effective and manageable solution.
- Third, anesthesiology coverage is crucial for the safe and successful execution of surgeries. VEI cannot regularly secure anesthesiology coverage on Fridays. This alone makes opening the facility on Fridays a non-viable option.
- Last, regular maintenance of surgical equipment is essential to ensure their optimal performance and longevity, and maintenance is typically performed on Fridays. Opening the facility on this day would disrupt these schedules. This could potentially lead to equipment failure or malfunctions, compromising patient safety and surgical outcomes.

In support of its assertion that it has a compelling institutional need for the proposed expansion, the applicant references the 83% rate utilization for 2023 and 84% in 2022. Similarly, the applicant provides projections for 2024 and 2025 of 94.3% utilization and 96.6% utilization, respectively. Additionally, the applicant explains that patients are having to wait up to eight weeks for their surgeries.

However, DCOPN contends that the applicant has not reached the SMFP expansion standard, even in its projections for the next two years. Therefore, the request to expand by adding one GPOR is premature. DCOPN further concludes that the applicant has not demonstrated an institutional need to expand. Furthermore, it can be argued that there are reasonable alternatives to the proposed project, including, the status quo or extending hours in the existing ORs, despite the applicant's assertions to the contrary.

(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;

Currently there is no organization in HPR IV designated by the Virginia Department of Health to serve as the Health Planning Agency for PD 15. Therefore, this consideration is not applicable to the review of the proposed projects.

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

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

As demonstrated by **Table 2**, the projected capital costs of the proposed project are \$20,836,808, approximately 40% of which represent direct construction costs. The entirety of the capital costs will be funded using the internal resource of the applicant (**Table 2**). Accordingly, there are no financing costs associated with this project. DCOPN concludes that when compared to similar projects, these costs are reasonable. For example, COPN No. VA-04770 issued to Inova Oakville Ambulatory Surgery Center to establish an OSH with three general-purpose operating rooms is anticipated to cost approximately \$20,013,530.

The applicant identified numerous benefits of the proposed project, including:

- The project will improve the distribution of surgical services in PD 15, result in the provision of the same surgical services at a lower cost within PD 15 because the operating rooms will be converted from hospital operating rooms to lower cost ambulatory surgery center operating rooms, and optimize the number of operations in the PD that are performed on an outpatient basis.
- The MVSC site is ideally located less than one mile off Interstate 95, thereby improving access for patients who already choose to receive surgical services at HCA Virginia facility and who would otherwise need to navigate through often heavy traffic to receive timely access to such care.
- By relocating existing operating rooms from hospitals in PD 15, the project is inventory neutral.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

As demonstrated by **Table 3**, the projected capital costs of the proposed project are \$2,906,021.06 (**Table 3**). DCOPN observes that the projected costs of \$2,906,021 are reasonable when compared to previously authorized projects similar in scope. For example, COPN No. VA-

04819 issued to the Center for Visual Surgical Excellence, LLC to add one ophthalmic restricted operating room by converting a procedure room to an OR is anticipated to cost approximately \$2,511,226. The landlord, VEI Surgery Building, LLC will fund the construction costs associated with the renovations, which will be passed through to VEI in the form of rent, which will be paid as an operational expense. VEI will also incur financing costs directly associated with purchasing the equipment to operate the operating room.

The applicant identified numerous benefits of the proposed project, including:

- The introduction of a sixth operating room will reduce patient wait times and increase access to state-of-the-art ophthalmic surgical services.
- Because the site was originally constructed to house six operating rooms, it has sufficient parking and utilities to support the additional volume.
- Given the minimal costs associated with the renovations, the proposed project is a very cost-efficient way to address VEI’s institutional need.
- The [growth] trajectory that VEI is experiencing indicates that the ASC will essentially be fully utilized by the time construction is finished, should the project be approved.

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

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The Pro Forma Income Statement provided by the applicant includes the provision of charity care in the amount of 0.8% (**Table 6**). As previously discussed, recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. DCOPN notes that, if approved, the proposed project should be subject to a charity care condition no less than the 1% HPR IV average, in addition to any new requirements as found in the revised § 32.1-102.4B of the Code of Virginia.

Table 6. MVSC Pro Forma Income Statement

	Year 1	Year 2
Total Gross Revenue	\$66,470,182	\$70,993,520
Contractual Adjustments	(\$57,129,048)	(\$61,016,715)
IBad Debt	(\$88,094)	(\$94,089)
Charity Care	(\$531,761)	(\$567,948)
Net Revenue	\$8,721,279	\$9,314,768
Total Operating Expenses	\$8,642,454	\$8,973,479
Operating Income	\$78,825	\$341,289

Source: COPN Request No. VA-8752

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

The Pro Forma Income Statement provided by the applicant includes the provision of charity care in the amount of 1.0% (**Table 7**). As previously discussed, according to regional and

statewide data regularly collected by VHI, for 2020, the most recent year for which such data is available, the average amount of charity care provided by HPR IV facilities was 1% of all reported total gross patient revenues (**Table 5**). As previously discussed, recent changes to § 32.1-102.4B of the Code of Virginia now require DCOPN to place a charity care condition on every applicant seeking a COPN. DCOPN notes that, if approved, the proposed project should be subject to a charity care condition no less than the 1% HPR IV average, in addition to any new requirements as found in the revised § 32.1-102.4B of the Code of Virginia.

Table 7. VEI Pro Forma Income Statement

	Year 1	Year 2
Total Gross Revenue	\$66,377,557	\$67,774,465
Discounts/Contractual Allowances	(\$42,717,324)	(\$43,616,305)
Bad Debt	(\$197,836)	(\$202,000)
Charity Care	(\$597,398)	(\$609,970)
Net Patient Revenue	\$22,864,999	\$23,346,190
Total Operating Expenses	\$16,184,508	\$16,684,889
Net Income	\$4,200,558	\$4,126,969

Source: COPN Request No. VA-8753

- (vi) **at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project;**

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On September 29, 2023, the Commissioner denied HCA Services of Virginia’s request to establish a hospital with 60 beds, four GPORs, one cardiac catheterization laboratory, one CT scanner and one MRI unit at 10054 Sliding Hill Road, Ashland, Virginia, which is the same location as the proposed project. The Commissioner’s reasons for denial were:

- The proposed project to establish a 60-bed, 1 Cath lab, 1 CT, 4 OR, and 1 MRI hospital, is not consistent with the COPN law and is not in harmony with the SMFP or public policies, interests, and purposes to which the COPN law are dedicated;
- Maintaining the status quo is a reasonable alternative to the project – it is more cost-effective and does not appear to have an adverse effect on the PD;
- The project’s capital costs are high and not reasonable in light of the proposed project’s relative benefit;
- There is known opposition to the proposed project; and
- The proposed project will likely have a negative impact on the utilization, costs, or charges of other service providers in PD 15, materially harming existing providers.

On October 30, 2023, the Commissioner denied HCA Services of Virginia’s request to establish a specialized center for CT and MRI imaging at 10054 Sliding Hill Road, Ashland, Virginia, which is the same location at the proposed project. The Commissioner’s reasons for denial were:

- 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.
- 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.
- There is a surplus of both CT and MRI scanners in PD 15.
- There is documented opposition to the proposed project.
- 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.
- The project was in a competing cycle with a similar project which was preferred based on guidance from the Code of Virginia.
- The status quo is more beneficial and a better alternative than the proposed project.

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DCOPN did not identify any other discretionary factors, not discussed elsewhere in this staff analysis report, to bring to the attention of the Commissioner as may be relevant to determining a public need for the proposed projects.

3. The extent to which the application is consistent with the State Health Services 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, these regulations provide the best available criteria and DCOPN will consider the consistency of the proposed project with the predecessor of the SHSP, the State Medical Facilities Plan (SMFP).

Part V of the SMFP contains criteria/standards for the addition of general-purpose operating rooms. They are as follows:

Part V General Surgical Services

Criteria and Standards for General Surgical Services

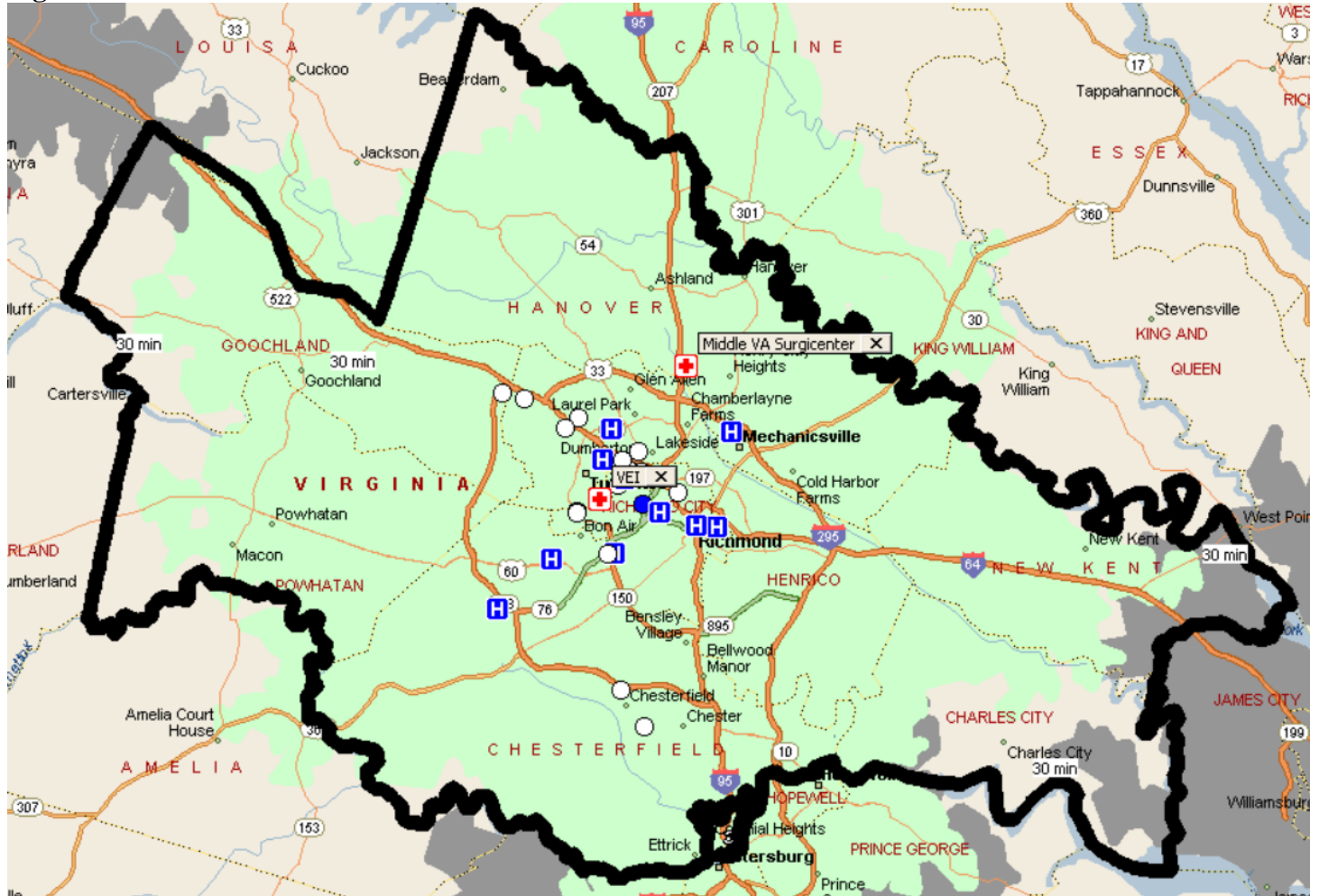
12VAC5-230-490. Travel Time.

Surgical services should be available within 30 minutes driving time one way under normal conditions for 95% of the population of the health planning district using mapping software as determined by the commissioner.

The heavy black line in **Figure 1** represents the boundary of PD 15. The red cross symbols mark the locations of the proposed projects. The white “H” symbols on blue backgrounds mark the locations of existing general hospital surgical services within PD 15. The white circles are existing and authorized OSH sites in PD 15. The light green shaded area represents the areas of

PD 15 and surrounding areas that are within 30 minutes' drive time of existing PD 15 surgical services. Given the amount and location of shaded area, it is evident that surgical services currently exist within a 30-minute drive time for at least 95% of the population of PD 15.

Figure 1



12VAC5-230-500. Need for New Service.

A. The combined number of inpatient and outpatient general purpose surgical operating rooms needed in a health planning district, exclusive of procedure rooms, dedicated cesarean section rooms, operating rooms designated exclusively for cardiac surgery, procedures rooms or VDH-designated trauma services, shall be determined as follows:

$$\frac{\text{FOR} = ((\text{ORV}/\text{POP}) \times (\text{PROPOP})) \times \text{AHORV}}{1600}$$

Where:

ORV = the sum of total inpatient and outpatient general purpose operating room visits in the health planning district in the most recent five years for which general purpose operating room utilization data has been reported by VHI; and

POP = the sum of total population in the health planning district as reported by a demographic entity as determined by the commissioner, for the same five-year period as used in determining ORV.

PROPOP = the projected population of the health planning district five years from the current year as reported by a demographic program as determined by the commissioner.

AHORV = the average hours per general purpose operating room visit in the health planning district for the most recent year for which average hours per general purpose operating room visits have been calculated as reported by VHI.

FOR = future general purpose operating rooms needed in the health planning district five years from the current year.

1600 = available service hours per operating room per year based on 80% utilization of an operating room available 40 hours per week, 50 weeks per year.

The preceding formula can be used to affirm whether there is currently an excess of GPORs in PD 15. The preceding formula can also determine the overall need for GPORs within PD 15 five years from the current year, i.e., in the year 2029.

Based on GPOR utilization data submitted to and compiled by VHI, for the five-year period of 2018-2022, which is the most recent five-year period for which relevant data is available, the total and average number of reported inpatient and outpatient operating room visits is shown below in **Table 8**.

Table 8. Inpatient and Outpatient GPOR Visits in PD15: 2018-2022

Year	Total Inpatient & Outpatient GPOR Visits
2018	134,998
2019	141,390
2020	119,544
2021	136,700
2022	137,157
Total	669,789
Average	133,958

Source: VHI (2018-2022)

Based on actual population counts derived as a result of the 2010 U.S. Census, and population projections as compiled by Weldon Cooper, **Table 9** presents the U.S. Census' baseline population estimates for PD 15 for the five years 2018-2022 as follows:

Table 9. PD 15 Population: 2018-2022 and 2029

Year	Population
2018	1,084,014
2019	1,096,002
2020	1,108,448
2021	1,121,051
2022	1,130,755
Total	5,540,270
2029	1,207,561

Source: U.S. Census, Weldon Cooper Center Projections (August 2019)

Based on the above population estimates from the 2010 U.S. Census and population projections as compiled by Weldon Cooper, the cumulative total population of PD 15 for the five-year period 2018-2022, was 5,540,270, while the population of PD 15 in the year 2029 (PROPOP – five years from the current year) is projected to be 1,207,561. These figures are necessary for the application of the preceding formula, as follows:

ORV	÷	POP	=	CSUR
Total PD 15 GPOR Visits 2018 to 2022		PD 15 Historical Population 2018-2022		Calculated GPOR Use Rate 2018-2022
669,789		5,540,270		0.1209

CSUR	X	PROPOP	=	PORV
Calculated GPOR Use Rate 2018-2022		PD 15 Projected Population 2029		Projected GPOR Visits 2029
0.1209		1,207,561		145,994

AHORV is the average hours per operating room visit in the planning district for the most recent year for which average hours per operating room visits has been calculated using information collected by the Virginia Department of Health.

AHORV = 253,394 total inpatient and outpatient operating room hours (**Table 10**) reported to VHI in 2022, divided by 137,157 total inpatient and outpatient operating room visits reported to VHI for that same year (**Table 9**).

$$\text{AHORV} = 1.8475$$

$$\text{FOR} = ((\text{ORV} / \text{POP}) \times (\text{PROPOP})) \times \text{AHORV} / 1600$$

$$\text{FOR} = ((669,789 / 5,540,270) \times (1,207,561)) \times 1.8541 / 1600$$

$$\text{FOR} = 269,724.15 / 1600$$

FOR = 168.58 General Purpose Operating Rooms Needed in PD 15 in 2029
Current PD 15 GPOR Inventory: 189 (Table 1)

Net Surplus: 20.42 (21) GPORs for 2027 Planning Year

As shown above, DCOPN has calculated a surplus of 21 GPORs in PD 15 for the 2029 planning year. Additionally, as shown in **Table 10**, in 2022, the 179 GPORs in PD 15 in operation for that year displayed a collective utilization of 88.5%.

Table 10. 2022 PD 15 General Purpose Operating Room Utilization

Facility	Operating Rooms	Total Hours	Use Per OR	Utilization Rate
American Access Care of Richmond	2	2,400	1,200.0	75.0%
Bon Secours Memorial Regional Medical Center	12	22,193	1,849.4	115.6%
Bon Secours Richmond Community Hospital	3	956	318.7	19.9%
Bon Secours St. Francis Medical Center	11	17,661	1,605.5	100.3%
Bon Secours St. Mary's Hospital	21	35,966	1,712.7	107.0%
Boulders Ambulatory Surgery Center	3	6,595	2,198.3	137.4%
Cataract and Refractive Surgery Center	1	2,700	2,700.0	168.8%
Chippenham Hospital	14	14,363	1,025.9	64.1%
Henrico Doctors' Hospital - Forest	17	16,123	948.4	59.3%
Henrico Doctor's Hospital - Parham Doctors' Hospital	11	9,581	871.0	54.4%
Henrico Doctor's Hospital - Retreat	5	4,105	821.0	51.3%
Johnston-Willis Hospital	17	19,436	1,143.3	71.5%
MEDARVA Stony Point Surgery Center	6	9,702	1,617.0	101.1%
MEDARVA Surgery Center @ West Creek	2	4,393	2,196.5	137.3%
Skin Surgery Center of Virginia	2 ¹	1,775	887.5	55.5%
St. Mary's Ambulatory Surgery Center	4	8,216	2,054.0	128.4%
Urosurgical Center of Richmond	3 ²	2,216	738.7	46.2%
VCU Health Neuroscience, Orthopedic and Wellness Center	6	721	120.2	7.5%
VCU Medical Center	34	67,564	1,987.2	124.2%
Virginia Eye Institute Surgery Pavilion	5	6,728 ³	1345.6	84.1%
TOTAL	179	253,394	1,415.6	88.5%

Source: VHI (2022) and DCOPN records

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MVSC is not proposing to establish a new service, but rather, is proposing to relocate existing operating rooms in its inventory. Accordingly, DCOPN concludes that this provision is not applicable to the proposed project.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

VEI is not proposing to establish a new service, but rather, proposes to increase its current GPOR complement by one GPOR. Accordingly, DCOPN concludes that this provision is not applicable to the proposed project.

¹ Second operating room limited to the surgical treatment of skin cancers added pursuant to COPN No. VA-04301. VHI data lists as procedure rooms – corrected for utilization calculations in Table 12.

² DCOPN records indicate the Urosurgical Center of Richmond operates three GPORs. VHI data lists two as cystoscopic – corrected for utilization calculations in Table 12.

³ VEI explained in its application that for several years, its previous reporting to VHI had inadvertently contained several discrepancies, including counting lase procedures in its case count and including total hours for prep and cleanup. For purposes of the PD need calculation and overall utilization, DCOPN has corrected this information based on the application corrected data.

B. Projects involving the relocation of existing operating rooms within a health planning district may be authorized when it can be reasonably documented that such relocation will: (i) improve the distribution of surgical services within a health planning district ; (ii) result in the provision of the same surgical services at a lower cost to surgical patients in the health planning district; or (iii) optimize the number of operations in the health planning district that are performed on an outpatient basis.

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

As can be observed in **Figure 1**, the majority of surgical services are concentrated in the central portion of PD 15, close to the Richmond metropolitan area. As shown in **Figure 1**, the location of the proposed project is farther north than any other surgical service in PD 15. Accordingly, DCOPN concludes that approval of the proposed project would address a geographic maldistribution of surgical services in PD 15.

Additionally, the proposed project is inventory neutral and has the potential to improve the utilization of existing authorized surgical services within PD 15. The applicant intends to move two GPORs from RDH and one GPOR from HDH-Forest). As shown in **Table 10**, in 2022, RDH operated at 51.3% utilization and HDH – Forest operated at 59.4% utilization. Considering the inventory left at those hospitals after implementation of the proposed project (3 at RDH and 16 at HDH – Forest) and 2022 operating room hours, RDH would have operated at 86% and HDH – Forest would have operated at 63%, representing a better utilization of surgical services.

Finally, because the applicant proposes to move the GPORs from a hospital setting to an OSH, the proposed project does increase the potential for provision of services on an outpatient basis, which is generally lower cost than if performed in a hospital setting.

The applicant has satisfied this standard.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

Not applicable. The applicant is not seeking to relocate existing operating rooms.

12VAC5-230-510. Staffing.

Surgical services should be under the direction or supervision of one or more qualified physicians.

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COPN Request No. VA-8753: Virginia Eye Institute, Inc.

Both applicants have provided assurances that the proposed surgical services will be under the direction of appropriately qualified physicians.

The SMFP also contains criteria/standards for when competing applications are received and when institutional expansion is needed. They are as follows:

Part 1

Definitions and General Information

12VAC5-230-30. When Competing Applications Received.

In reviewing competing applications, preference may be given to an applicant who:

1. Has an established performance record in completing projects on time and within the authorized operating expenses and capital costs;
2. Has both lower capital costs and operating expenses than his competitors and can demonstrate that his estimates are credible;
3. Can demonstrate a consistent compliance with state licensure and federal certification regulation and a consistent history of few documented complaints, where applicable; or
4. Can demonstrate a commitment to serving his community or service area as evidenced by unreimbursed services to the indigent and providing needed but unprofitable services, taking into account the demand of the particular service area.

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

As a new applicant, MVSC does not have a history of previous projects for DCOPN to review. Although MVSC is a limited liability company without historical charity care to review, its ultimate corporate parent is HCA Healthcare, Inc., which operates six hospitals in HPR IV. These facilities provided charity care ranging from 0.7% to 1% in 2021, the latest year for which such data are available. With respect to the proposed project, the projected capital cost is \$20,836,808, which is reasonable when compared to similar projects. The Pro Forma Income Statement provided by the applicant includes the provision of charity care in the amount of 0.8%.

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VEI has been operating with five operating rooms for 20 years, and thus does not have a recent history of previous projects for DCOPN to review. With respect to the proposed project, the projected capital cost is \$2,906,021, which is reasonable when compared to similar projects. Finally, the applicant asserts that it is committed to providing surgical services to those in need without regard to ability to pay. The Pro Forma Income Statement provided by the applicant includes the provision of charity care in the amount of 1%, consistent with the HPR average.

Conclusion

DCOPN concludes that no applicant warrants preference regarding completing projects on time and within the approved capital expenditure or for having lower capital costs, meeting state licensure and federal certification regulations or displaying a commitment to charity care.

The SMFP also contains criteria/standards for when institutional expansion is needed. They are as follows:

12VAC5-230-80. When Institutional Expansion is Needed.

- 1. Notwithstanding any other provisions of this chapter, the commissioner may grant approval for the expansion of services at an existing medical facility in a health planning district with an excess supply of such services when the proposed expansion can be justified on the basis of a facility's need having exceeded its current service capacity to provide such service or on the geographic remoteness of the facility.**
- 2. If a facility with an institutional need to expand is part of a health system, the underutilized services at other facilities within the health system should be reallocated, when appropriate, to the facility with the institutional need to expand before additional services are approved for the applicant. However, underutilized services located at a health system's geographically remote facility may be disregarded when determining institutional need for the proposed project.**
- 3. This section is not applicable to nursing facilities pursuant to §32.1-102.3:2 of the Code of Virginia.**
- 4. Applicants shall not use this section to justify a need to establish new services.**

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

Not applicable. The applicant is not asserting an institutional need to expand.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

As previously discussed, for 2022, the most recent year for which VHI data is available, the existing five GPORs at VEI reported 6,728 surgical hours and operated at a utilization rate of 84.1%, below the SMFP threshold for expansion (**Table 10**). Furthermore, the applicant reports that it operated at 83% utilization in 2023 and anticipates being at 94% utilization for 2024. Finally, the applicant projects 96.6% utilization for 2025.

Though VEI GPOR volumes have not surpassed the SMFP threshold, the applicant asserts that it has an institutional need for an additional GPOR. As previously discussed, the applicant is currently operating from Monday-Thursday 6:45 a.m. to 5:30 p.m. According to the applicant, patients are waiting up to eight weeks before they are able to have needed surgeries. Additionally, when emergencies arise, fitting emergency cases into the schedule requires postponing or moving other scheduled case. VEI expanded its Short Pump office in March 2024 to accommodate additional patients at that location and also plans to onboard three new surgeons. VEI assert that given these factors, and the high utilization of its ORs, VEI's surgical case growth is currently constrained.

According to the applicant, it has explored various options for increasing operating room capacity, including extending its hours, performing surgeries on Fridays or constructing a second Ambulatory Surgery Center (ASC). Also, according to the applicant, after significant study, VEI determined that extending hours is not a reasonable alternative because of the logistical challenges, increased staffing requirements, lack of anesthesiology coverage, and disruption of maintenance schedules. Additionally, the applicant determined the cost of constructing another ASC would far exceed the costs for the proposed project.

DCOPN notes that in 2005, VEI sought and received approval to remove the limitation on the scope of its surgical services to provide only ophthalmic surgery to allow them to offer ear nose

and throat (ENT) surgeries. The ENT surgery was offered through the lease of 1.5 ORs to an ENT physician practice. The applicant reports that ENT surgeries were done in its ORs until 2021 but given VEI's high utilization, there is no time on the schedule for ENT procedures.

VEI does not operate any ORs that could be reallocated. The proposed project is not a nursing facility, and the proposal does not use institutional need to justify the establishment of a new service.

As discussed above, the applicant has not demonstrated an institutional need to expand, even in its projections. Therefore, approval of the proposed project would be premature.

Required Considerations Continued

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;

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

As previously discussed, the applicant is a current provider of surgical services, and PD 15 is served by multiple thriving providers of surgical services. As such, the proposed project is unlikely to foster institutional competition that benefits the area to be served. As previously discussed, as can be observed in **Figure 1**, the majority of surgical services are concentrated in the central portion of the PD, close to the Richmond metropolitan area. As shown in **Figure 1**, the location of the proposed project is farther north than any other surgical service in the PD. Therefore, approval of the proposed project has the potential to address a geographic maldistribution of surgical services in PD 15, and thus improve access to these services.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

VEI is an existing provider of surgical services, and the proposed project is based on VEI's reported institutional need to expand ophthalmic surgical services. As such, the proposed project is unlikely to foster institutional competition that benefits the area to be served.

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;

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DCOPN notes that the location of the proposed project is approximately eight miles from Bon Secours Memorial Regional Medical Center and that Bon Secours Richmond Health System submitted opposition to the proposed project with specific concern regarding whether the applicant has an existing patient base in MVSC's proposed service area to support its projections and the proposed project's effect on Bon Secours Memorial Regional Hospital.

According to the applicant, the patients it intends to serve at this OSH are those patients who have already chosen HCA as their provider. As shown in **Figure 2** below, the applicant anticipates performing 3,587 cases in Year 1 of operations. Using Zip Code 23111 as an example

in support of these projections, and in response to Bon Secours’ opposition, the applicant explains:

In 2022, HCA PD 15 facilities performed 639 outpatient surgical cases on the 2024 Medicare-approved ASC procedure list on patients residing in ZIP Code 23111. Applying HCA’s PD 15 2017-2022 compound annual growth rate (“CAGR”) in outpatient surgical cases on the 2024 Medicare-approved ASC procedure list of 1.73% to the 639 2022 cases from ZIP Code 23111 yields a projected 696 cases by 2027, the year before Middle Virginia Surgicenter’s projected first full calendar year of operation (2028). The application conservatively projected that 75% of these patients would seek care from Middle Virginia Surgicenter, equating to the projected 522 cases from ZIP Code 23111.

DCOPN concludes that based on the available information, the applicant’s projections are reasonable and conservative.

Figure 2

Middle Virginia Surgicenter Cases
Year 1 Cases by ZIP code
IV.B.2

Zip Code	City	Cases	% of Total	Running Total
23116	Mechanicsville	539	15.0%	15.01%
23111	Mechanicsville	522	14.6%	29.57%
23005	Ashland	406	11.3%	40.90%
23024	Bumpass	204	5.7%	46.59%
22546	Ruther Glen	165	4.6%	51.20%
23117	Mineral	113	3.1%	54.34%
23009	Aylett	96	2.7%	57.03%
23015	Beaverdam	89	2.5%	59.51%
22407	Fredericksburg	83	2.3%	61.82%
22560	Tappahannock	65	1.8%	63.64%
23148	Saint Stephens	60	1.7%	65.30%
22551	Spotsylvania	54	1.5%	66.81%
22408	Fredericksburg	54	1.5%	68.31%
23047	Doswell	50	1.4%	69.70%
23069	Hanover	48	1.3%	71.04%
22514	Milford	47	1.3%	72.35%
23059	Glen Allen	47	1.3%	73.65%
23060	Glen Allen	47	1.3%	74.95%
22534	Partlow	43	1.2%	76.16%
Other		855	23.8%	
Grand Total		3,587	100.0%	

Source: COPN Request No. VA-8752

DCOPN further notes that the GPORs at Bon Secours Memorial Regional Hospital are very well utilized. As shown in **Table 10**, in 2022, Bon Secours Memorial Regional Hospital's 12 GPORs operated at 115.6% utilization. When reviewing Bon Secours Memorial Regional Hospital's ambulatory surgical GPORs separately from the GPORs in the hospital, the ambulatory surgical GPORs operated at 74.5% utilization and the hospital GPORs operated at 136.1% utilization in 2022. Therefore, it is unlikely that approval of the proposed project would substantially negatively affect the utilization of Bon Secours Memorial Regional Hospital's GPORs.

For these reasons, DCOPN concludes that while approval of the proposed project may have some effect on existing providers, this effect will be minimal, and the benefits of the proposed project outweigh the risk.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

As previously discussed, DCOPN has calculated a net surplus of 21 GPORs in PD 15 for the 2029 planning year. If approved, the proposed project would add to the surplus. Additionally, the 2022 utilization data for VEI demonstrates available capacity within the facility's existing GPOR complement.

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;

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

As already discussed, DCOPN contends that the projected costs of \$20,836,808 are reasonable when compared to previously authorized projects similar in scope. For example, COPN No. VA-04770 issued to Inova Oakville Ambulatory Surgery Center to establish an OSH with three GPORs is anticipated to cost approximately \$20,013,530. The entirety of the capital costs will be funded using the internal resources of the applicant. Accordingly, there are no financing costs associated with this project. The Pro Forma Income Statement provided by the applicant projects excess revenue of \$78,825 from in the first year of operation, and excess revenue of \$341,289 in the second year of operation (**Table 6**).

With regard to staffing, the applicant states that 22 additional full time equivalent employees (FTE) are required to staff the proposed project, including 6 administrative FTEs, 10 registered nurses, 1 radiologic technician, and 5 other support personnel. DCOPN notes that the HCA Health System has a robust employee recruitment and retention program. Taken together with the limited number of employees needed for this project, DCOPN concludes that the applicant will not have difficulty filling the required position or that doing so will have a negative impact on other area healthcare providers.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

DCOPN observes that the projected costs of \$2,906,021 are reasonable when compared to previously authorized projects similar in scope. For example, COPN No. VA-04819 issued to the Center for Visual Surgical Excellence, LLC to add one ophthalmic restricted operating room is anticipated to cost approximately \$2,511,226. The landlord will fund the construction costs associated with the renovations, which will be passed through to VEI in the form of rent, which will

be paid as an operational expense. VEI will also incur financing costs directly associated with purchasing the equipment to operate the operating room. The Pro Forma Income Statement provided by the applicant projects a net income of \$4,200,558 from in the first year of operation, and a net income of \$4,126,969 in the second year of operation.

With regard to staffing, the applicant states that 6 additional full time equivalent employees (FTE) are required to staff the proposed project, including 0.5 registration FTEs, four registered nurses, one surgical technician, and 0.5 central sterile technician. Regarding this standard, the applicant explains, “[t]hese additional staff will be recruited by posting each employment opportunity on a web-based employment site. Because of the low number of required staff, DCOPN does not anticipate that the applicant will have difficulty staffing the proposed project or that doing so will have a significant negative impact on other PD 15 providers.

- 7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health care 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; and**

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

The proposed project would not introduce new technology that would promote quality or cost effectiveness in the delivery of inpatient acute care. However, the proposed project will increase the potential for provision of services on an outpatient basis.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

The proposed project would not introduce new technology that would promote quality or cost effectiveness in the delivery of inpatient acute care. However, the proposed project will increase the potential for provision of services 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, and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.**

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

The applicant is not a teaching hospital or affiliated with a public institution of higher education or medical schools in the area to be served. Approval of the proposed project would not contribute to the unique research, training or clinical mission of a teaching hospital or medical school. Although HDH is not associated with a teaching hospital or medical school, 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.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

The applicant is not a teaching hospital or affiliated with a public institution of higher education or medical schools in the area to be served. Approval of the proposed project would not contribute to the unique research, training or clinical mission of a teaching hospital or medical school. With regard to this consideration, the applicant notes that it provides observational clinical rotations for refractive surgery for Virginia Commonwealth University, and it averages around 12 students per year.

DCOPN Findings and Conclusions

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

DCOPN finds that Middle Virginia Surgicenter, LLC's proposed project to establish an outpatient surgical hospital with three general purpose operating rooms is generally consistent with the applicable criteria and standards of the SMFP and the Eight Required Considerations of the Code of Virginia. As previously discussed, approval of the proposed project would address a geographic maldistribution of surgical services in PD 15. Additionally, the proposed project is inventory neutral and has the potential to improve the utilization of surgical services within PD 15 by reallocating underutilized capacity. Moreover, for the reasons discussed, the status quo is not a preferable alternative to the proposed project.

DCOPN finds that the total capital costs of the proposed project are reasonable and consistent with previously approved projects similar in scope. Furthermore, DCOPN finds that the project appears to be economically feasible both in the immediate and long-term.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

DCOPN finds that Virginia Eye Institute, Inc.'s proposal to add one general purpose operating room, limited to ophthalmic procedures within PD 15 is generally inconsistent with the applicable criteria and standards of the SMFP and the Eight Required Considerations of the Code of Virginia. DCOPN has calculated a surplus of 21 GPORs in PD 15 and approval of the proposed project would add to this surplus.

As previously discussed, VEI has shown a utilization of 84.1% in 2022 and 83% utilization in 2023. Furthermore, the applicant anticipates being at 94% utilization for 2024. As such, VEI has not exceeded the SMFP volume threshold for GPOR expansion and has not demonstrated an institutional need to expand. DCOPN concludes that the application for the addition of one GPOR at VEI is premature.

DCOPN finds that the total capital costs of the proposed project are reasonable and consistent with previously approved projects similar in scope. Furthermore, DCOPN finds that the project appears to be economically feasible both in the immediate and long-term.

DCOPN Staff Recommendation

COPN Request No. VA-8752: Middle Virginia Surgicenter, LLC

The Division of Certificate of Public Need recommends **conditional approval** of Middle Virginia Surgicenter, LLC's COPN request to establish an outpatient surgical hospital with three GPORs for the following reasons:

1. The proposed project is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan and the Eight Required Considerations of the Code of Virginia.
2. The capital costs are reasonable.
3. The proposed project appears economically viable in the long-term.
4. The project is more favorable than maintaining the status quo.

Recommended Condition

Middle Virginia Surgicenter, LLC will provide surgical services to all persons in need of these services, regardless of their ability to pay, and will provide as charity care to all indigent persons free services or rate reductions in services and facilitate the development and operation of primary care services to medically underserved persons in an aggregate amount equal to at least 1% of Middle Virginia Surgicenter, LLC's total patient services revenue derived from inpatient bed and intensive care unit services as valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. Compliance with this condition will be documented to the Division of Certificate of Public Need annually by providing audited or otherwise appropriately certified financial statements documenting compliance with the preceding requirement. Middle Virginia Surgicenter, LLC will accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. is available from Virginia Health Information. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

Middle Virginia Surgicenter, LLC will provide surgical services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. Additionally Middle Virginia Surgicenter, LLC will facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area.

COPN Request No. VA-8753: Virginia Eye Institute, Inc.

The Division of Certificate of Public Need recommends **denial** of Virginia Eye Institute, Inc.'s COPN request to add one operating room limited to ophthalmic surgical procedures for the following reasons:

1. The proposed project is inconsistent with the applicable criteria and standards of the State Medical Facilities Plan and the Eight Required Considerations of the Code of Virginia.
2. PD 15 has a surplus of GPORs.
3. The applicant has not demonstrated an institution-specific need for GPOR expansion.
4. The status quo is a reasonable alternative to the proposed project.