

**Health Systems Agency of Northern Virginia  
Board of Directors Meeting  
Video Conference Meeting  
November 7, 2022**

**Members Present**

Ana Alvarez  
Magalie Emile-Backer, Pharm.D  
Michael Carrasco  
Tom Fonseca, Chairperson  
Michelle Kimmel  
Pamela Kincheloe, RN  
Sally Patterson  
Douglas Samuelson  
Andrew Wankum  
Terry West  
John Whyte, MD  
Maria Zlotnick

**Staff Present**

Ann McFeeley  
Dean Montgomery

**Guests (Partial List)**

Miriam Arem, Premier Healthcare Management, Cherrydale Health & Rehabilitation Center  
Matthew Cobb, Williams Mullen, Counsel, Cherrydale Health & Rehabilitation Center  
Shilen Lakhani, MD, Gastro Health Reston, South Lakes Surgicenter  
Jessica Parker, Senior Director Strategy Planning, Inova Health System  
Frank Peck, Premier Consulting, Consultant, Cherrydale Health & Rehabilitation Center  
Thomas Stallings, McGuire Woods, Counsel, South Lakes Surgicenter  
Cody Schwartz, Vice President for Operations, Cherrydale Health & Rehabilitation Center  
Judy Randall, Loudoun County, Virginia

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**I. Call to Order**

Tom Fonseca, Chairperson, Health Systems Agency of Northern Virginia (HSANV), called the meeting to order at 7:33 PM. He welcomed those present and reviewed the agenda.

Fonseca stated that, among other matters, the Committee would consider two certificate of public need (COPN) applications:

- South Lakes Surgicenter, Establish Outpatient Surgical Hospital (COPN Request VA-8663)
- Cherrydale Health and Rehabilitation Center, Add 30 Beds (COPN Request VA-8657)

## II. Previous Minutes

Minutes of the August 8, 2022 meeting were approved.

## III. Conflict of Interest

Fonseca followed established HSANV conflict of interest procedures to determine whether any member had a conflict of interest on the applications on the agenda. No conflicts were declared, alleged, or otherwise identified.

## IV. COPN Applications: **South Lakes Surgicenter, Establish Outpatient Surgical Hospital (COPN Request VA-8663); Cherrydale Health and Rehabilitation Center, Add 30 Nursing Home Beds (COPN Request VA 8657)**

### A. **South Lakes Surgicenter, Establish Outpatient Surgical Hospital (COPN Request VA-8663)**

#### HSANV Staff Review

Dean Montgomery presented the HSANV staff evaluation of the application. He said South Lakes Surgicenter (South Lakes), a recently formed subsidiary of Hospital Corporation of America (HCA), proposes to establish an outpatient surgical hospital (i.e., an ambulatory surgery center) in Reston, VA. The project entails the conversion of a large (5,900 sq. ft.) medical office gastroenterology operatory to a licensed surgery center. The medical facility created would have one general purpose operating room, unlicensed procedure rooms, and support space.

Examination of the application in the context of regional planning and regulatory requirements, recent and pending surgery service developments, and local surgery service capacity and use indicates that:

- Regional demand for surgery and authorized operating room capacity in Northern Virginia are in balance, currently and over the next three to five years. There is no evidence or indication of a public need for additional surgery facilities or operating rooms, whether general purpose or specialty gastroenterology rooms.
- The regional operating room surplus is in the Hospital Corporation of America (HCA) system, specifically at StoneSprings Surgery Center and StoneSprings Hospital Center. There is no public benefit in increasing this surplus.
- The primary service area of Gastro Health Reston (South Lakes Surgicenter) overlaps substantially with the service areas of the other HCA surgery services in the region.
- The South Lakes project is not responsive to an identified public need or to cure a system deficiency. Rather, it is responsive to a clearly and repeatedly stated institutional desire to increase revenue by obtaining higher payments from government health insurance programs for services now provided appropriately in a lower cost medical office operatory.
- Authorization of specialty medical facilities in the absence of a clear, compelling need or other justification, essentially to permit a service provider to enhance its revenue stream, conflicts with the principles that underlie Virginia COPN regulation.

Based on these findings, and on the data and arguments presented in the application, staff found the project outlined in the South Lakes application not needed, unnecessarily duplicative, and inconsistent with applicable provisions of the Virginia State Medical Facilities Plan (SMFP).

### **South Lakes Surgicenter Presentation**

Thomas Stallings, Counsel, South Lakes Surgicenter, introduced himself and Shilen Lakhani, MD, representing Gastro Health Reston and South Lakes Surgicenter. Stallings and Lakhani presented the application. The points they emphasized are summarized in the slides used in the presentation (Attachment 1). They include:

- Gastro Health Reston refers its Medicare, Medicaid, and Tricare patients, about 1,400 patients annually, to Reston Surgery Center because government payers (e.g., Medicare, Medicaid, Tricare) do not pay a medical facility fee for gastroenterology procedures (e.g., endoscopy, colonoscopy) performed in a physician office surgery service. The fees available for these services in the Gastro Health Reston operator do not cover Gastro's cost of providing them. Hence the necessity of treating these patients in Reston Surgery Center.
- Establishing a licensed surgery center where government payers (e.g., Medicare, Medicaid, Tricare) will pay an ASC facility fee, would eliminate the necessity of treating Gastro Health Reston patients at Reston Surgery Center, where higher payments are available, and better, more efficient care can be offered.
- South Lakes believes that about 1,000 of the approximately 1,400 patients now referred to Reston Surgery Center would be treated in house if the Gastro Health operator is licensed as an outpatient surgical hospital.
- The project is consistent with precedent; statewide and locally, of approving COPN proposals to establish dedicated freestanding specialty surgery centers regardless of regional need for general purpose operating rooms.
- Northern Virginia (PD 8) does not have a freestanding ambulatory surgery center dedicated to gastroenterology patients and procedures. The South Lakes project is consistent with recent assessments, views and decisions of Virginia Department of Health DCOPN staff, the COPN adjudication officer, and the Commissioner of Health regarding dedicated freestanding specialty surgery centers.
- Converting Gastro Health Reston's office based surgery service to a licensed ambulatory surgery center would not affect service volumes at any surgery service other than Reston Surgery Center. Given that the patients likely to use the new surgery center would otherwise obtain care at Reston Surgery Center where a facility fee would be paid, the project would not increase costs and would have no known negative health system effects.
- The HSANV staff characterization of the proposal as being motivated by a desire to increase Gastro Health Reston's revenue stream and profitability is incorrect and inappropriate. If the motivation or intent were to grow revenue and enhance profitability the solution would be for Gastro to quit serving Medicare and Medicaid patients.
- The project is intended and designed to permit Gastro Health Reston to function more efficiently and to serve its patients more effectively.

### **Board & Staff Questions, Discussion**

In response to questions, Stallings and Lakhani stated or acknowledged that:

- Without a facility fee, there is an economic disincentive to serve Medicare, Medicaid and Tricare patients in an unlicensed gastrointestinal operatory (medical office based surgery).
- Gastro Health Reston physicians now own shares of Reston Surgery Center, which is located less than three miles from the applicant's offices, where they serve Gastro's Medicare, Medicaid and Tricare patients.
- Gastro Health Reston patients served at Reston Surgery Center are treated in procedure rooms, not licensed operating rooms with sterile environments.
- South Lakes Surgicenter gastrointestinal patients would continue to be treated in the existing procedure rooms shown in the application.
- Gastro Health Reston facility fees for privately insured patients are negotiated separately with each insurer. They vary considerably from Medicare and Medicaid facility fee payments.
- South Lakes Surgicenter will be syndicated with Gastro Health Reston physicians offered limited partnerships in the venture. Hospital Corporation of America will retain a majority interest in and control of the facility.
- South Lakes Surgicenter would be used by Gastro Health Reston physicians and staff. There are no plans to syndicate the facility beyond the Gastro Health Reston practice.
- Gastro Health Reston would be likely to relinquish (sell) their interest in Reston Surgery Center after obtaining a limited partnership in South Lakes Surgicenter.

### **Public Comment**

Jessica Parker, Senior Director Strategy and Planning, Inova Health System spoke in opposition to the application. She summarized Inova's assessment of, and opposition to, the South Lakes Surgicenter proposal. The Inova critique is attached (Attachment 2).

South Lakes Surgicenter's respond to the Inova critique also is attached (Attachment 3).

### **Applicant Final Summary**

Stallings restated the principal arguments presented earlier in support of the application. He stressed that the proposal is modest, beneficial, consistent with the favorable COPN treatment accorded recently to dedicated specialty surgery centers, and has no known negative health system effects.

### **Staff Recommendation**

Based on the information and argument presented in the agency staff report on the application, and the discussion earlier with South Lakes Surgicenter representatives, Montgomery recommended denial of the application.

Among other considerations, he noted that:

- there is no need for additional surgery facilities or capacity of any kind region wide,
- Gastro Health Reston physicians and their patients already have direct and ready access to multiple nearby HCA outpatient surgery services,
- there is surplus capacity within the regional HCA surgery service network,

- the prospective limited partners in the venture (Gastro Health Reston physicians) are already limited partners in and regularly use Reston Surgery Center,
- the project is redundant within the local HCA surgery services network and region wide,
- approval of the project would extend and reinforce a problematic pattern of preferential treatment of selected certificate of public need applicants.

**Board Deliberation and Vote**

Doug Samuelson offered a motion to recommend denial of the application. Sally Patterson seconded the motion. The motion passed by a vote of ten in favor (Alvarez, Carrasco, Fonseca, Kimmel, Patterson, Samuelson, West, Whyte, Zlotnick) and two (Kincheloe, Wankum) opposed.

**B. Cherrydale Health & Rehabilitation Center, Add 30 Beds (COPN Request VA-8657)**

**HSANV Staff Review**

Dean Montgomery summarized the HSANV staff assessment of the application. He noted that the proposal to add 30 nursing home beds to the 180 Cherrydale Health and Rehabilitation Center now has, would be a 17% increase in licensed capacity.

In assessing the proposal, Montgomery indicated that:

- The Cherrydale application is accepted for review as a qualified exception to the standard nursing home request for applications (RFA) planning process, in accordance with the provisions of HB 2292, a 2013 amendment to the Virginia COPN statute that permits the relocation of nursing home beds statewide (across planning district boundaries), provided the proposed relocation meets four specified conditions.
- Cherrydale argues that its proposal meets the criteria specified in HB 2292, as well as other applicable provisions of the Virginia State Medical Facilities Plan (SMFP).
- Cherrydale also emphasizes that the project is consistent with precedent, with the ultimate approval of all of the other COPN applications filed under the provisions of HB 2292.
- The project is similar to the recently reviewed proposals to expand Heritage Hall-Leesburg (30 beds) and Leewood Healthcare (25 beds). HSANV opposed both as unnecessary. Both were subsequently authorized.
- It is evident from the plain language of HB 2292 that acceptance of an application for review under its provisions does not speak to the merits of the proposal and does not relieve the applicant of demonstrating a public need for the additional capacity in the planning district where the repositioned beds would be located.
- Cherrydale and its proponents relies on, the “calculated need” figure in the 2020 request for applications (RFA) document published in May 2020 as evidence of a need for additional nursing home beds in Northern Virginia. This “*calculated need*” is based on a flawed methodology that produces highly erratic results and consistently overstates likely (projected) demand in areas and populations with decreasing use rates.
- Recent and projected demand for nursing home care statewide indicate that the beds Cherrydale proposes to transfer from Salem Health and Rehabilitation Center, located in Planning District 5 (PD 5), to Northern Virginia (PD 8) are more likely to be needed in PD 5 than in Northern Virginia.

Based in these considerations and findings, and on the data and argument presented in the application, staff believe the application does not qualify for approval.

### **Cherrydale Health & Rehabilitation Center Presentation**

Matthew Cobb, Williams Mullen, Counsel, Cherrydale Health & Rehabilitation Center, introduced himself and others representing the applicant: Frank Peck, Premier Consulting, Consultant to Cherrydale Health and Rehabilitation Center; Cody Schwartz, Vice President for Operations, Cherrydale Health and Rehabilitation Center; Miriam Arem, Director of Business Development, Premier Health Care Management, Cherrydale Health and Rehabilitation Center.

Cobb, Schwartz and Arem discussed the applicant's view of, and rationale for, the proposal. Their arguments are summarized in the slides used in the presentation (Attachment 4). They include:

- The proposal qualifies for consideration outside the standard request for applications (RFA) planning process in accordance with a 2013 amendment to the Virginia COPN statute (HB 2292, enacted in 2013).
- The project is consistent with about a dozen similar proposals, two in Northern Virginia, that have obtained COPN authorization recently to move nursing home beds from one planning district to another outside the normal nursing home planning process.
- The proposal, which entails the "transfer" of 30 nursing home beds from southwest Virginia (PD 5) to Northern Virginia (PD 8), would not result in a net increase in the number of licensed nursing home beds statewide.
- The Virginia Department of Health, Division of Certificate of Public Need (DCOPN) has determined there are substantial numbers of unneeded (surplus) nursing home beds in Southwest Virginia, specifically in Planning District 5 (PD 5) where Salem Health and Rehabilitation Center is located. A thirty bed reduction in authorized capacity there would not affect access to nursing home services among residents of Planning District 5 or result in the district qualifying for a near term increase in capacity.
- The Virginia Department of Health, Division of Certificate of Public Need (DCOPN) has determined there is currently a need for several hundred additional nursing home beds in Northern Virginia, quantified as a need for 284 additional beds in 2022.
- Relocating unneeded capacity in PD 5 to PD 8 would improve access to needed nursing care services in Northern Virginia, and would facilitate improvement of operations at Salem Health and Rehabilitation Center.
- All beds added at Cherrydale would be certified for Medicare and Medicaid participation.
- The project is consistent all applicable provisions of the Virginia State Medical Facilities Plan.
- The capital cost of the project is modest.

### **Board & Staff Questions, Discussion**

In response to questions, Cobb, Swantz, Arem and Peck stated that:

- Cherrydale is following the State mandated policy, process, and practice in asserting there is a need for additional nursing home beds in Northern Virginia.
- The provisions of HB 2292 are being implemented as intended by the state legislature.

- Reliance on what is now referred to as the “calculated need” for additional nursing homes is the required public need planning methodology that must be used to justify transferring the licensing authority for nursing beds across planning district boundaries.
- The ownership and control of Cherrydale Health & Rehabilitation Center changed hands earlier this year. Cherrydale representatives could not, or would not, identify the new owner/investors or their experience and track record in providing nursing home care.
- There is no forbearance agreement, or other economic consideration, between or among the owners and operators of Cherrydale Health and Rehabilitation Center and Salem Health and Rehabilitation Center.
- There is no common ownership or other form of control between Cherrydale Health and Rehabilitation Center and Salem Health and Rehabilitation Center.

**Public Comment**

There was no public comment other than the letters of support submitted as a part of the application.

**Applicant Final Summary**

Matt Cobb summarized the applicant’s view of the application, thanked the board for its consideration, and offered to answer in remaining questions.

**Staff Recommendation**

Based on the information presented in the agency staff report on the application, and the testimony presented earlier discussion with Cherrydale representatives, Montgomery recommended denial of the application.

**Board Deliberation and Vote**

Pamela Kincheloe offered a motion to recommend denial of the application. Andrew Wankum seconded the motion. The motion passed by a vote of 10 in favor (Alvarez, Carrasco, Fonseca, Kimmel, Kincheloe, Patterson, Samuelson, Wankum, West, Zlotnick) and none opposed.

**V. Other Business**

The next HSANV board meeting was set for Monday, December 5, 2022.

**VI. Adjourn**

Fonseca adjourned the meeting 10:13 PM.

**Respectfully submitted,**



**Dean Montgomery**

**Attachments (4)**