



COMMONWEALTH of VIRGINIA

Karen Shelton, MD
State Health Commissioner

Department of Health
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RICHMOND, VA 23218

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

January 10, 2025

Matthew M. Cobb, Esq.
Williams Mullen
Post Office Box 1320
Richmond, Virginia 23218

RE: Certificate of Public Need No. VA-04918 (COPN Request No. VA-8773)
Loudoun VA PropCo, LLC
Planning District 8
Add 4 Nursing Home Beds by Relocation

Dear Mr. Cobb:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the "COPN Law"), I have reviewed the application captioned above. As required by the COPN Law, I have considered all matters, listed therein, in developing my decision.

I have reviewed and adopted the enclosed findings, conclusions and recommended decision of the adjudication officer that convened the informal fact-finding conference on this application in accordance with the Virginia Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*

Based on my review of this application and on the recommended decision of the adjudication officer, I am approving the application. The reasons for my decision include the following:

- (i) The project complies with the components of the nursing home Bed Transfer Statute;
- (ii) The project is generally consistent with the SMFP, to the extent the SMFP has been interpreted to operate in coordination with the Bed Transfer Statute;
- (iii) The project would not pose a direct adverse effect on any existing provider of nursing home services in PD 8 or detrimentally affect any provider of such services in PD 5;
and

- (iv) The total capital and financing costs of the project are reasonable, and the project is feasible.

This certificate is valid for the period of January 10, 2025 through January 9, 2026. Please file two copies of the application for a certificate extension with the Department no later than 30 days before the expiration date of the certificate. Part VIII of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations identifies the filing requirements and review procedure for certificate extension requests.

Sincerely,



Karen Shelton, MD
State Health Commissioner

Enclosure

cc:

Allyson Tysinger, Senior Assistant Attorney General, Commonwealth of Virginia
Dean Montgomery, Executive Director, Health Systems Agency of Northern Virginia
Erik Bodin, Director, Division of Certificate of Public Need
Vanessa MacLeod, Adjudication Officer
Deborah K. Waite, Chief Operating Officer, Virginia Health Information

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED

THIS CERTIFIES THAT Loudoun VA PropCo, LLC is authorized to initiate the proposal as described below.

NAME OF FACILITY: Loudoun Center for Rehabilitation and Nursing, LLC d/b/a Loudoun Rehabilitation Nursing Center

LOCATION: 235 Old Waterford Road, NW, Leesburg, Virginia 20176

OWNERSHIP AND CONTROL: Loudoun VA PropCo, LLC

SCOPE OF PROJECT: Add four nursing home beds for a total of 104 nursing home beds at Loudoun Rehabilitation Nursing Center in PD 8 by relocating them from Friendship Health and Rehabilitation Center - North in PD 5, leaving that facility with 249 nursing home beds. Capital costs authorized for this project total \$1,670,000. The project is expected to be completed by January 10, 2026.



Pursuant to Chapter 4, Article 11 of Title 32.1, Sections 32.1-102.1 through 32.1-102.12 of the Code of Virginia (1950), as amended and the policies and procedures promulgated thereunder, this Medical Care Facilities Certificate of Public Need is issued contingent upon substantial and continuing progress towards implementation of the proposal within twelve (12) months from the date of issuance. A progress report shall be submitted to the State Health Commissioner within twelve (12) months from the date of issuance along with adequate assurance of completion within a reasonable time period. The Commissioner reserves the right not to renew this Certificate in the event the applicant fails to fulfill these conditions. This Certificate is non-transferable and is limited to the location, ownership, control and scope of the project shown herein.

Certificate Number: VA-04918

Date of Issuance: January 10, 2025

Expiration Date: January 9, 2026


Karen Shelton, MD, State Health Commissioner

**Recommended Case Decision
Certificate of Public Need (COPN)
Request Number VA-8773
Loudoun VA PropCo, LLC
Leesburg, Virginia
Planning Region (PD) 8
Health Planning Region (HPR) II
Add 4 Nursing Home Beds by Relocation: Relocation of 4 Nursing Home Beds from
Friendship Health and Rehabilitation Center – North (in PD 5) to Loudoun Center for
Rehabilitation and Nursing LLC d/b/a Loudoun Rehabilitation and Nursing Center (in PD
8)**

I. Introduction

This document is a recommended case decision, submitted to the State Health Commissioner (hereinafter, “Commissioner”) for consideration. It follows full review of the administrative record pertaining to the above-captioned application, as well as the convening of an informal fact-finding conference (IFFC)¹ conducted in accordance with the Virginia Administrative Process Act² and Title 32.1 of the Code of Virginia.

II. Authority

Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the “COPN Law”) addresses medical care services and provides that “[n]o person shall undertake a project described in [this Article] or regulations of the [State] Board [of Health] at or on behalf of a medical care facility . . . without first obtaining a certificate [of public need] from the Commissioner.”³ The endeavor described and proposed in this application falls within the statutory definition of “project” contained in the COPN law, and thereby, requires a Certificate to be issued before the project may be undertaken.⁴

III. Statement of Facts

The factual basis underlying this recommendation consists of evidence in the administrative record, including, but not limited to, the application giving rise to this review, the testimony of

¹ The IFFC was held on September 30, 2024. A certified reporter’s transcript (“Tr.”) of the IFFC is in the administrative record (“AR”).

² Va. Code § 2.2-4000 *et seq.*

³ Va. Code § 32.1-102.1:2(A); (a “Certificate” or COPN).

⁴ Va. Code §§ 32.1-102.1 and 32.1-102.3.

witnesses presented and written documents prepared by the applicant at and following the IFFC, and the two governmental analyses, *i.e.*, staff reports on the proposed project – one prepared by the Division of Certificate of Public Need (“DCOPN”) and one prepared by the Health Systems Agency of Northern Virginia (“HSANV”).

Specific findings of fact are as follows:

1. Loudoun VA PropCo, LLC is a Virginia limited liability company which owns Loudoun Center for Rehabilitation and Nursing, LLC d/b/a Loudoun Rehabilitation and Nursing Center (“Loudoun Nursing”), also a Virginia limited liability company.
2. The applicant proposes to relocate 4 nursing home beds from Friendship Health and Rehabilitation Center – North to Loudoun Nursing.
3. Friendship Health and Rehabilitation Center – North is located in Roanoke, Virginia, PD 5.
4. Loudoun Nursing is a 100-bed nursing home located in Leesburg, Virginia, PD 8, HPR II.
5. The estimated capital costs for the proposed project are \$1,870,000, funded entirely by the applicant. As such, there are no financing costs involved in the proposed project.
6. The Code of Virginia § 32.1-102.3:7 (the “Bed Transfer Statute”) guides the relocation of beds from one PD to another.
7. The proposed project entails the conversion and renovation of existing space. This proposed renovation would increase the number of private rooms at the facility and raise its overall bed count to 104.
8. Loudoun Nursing intends to establish dual certification, Medicare and Medicaid, for the 4 beds it proposes to relocate to PD 8.
9. The beds at Loudoun Nursing had an occupancy rate of 92.9% in 2023⁵ and 92.7% from January to September of 2024.⁶
10. The beds at Friendship Health and Rehabilitation Center – North had an occupancy rate of 78% in 2022.⁷
11. In 2022, the average nursing home utilization rate in PD 8 was 81.2%.⁸
12. In 2022, the average nursing home utilization rate in PD 5 was 80.2%.⁹

⁵ Loudoun IDR Exhibit 16.

⁶ *Id.*

⁷ DCOPN Staff Report at 4-5 (AR 11).

⁸ *Id.* at 2.

⁹ *Id.* at 4.

13. A Request for Applications (RFA) should be published at least annually.¹⁰ In the most recent RFA for nursing home beds,¹¹ DCOPN calculated a need for 284 nursing home beds in PD 8, as well as a 2022 surplus of 224 beds in PD 5, for 2022.¹²
14. On September 9, 2024, the board of directors of the HSNV reviewed the proposed application and recommended denial.
15. DCOPN recommended that the Commissioner deny the proposed application.¹³
16. Loudoun Nursing asserts that its proposed project complies with the Bed Transfer Statute.

Relation of the Proposed Project to the Bed Transfer Statute

Before enactment of the Bed Transfer Statute in 2013,¹⁴ nursing home beds could be transferred from a nursing home located in one PD to a nursing home in another PD only under one of two situations: (i) in response to an RFA that identifies a calculated need for beds in the PD to which beds are proposed to be transferred, or (ii) with authorization granted by an act of the General Assembly contemplating a specific transfer.

The patron of the Bed Transfer Statute created a means for the Commissioner to accept and, following review, approve applications for the transfer of nursing home beds from one PD to another despite the absence of an effective RFA. Under the statute, the Commissioner may approve such an application if it complies with the subitems of the statute, by showing specifically that:

- (i) A shortage, or need, for beds exists in the receiving PD;
- (ii) A surplus of beds exists in the PD from which beds are proposed to be transferred, *i.e.*, the donating PD;
- (iii) The proposed transfer of beds would not create a need in the donating PD; and
- (iv) After transfer, the beds will be available to individuals without regard to their ability to pay for nursing home services or the source of payment for such services.

With authorization and by operation of the Bed Transfer Statute, the Commissioner may approve an application for transfer of beds that complies with these four requirements, enumerated in the paragraph above.

Following analysis, DCOPN concluded that the proposed project proposed does not comply with the requirements of the Bed Transfer Statute.¹⁵ Specifically, DCOPN concluded

¹⁰ Va. Code § 32.1-102.3:2.

¹¹ IFFC Exhibit 5.

¹² *Id.*

¹³ DCOPN Staff Report (AR 11).

¹⁴ House Bill 2292 [Acts of Assembly, c. 515 (2013)], passed unanimously by the House of Delegates and the Senate.

¹⁵ DCOPN Staff Report at 21 (AR 11).

that the proposal to add four nursing facility beds through inter-PD transfer from PD 5 is inconsistent with the applicable standards and criteria of the SMFP and the 8 Required Considerations of the Code of Virginia; the utilization of the applicant facility is below the SMFP standard; occupancy in PD 8 is lower than that of the proposed contributing PD; multiple additional nursing facility beds are authorized but not yet implemented in PD 8, and a decrease in beds is authorized but not yet implemented in PD 5 from where the proposal would relocate more beds; and the status quo is a reasonable and less costly alternative, and it would be prudent to implement and assess the impact of authorized changes in both PDs prior to approving more.¹⁶ Furthermore, DCOPN argues that the proposal does not correct a maldistribution of beds and may create one and the per bed capital costs of the proposed project are relatively high.¹⁷

HSANV also does not believe the project complies with the Bed Transfer Statute, and argues that Loudoun Nursing “does not address, much less meet, this test.”¹⁸ HSANV argues emphatically that the computational methodology by which a shortage of nursing home beds has purportedly been shown in PD 8 is problematic and fraught with substantive and procedural error. Furthermore, HSANV argues that nursing home beds are well-distributed, there is a surplus of unused beds in PD 8, and the relocation does not serve the public need.

DCOPN and HSANV's reports considered the occupancy standard in 12 VAC 5-230-610 and the expansion standard in 12 VAC 5-230-620 to support their recommendations for denial, looking at data from 2021 and 2022. Notably, HSANV states it “agrees with Loudoun [Nursing]’s observation that the facility expansion standard is not dispositive in inter planning district bed transfers;”¹⁹ which is why it focused its review on local and statewide nursing home demand as indicated by current and historical population-based use rates, which, it asserts, have been decreasing for more than three decades locally and statewide.²⁰

Loudoun Nursing argues that these aforementioned regulations do not apply to the Bed Transfer Statute and were erroneously applied and considered. However, even if they applied, the applicant argues they would meet the related regulatory standards based on their current numbers, as opposed to the COVID-era numbers used by DCOPN and HSANV.²¹

The Proposed Project in Relation to the Four Criteria in the Nursing Home Bed Transfer Statute.

1. **A Shortage of Beds Exists in PD 8.** DCOPN devised a 2022 statewide forecast of nursing home bed need and determined that, according to operation of a computational methodology designed to anticipate nursing home bed need,²² there was a numerical need for 284 nursing home beds in PD 8. Between 2020-2030, the 75+ population within PD 8 is

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ HSANV's Proposed Findings and Conclusions Regarding Loudoun VA PropCo, LLC, Expand Nursing Care Facility, COPN Request VA-8773 Informal Fact-Finding Conference, at 3.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ Loudoun Nursing's Closing Argument at 2-12; IFFC Exhibits 2-4, 16-17, 19, and 32-33.

²² See 12 VAC 5-230-610.

expected to grow by 51.55% and by an even greater 68.96% in Loudoun County, where Loudoun Nursing is located.²³ Even taking into consideration the additional beds approved for transfer to PD 8 following publication of the 2022 forecast, PD 8 continues to maintain a need of 602 beds in 2024.²⁴ The application meets this standard.

2. **The Number of Beds in PD 5 Exceeds the Need for Such Beds.** In its 2020 Notice of No Need, DCOPN determined that a numerical surplus of 224 beds exists in PD 5 in 2022.²⁵ Taking into consideration the projects which have been approved for bed transfer from PD 5 since the 2022 RFA was published, PD 5 still has a bed surplus of 46 beds. The application meets this standard.

3. **The Proposed Transfer of Beds would not Result in Creation of a Need for Additional Beds in PD 5.** Transferring the proposed nursing home beds would not create a current need for beds in the donor PD due to the aforementioned bed surplus. Donating 4 beds is not significant in relation to the total number of beds. The application meets this standard.

4. **The Beds to be Transferred will be Made Available to Individuals in Need of Services without Regard to the Source of Payment.** The applicant assures the Commissioner that the beds to be transferred will be certified for both Medicare and Medicaid services reimbursement. The application meets this standard.

Application of Criteria of Public Need

The Bed Transfer Statute contains no provisions requiring a public need analysis for beds be demonstrated in the PD proposed to receive beds through the application of all provisions of the COPN Law, the SMFP and COPN regulations in the review of a project submitted under this statute. Regardless, the eight statutory considerations, contained in the COPN Law and customarily applied in review of applications for a Certificate, appear below with notations pertinent to the applicant's proposed project:

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

Loudoun Nursing assures the Commissioner that, if the project were approved, it would expand access to necessary skilled nursing services to the residents of North-Western PD 8, and the 4 beds proposed for transfer would be available to individuals without regard to source of payment.

²³ IFFC Exhibit 22; Tr. at 63-65.

²⁴ IFFC Exhibit 6.

²⁵ IFFC Exhibit 5.

2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following: (i) The level of community support for the project demonstrated by citizens, businesses, and governmental leaders representing the area to be served; (ii) The availability of reasonable alternatives to the proposed service or facility that would meet the needs of the population in a less costly, more efficient, or more effective manner; (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; (iv) Any costs and benefits of the project; (v) The financial accessibility of the project to the residents of the area to be served, including indigent residents; (vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a project.

Loudoun Nursing's proposed project has received a high level of support from the medical staff of Inova Loudoun Hospital.²⁶

Other than DCOPN and HSANV, there is no other documented opposition to the proposed project. Loudoun Nursing argues that no alternative to the project exists.

Loudoun Nursing assures the Commissioner that the project is the least costly and most effective way to achieve the purposes identified and touted.

The total costs of the project are reasonable. Benefits of the project, according to Loudoun Nursing, include greater access to single-bed rooms. Per Loudoun Nursing, the addition of four beds to Loudoun Nursing will not only allow the facility to make a modest expansion of capacity, but it will also allow Loudoun Nursing, as part of the overall renovation, to add eight private rooms to the facility.²⁷ The applicant asserts that residents prefer private rooms, and single occupancy rooms allow the facility to improve their infection control and maintain higher occupancy because patient incompatibilities would not be a factor.²⁸

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

12 VAC 5-230-610 contains the computational methodology by which need for nursing home beds are calculated annually in PDs, statewide. 12 VAC 5-230-620 contains the computational methodology for increasing an existing nursing facility's bed capacity. These regulations do not operate to determine any numerical need for nursing home beds sought to be relocated under the Bed Transfer Statute.

The project proposed appears to demonstrate adequate compliance with the few applicable provisions of the SMFP, as they are currently deployed.

²⁶ IFFC Exhibit 13; Tr. at 41-44; COPN Application Attachment IV.G.

²⁷ Tr. at 31-32 and 44-45.

²⁸ *Id.*

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

The project would improve access in PD 8 by offering skilled nursing services with private room options.

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

Following its review, DCOPN recommended denial of the proposed project raising a concern that "the occupancy of Loudoun Nursing is 85.6%, relatively high compared to the PD 8 average, it does not reach the 90% occupancy threshold and does not by itself constitute a public need."²⁹ Loudoun Nursing argues those numbers are from the COVID-era, alleging their average occupancy rate is currently 90.57%³⁰ and this standard does not apply to the Bed Transfer Statute.

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

The project is feasible, overall. Approval of the project would be substantially beneficial to the applicant, increasing revenue-generating resources. Resources for construction and operation appear generally available.

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

Not applicable, without prejudice to the applicant.

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 serve (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.

Not applicable, without prejudice to the applicant.

²⁹ DCOPN Staff Report at 19.

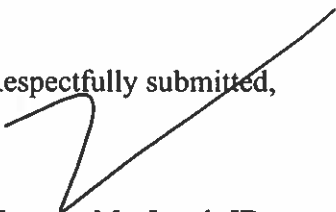
³⁰ Post-IFFC Exhibit 30.

Conclusions and Recommendation

Review of the record indicates sufficient evidence to support the conclusion that the proposed project is adequately consistent with the Bed Transfer Statute. The project is approvable under applicable law. I recommend that the application for authorization to initiate the project, as proposed, be approved. Specific reasons for this recommended decision include:

- (i) The project complies with the components of the nursing home Bed Transfer Statute;
- (ii) The proposed project is generally consistent with the SMFP, to the extent the SMFP has been interpreted to operate in coordination with the Bed Transfer Statute;
- (iii) The proposed project would not pose a direct adverse effect on any existing provider of nursing home services in PD 8 or detrimentally affect any provider of such services in PD 5; and
- (iv) The total capital and financing costs of the project are reasonable, and the project is feasible.

Respectfully submitted,



Vanessa MacLeod, JD
Adjudication Officer

January 2, 2025