

October 24, 2024

Via E-Mail

Erik O. Bodin
Director, Division of Certificate of Public Need
Virginia Department of Health
9960 Mayland Drive, Suite 401
Henrico, Virginia 23233

**Re: COPN Request No. VA-8780
North VA Surgicenter, LLC
Establish an Outpatient Surgical Hospital with Four (4) Operating Rooms
Planning District 8
Herndon (Fairfax County), Virginia**

Dear Mr. Bodin:

I write on behalf of the Inova Health System to oppose the captioned COPN application, filed by HCA's North VA Surgicenter, LLC ("HCA NVSC") to convert an unlicensed operator in Planning District 8 ("PD 8") into a new licensed outpatient surgical hospital ("OSH") with four (4) general purpose operating rooms ("GPORs"), including two (2) to be relocated from Reston Hospital Center ("RHC") and two (2) that would be new to the PD 8 inventory. The project as proposed should be denied because it is inconsistent with the applicable provisions of the State Medical Facilities Plan ("SMFP") and, accordingly, there is no public need for it. PD 8 already has a substantial surplus of GPOR capacity and approval of COPN Request No. VA-8780 would only add to the existing surplus.

1. The project is inconsistent with 12 VAC 5-230-500.A.

HCA NVSC's project proposes to establish a new OSH that, if approved, would result in the net addition of two (2) GPORs to PD 8. Accordingly, 12 VAC 5-230-500 (Need for new service) applies to the project. Per the calculation of GPOR need mandated by 12 VAC 5-230-500.A, there is already a substantial existing surplus of GPORs in PD 8. As of May 2024, the Division of Certificate of Public Need ("DCOPN") identified a surplus of seventeen (17) GPORs in PD 8.¹

¹ See May 20, 2024 DCOPN staff report on COPN Request, Nova. VA-8746 at 15. COPN Request No. VA-8746 proposed the addition of two (2) GPORs at Inova Fair Oaks Hospital based on institution-specific need. The State Health Commissioner ("Commissioner") approved the project in June 2024 pursuant to COPN No. VA-04890.

Due to the substantial existing surplus of GPORs and the fact that HCA NVSC's project, if approved, would add to this existing surplus, the project as proposed is inconsistent with 12 VAC 5-230-500.A.

Although HCA NVSC argues that that "the existence of a calculated surplus of GPORs is not determinative of SMFP consistency,"² the case decision HCA NVSC relies on as "established COPN precedent" involved OSH projects proposed in a planning district where the Adjudication Officer observed there was a "slight surplus" of GPORs, such that, "at most, the surplus of ORs constitutes 2.7 percent of the authorized, general-purpose OR inventory. Such a margin is not significant[.]"³ Here, the margin is significant, with the seventeen (17) GPOR surplus in PD 8 accounting for 8.3% of the 205 PD 8 GPORs identified by HCA NVSC in its COPN application.⁴ Notably, as discussed below, RHC currently maintains a surplus of five (5) GPORs, meaning that RHC is responsible for nearly 30% of PD 8's existing surplus GPOR capacity.

2. The project is inconsistent with 12 VAC 5-230-500.B.

HCA NVSC similarly claims its project is consistent with 12 VAC 5-230-500.B, which applies to project proposing the relocation of existing GPOR capacity. HCA NVSC claims consistency with this provision on the basis that its project involves the relocation of two (2) GPORs from RHC. Such argument, however, belies the fact that an additional (2) GPORs – 50% of the GPOR capacity proposes for the new OSH – would be new to PD 8, and would add to the existing substantial surplus of GPOR capacity in the planning district.

3. RHC maintains nearly 30% of the surplus GPOR capacity in PD 8.

When in 2021 RHC sought and later obtained COPN approval to increase its GPOR capacity to its current complement of seventeen (17) GPORs,⁵ DCOPN's analysis of public need for RHC's project was based on 2019 surgical services utilization data from VHI. In 2019, RHC reported 26,849 total surgical hours,⁶ which reflected a need for 16.7 (17) GPORs based on the SMFP's 1,600 hour utilization standard. Furthermore, PD 8 had a deficit of eight (8) GPORs.⁷ On this basis, the Commissioner determined RHC's project was consistent with the applicable provisions of the SMFP and issued a COPN for the project based on a determination of public need.

² COPN Request No. VA-8780 at 23 (citing September 20, 2021 case decision on COPN Request Nos. VA-8547 and VA-8549, Adjudication Officer's report at 7).

³ September 20, 2021 case decision on COPN Request Nos. VA-8547 and VA-8549, Adjudication Officer's report at 7.

⁴ COPN Request No. VA-8780 at 20.

⁵ January 10, 2022 case decision approving issuance of COPN No. VA-04772 to add two (2) GPORs to RHC.

⁶ See November 19, 2021 DCOPN staff report on COPN Request Nos. VA-8576, VA-8577 and VA-8581 at 21.

⁷ *Id.*

Since 2019, however, RHC’s surgical services utilization has *declined by more than 30%*. Based on RHC’s 18,697 total surgical case hours for 2023,⁸ RHC has a need for 11.7 (12) GPORs – meaning that RHC currently maintains a surplus of five (5) GPORs.

Reston Hospital Center Total Surgical Hours 2019-2023					
Year	2019	2020	2021	2022	2023
Total Hours	26,849	26,082	23,169	19,476	18,697
GPOR Need	16.8	16.3	14.5	12.2	11.7

Source: VHI: 2019-2022. COPN Request No. VA-8780: 2023.

RHC’s surplus alone accounts for nearly 30% of PD 8’s seventeen (17) GPOR surplus. Despite such substantial surplus GPOR capacity, HCA NVSC argues that RHC “can only transfer two of its GPORs” to the new OSH because RHC “will soon be opening its open heart surgery program, which will require use of one room,” and because its “2024 utilization is tracking higher than 2023.”⁹ Notably, however, HCA NVSC’s COPN application is devoid of any 2024 RHC surgical services utilization data, let alone data that would substantiate the claim that RHC can only transfer two (2) GPORs. Even if one were to assume that RHC in the immediate future will need to entirely dedicate one (1) GPOR to its planned open heart surgery program, RHC would continue to maintain a surplus of four (4) GPORs. Moreover, to the extent RHC has actually experienced any increases in GPOR utilization in 2024, such increases would almost certainly be offset by the projected shift in surgical volume, particularly Medicare, Medicaid and other governmental payor volume, that HCA NVSC projects will shift from the inpatient hospital setting to its OSH if COPN Request No. VA-8780 is approved.

4. The status quo is the least costly alternative.

Although HCA NVSC promotes its OSH project as one that will result in the provision of surgical services at lower cost, this project proposes the conversion of an existing operatory. For patients insured by commercial payors, operatories are the lowest cost alternative. Conversion of an operatory to an OSH results in additional costs to both the patient and their commercial payor. This fact is ignored by HCA NVSC in its COPN application.

Governmental payors, including Medicare and Medicaid, do not cover surgical procedures performed in the operatory setting. So for this patient population, the OSH (i.e., Medicare-certified ASC) is a lower cost alternative to the inpatient hospital setting. However, PD 8 is home to any number of Medicare-certified ASCs, many of which have ample capacity. Approval of HCA NVSC’s project would simply duplicate these existing resources.

In summary, COPN Request No. VA-8780 should be denied because it is inconsistent with the SMFP and there is no public need for it. Authorizing the establishment of the four (4) GPOR OSH

⁸ COPN Request No. VA-8780 at 16.

⁹ *Id.*

as proposed would result in the net addition of two (2) GPORs to a planning district that already maintains a substantial surplus of seventeen (17) GPORs, and enable RHC, even with the relinquishment of two (2) GPORs, to continue to maintain surplus GPOR capacity for which it has no need. Accordingly, Inova Health System respectfully requests that DCOPN issue a denial recommendation for HCA NVSC's project as proposed. To the extent DCOPN is inclined to recommend approval of the project, any recommendation of approval should be conditioned on the project being inventory neutral and require RHC to relinquish four (4) GPORs.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Dreyer", is displayed on a light green rectangular background.

Paul Dreyer
Senior Director, Strategy & Planning

cc: Dean Montgomery, Executive Director, HSANV
Thomas J. Stallings, Esq.