

STATE OF MARYLAND

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MEMORANDUM

TO: Commissioners

FROM: Kevin R. McDonald
Chief, Certificate of Need 

DATE: July 20, 2017

SUBJECT: Recommended Decision for Visiting Nurse Association of Maryland, LLC
Docket No. 17-R1-2393

Enclosed is the staff report and recommendation for a Certificate of Need application filed by Visiting Nurse Association of Maryland, LLC d/b/a VNA of Maryland.

Visiting Nurse Association of Maryland, LLC is a licensed home health agency currently operating in Baltimore City, Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's and St. Mary's and Washington Counties. In its CON application, VNA seeks to expand its service area through the entire Upper Eastern Shore Region, adding four of this region's jurisdictions, Caroline, Kent, Queen Anne's and Talbot Counties, to its authorized service area.

The total cost of launching the expansion is estimated to be \$34,000, and the applicant expects to begin operations within three months.

Staff recommends **APPROVAL** of the application, based on its conclusion that the proposed project complies with the applicable standards in COMAR 10.24.16, the State Health plan for Home Health Agency Services, and the other review criteria enumerated in COMAR 10.24.01.08, with the following conditions:

1. VNA shall maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding scale, and reduced fee services, and
2. VNA shall provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the multi-jurisdictional region it proposes to serve.

IN THE MATTER OF
VISITING NURSE ASSOCIATION
OF MARYLAND, LLC.
Docket No. 17-R1-2393

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BEFORE THE
MARYLAND HEALTH
CARE COMMISSION

Staff Report and Recommendation

July 20, 2017

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I. INTRODUCTION

A. The Applicant

The applicant is Visiting Nurse Association of Maryland, LLC, d/b/a/ VNA of Maryland (“VNA”). VNA is a licensed home health agency (Maryland license no. HH7008 and Medicare provider no. 21-7008) currently operating in Baltimore City and the counties of Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George’s, St. Mary’s, and Washington. It provides skilled nursing services, home health aide services, occupational therapy, speech/language therapy, physical therapy, and medical social services.

VNA is a limited liability company owned by VNA Home Health of Maryland, LLC. In calendar year (CY) 2016, VNA Home Health of Maryland, LLC made over 200,000 visits to 11,625 clients in 13 counties.¹ According to the Commission’s public use data files, VNA had the largest number of clients of any Maryland home health agency (“HHA”) in 2014 (latest available data) and the most HHA admissions of Medicare clients.² VNA is also the largest employer of administrative and patient care personnel among Maryland home health agencies. Its office is located at 7008 Security Boulevard, Suite 300, in Windsor Mill (Baltimore County). It has no branch offices. (DI#4, p.12).

B. The Project

VNA is proposing to expand its service area in the Upper Eastern Shore region from Cecil County into Caroline, Kent, Queen Anne’s and Talbot Counties where it will provide all of the same services it currently provides in Cecil County, i.e., skilled nursing services, home health aide services, Occupational therapy, speech/language therapy, physical therapy, and medical social services.

The cost of this project is estimated to be \$34,000, covering minor moveable equipment, contingencies, legal fees, printing and CON consulting fees. The applicant plans to finance this project with cash and will be fully operational in all of the proposed counties within 18 months of CON approval.

C. Staff Recommendation

Staff concludes that this project is in compliance with the applicable standards of COMAR 10.24.16, the State Health Plan chapter for Home Health Agency Services (“HHA Chapter”), that the need for additional home health agency services has been identified, and that VNA’s expansion into other areas in the Upper Eastern Shore region is a viable and cost-effective approach to

¹ In 2014, VNA provided 88,300 skilled nursing visits, 14,442 home health aide visits, 77,393 physical therapy visits, 14,704 occupational therapy visits, 2,568 speech therapy visits, and 2,864 medical social services visits.

² http://mhcc.maryland.gov/public_use_files/homehealthdownload.html.

meeting that need. Staff concludes that the CON criteria outlined in COMAR 10.24.01.08G(3) have been met, and thus recommends **APPROVAL** of the project with the following conditions:

1. VNA shall maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding scale, and reduced fee services, and
2. VNA shall provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the multi-jurisdictional region it proposes to serve.

II. PROCEDURAL HISTORY

For the procedural history, see the Record of the Review in Appendix A. There are no interested parties and no comments from local government or letters of support were received for this project.

III. BACKGROUND

The HHA Chapter regulates the development and expansion of home health agency services in Maryland based on a policy decision by the Maryland Health Care Commission (“Commission”) that consumers need a choice of high quality HHA providers. The HHA Chapter provides that jurisdiction shall be identified as having a need for additional home health agency services if it is determined that the jurisdiction has: (1) insufficient consumer choice of HHAs; (2) a highly concentrated HHA service market; or (3) insufficient choice of HHAs with high quality performance.³

Based on the provisions in COMAR 10.24.16.04, five counties in the Upper Eastern Shore (Caroline, Cecil, Kent, Queen Anne’s, and Talbot) show a need for additional HHA services. Caroline and Kent counties had insufficient consumer choice (i.e., two or fewer Medicare-certified HHAs that served 10 or more clients each year during the most recent three-year period). Cecil, Queen Anne’s, and Talbot counties had a sufficient number of competing HHAs but were found to be highly concentrated HHA markets using the Herfindahl-Hirschman Index (HHI).⁴ In the

³ As noted in the Background and Policies section of the HHA Chapter, the Commission: takes the approach of regulating HHA services by emphasizing the importance of providing consumers with meaningful choices for obtaining high quality services, in which one HHA or a small number of HHAs do not command overwhelming dominance. It sets a benchmark of sufficient consumer choice as the availability of at least three high performing agencies in each jurisdiction. It targets highly concentrated HHA markets, as measured by the Herfindahl-Hirschman Index (HHI), for consideration of new HHA providers, through new agency establishment or expansion of existing HHA(s). COMAR 10.24.17.03B (p. 10),

⁴ The Herfindahl-Hirschman Index is a measure of the competitiveness, or the lack of competitiveness, exhibited in a market served by competing firms. It is usually characterized as a measure of the level of concentration of market power within the market. For purposes of CON regulation, it is defined as the sum of the squares of the market shares of all the HHAs authorized and actually serving a jurisdiction. In theory, results can range from 0 to 1.0. An HHI of 1.0 indicates a monopoly in which one firm has total market power. Conversely, a competition index close to 0.0 indicates a condition of highly dispersed market power in which no one firm or small group of firms is dominant. Again, for purposes of CON regulation of HHA

HHA Chapter, the HHI is used to target regions for consideration of additional HHA providers to increase the likelihood of more competitive market conditions.

To submit an application that can be accepted for review, a potential applicant must: meet performance-related qualifications specified in COMAR 10.24.16.06.D and .07; and provide documentation that the applicant is currently in conformance with COMAR 10.24.16.06C. Visiting Nurses Association of Maryland, LLC is one of 18 Maryland Medicare-certified HHAs that met the required performance levels in the July 2016 CMS Home Health Compare dataset, and thus qualified to apply for a CON to expand the agency's current authorization for the 2017 CON review cycle.

IV. STAFF REVIEW AND ANALYSIS

The Commission reviews CON applications using six criteria found in COMAR 10.24.01.08G(3). The first of these considerations is the relevant State Health Plan standards and policies.

COMAR 10.24.01.08G(3)(a) THE STATE HEALTH PLAN

An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

In this review, the relevant chapter of the State Health Plan for Facilities and Services is the HHA Chapter, COMAR 10.24.16.

COMAR 10.24.16.08 STANDARDS

A. GENERAL STANDARDS. *The following general standards encompass Commission expectations for the delivery of home health services by all existing home health providers in Maryland, as defined in Health General §19-120(j)(3)(ii). Each applicant that seeks a Certificate of Need for a project covered by this Chapter shall address and document its compliance with each of the following general standards as part of its application.*

A. Service Area

An applicant shall:

(1) Designate the jurisdiction or jurisdictions in which it proposes to provide home health agency services; and (2) Provide an overall description of the configuration of the parent home health agency and its interrelationships, including the designation and location of its main office, each subunit, and each branch, as defined in this Chapter, or other major administrative offices recognized by Medicare.

services, the State Health Plan uses U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines established in 2010, to establish an HHI threshold of 0.25 or greater as defining a highly concentrated jurisdictional market for HHA services.

The applicant is proposing to expand its current service area in the Upper Eastern Shore region to include Caroline, Kent, Queen Anne's, and Talbot counties. (DI #4, p.11). VNA is not proposing establishment of any branch office. The operations in this expanded service area will be administered from its main office in Baltimore County. (DI #4, p.12).

The applicant complies with this standard.

B. Populations and Services.

An applicant shall describe the population to be served and the specific services it will provide.

VNA states that it will provide HHA services for adults, including skilled nursing services, occupational therapy, physical and speech language therapy, medical social work and home health aide services, typically following a hospitalization or a stay in a comprehensive care facility (nursing home). (DI #4, p.12).

This standard has been met.

Standard .08C Financial Accessibility, .08D Fees and Time Payment Plan, .05H Financial Solvency, .08I Linkages with Other Service Providers, .08J Discharge Planning, and .08K Data Collection and Submission.

Among the remaining applicable standards are several that prescribe policies, staffing and/or service requirements that an applicant must meet, or agree to meet prior to commencement of operations and some that require documentation or proof of compliance. Staff has reviewed VNA's CON application and confirmed that the applicant provided information and affirmations that demonstrate full compliance with the following standards:

- .08C Financial Accessibility,
- .08D Fees and Time Payment Plan,
- .08H Financial Solvency,
- .08I Linkages with Other Service Providers,
- .08J Discharge Planning, and
- .08K Data Collection and Submission.

Staff has concluded that the proposed project meets the requirements of these standards. The applicant is currently Medicare and Medicaid certified, and agrees to maintain those certifications and continue to accept clients whose primary source of payment is either or both Medicare or Medicaid. VNA has a fee and time payment policy that makes fees known at the time of patient assessment. It has the financial resources necessary to implement the expansion of its service area and sustain its expanded operations. It has established appropriate inter-organizational linkages within its existing service area and has an appropriate discharge planning process. VNA has documented that it is in compliance with federal and state data collection and reporting requirements. The text of these standards and the locations within the application file where compliance is documented are attached as Appendix 2.

E. Charity Care and Sliding Fee Scale.

Each applicant for home health agency services shall have a written policy for the provision of charity care for indigent and uninsured patients to ensure access to home health agency services regardless of an individual's ability to pay and shall provide home health agency services on a charitable basis to qualified indigent and low income persons consistent with this policy. The policy shall include provisions for, at a minimum, the following:

VNA submitted a copy of its charity care policy, which describes its procedure for providing services to uninsured, underinsured, and indigent patients who may qualify for charity care or reduced fees. (DI #4, Att. D; <https://www.vnamd.com/charity-care/>)

(1) Determination of Eligibility for Charity Care and Reduced Fees. Within two business days following a client's initial request for charity care services, application for medical assistance, or both, the home health agency shall make a determination of probable eligibility for medical assistance, charity care, and reduced fees, and communicate this probable eligibility determination to the client.

VNA's Charity Care and Sliding Fee Scale policy provides that it will make a determination of probable eligibility for financial assistance within two business days after an initial request for charity care, application for Medical Assistance, or both, or request for reduced fees.. (*Id.*).

(2) Notice of Charity Care and Sliding Fee Scale Policies. Public notice and information regarding the home health agency's charity care and sliding fee scale policies shall be disseminated, on an annual basis, through methods designed to best reach the population in the HHA's service area, and in a format understandable by the service area population. Notices regarding the HHA's charity care and sliding fee scale policies shall be posted in the business office of the HHA and on the HHA's website, if such a site is maintained. Prior to the provision of HHA services, a HHA shall address clients' or clients' families concerns with payment for HHA services, and provide individual notice regarding the HHA's charity care and sliding fee scale policies to the client and family.

VNA states that public notice of its Charity Care policy is displayed in the business office of the home office and is also posted on its website at: <https://www.vnamd.com/charity-care/>

(3) Discounted Care Based on a Sliding Fee Scale and Time Payment Plan Policy. Each HHA's charity care policy shall include provisions for a sliding fee scale and time payment plans for low-income clients who do not qualify for full charity care, but are unable to bear the full cost of services.

VNA also provided a copy of its policy that includes a provision for the sliding fee schedule and time payment plan options available for low-income clients ineligible for Charity Care. (DI #4, Att. D).

(4) Policy Provisions. An applicant proposing to establish a home health agency or expand home health agency services to a previously unauthorized jurisdiction shall make a commitment to, at a minimum, provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the jurisdiction or multi-jurisdictional region it proposes to serve during the most recent year for which data is available. The applicant shall demonstrate that:

(a) Its track record in the provision of charity care services, if any, supports the credibility of its commitment; and

In its CON application, VNA reported providing a total of 197,491 visits in 2015 across its authorized service area, of which 342 visits (or about 0.17 percent) were provided for charity care; in 2016, VNA provided about 0.24 percent charity care (493 charitable visits out of a total of 207,675 visits).

According to data reported on the MHCC HHA Annual Survey for Fiscal Year 2014, there were seven agencies serving Cecil County with a total of 30,850 visits. Three of these seven HHAs, including VNA, reported providing charity care in Cecil County, with a total of 35 charity care visits, with VNA providing 15 of the 35 charity care visits. Based on 6,086 total visits provided by VNA in Cecil County in FY 2014, VNA provided about 0.25 percent of charity care visits. For the four remaining counties within the Upper Eastern Shore, consisting of Caroline, Kent, Queen Anne's and Talbot Counties, there were a total 54,259 visits, of which 42 visits (or 0.08 percent) were charity care visits provided by one HHA provider, Shore Home Care, in two of the four jurisdictions, Caroline County (22 charity care visits) and Talbot County (20 visits).

As reported in MHCC's HHA Annual Survey for FY 2014, there was a statewide total of 1,813,878 total visits of which 2,816 visits (or about 0.15 percent) were provided for charity care. VNA provided a total of 180,862 visits across its 14 authorized jurisdictions in FY 2014, of which 460 visits (or about 0.25 percent) were provided for charity care.

VNA's required charity care percentage under this regulation is 0.09% in the Upper Eastern Shore region that is the subject of this application. Its level of charity care across its entire operation in 2015/16 was 0.21%. As noted above, its provision of charity care (0.25 percent) in Cecil County in 2014 exceeded that.

In addressing the charity care standard, VNA has demonstrated its track record in the provision of charity care services

(b) It has a specific plan for achieving the level of charity care to which it is committed.

VNA's process for identifying patients in need of charity care is to receive referrals directly or from its referral sources.

Given VNA's past performance and agreements to continue to conform with the standard, staff recommends that any approval of this project be issued with the following conditions:

1. VNA shall maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding scale, and reduced fee services, and
2. VNA shall provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the multi-jurisdictional region it proposes to serve.

F. Financial Feasibility.

An applicant shall submit financial projections for its proposed project that must be accompanied by a statement containing the assumptions used to develop projections for its operating revenues and costs. Each applicant must document that:

- (1) Utilization projections are consistent with observed historic trends of HHAs in each jurisdiction for which the applicant seeks authority to provide home health agency services;***

VNA referenced a 15% increase in its total visits in Caroline, Kent, Queen Anne's, and Talbot counties between 2011 and 2014 (from 47,190 to 54,247), along with the projected population growth in the Upper Eastern Shore's aging population as a basis for its projections. (DI #4, pp.15-16). After a low-volume start in the first year of operation, VNA projects 4,582 visits in its second year of operation, and 8,002 in its third year of operation.

- (2) Projected revenue estimates are consistent with current or anticipated charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant if an existing HHA or, if a proposed new HHA, consistent with the recent experience of other Maryland HHAs serving each proposed jurisdiction; and***

VNA bases its revenue estimates are based on its utilization projections and current charge levels, rates of reimbursement, contractual adjustments, charity care, and bad debt as experienced by VNA. (DI #4, p.1; DI #18, p.3).

- (3) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant if an existing HHA or, if a proposed new HHA, consistent with the recent experience of other Maryland HHAs serving the each proposed jurisdiction.***

VNA's staffing and overall expense projections are based on its current expenditure levels and are consistent with the applicant's utilization projections. (DI #4, p.17). VNA projects that its proposed expansion on the Eastern Shore will generate a loss of approximately \$11,000 in the first year of expansion but will yield profits by the second year, when visit volume will increase substantially. (DI#4, p.37). This incremental expansion is relatively small in the context of VNA's overall operations, which earned a profit of \$1.8 million in 2015 and \$1.4 million in 2016. VNA projects a profit of \$1.4 million in 2017.

Table IV-1: Projected Incremental Operating Results for the Proposed Expansion into Four Upper Eastern Shore Jurisdictions, VNA, CY2017-2019

	2017	2018	2019
Visits	736	4,582	8,002
Revenue	\$122,404	\$762,113	\$1,330,813
Expenses	\$133,161	\$685,741	\$1,201,298
Incremental Net Income	(\$10,757)	\$76,372	\$129,515

Source: DI# 4, Table 2B, p.35 and Table 4, p.40

Staff concludes that VNA’s financial projections are based on reasonable utilization, payor mix, revenue, expense, and staffing assumptions. The applicant has met this standard.

G. Impact.

An applicant shall address the impact of its proposed home health agency service on each existing home health agency authorized to serve each jurisdiction or regional service area affected by the proposed project. This shall include impact on existing HHAs’ caseloads, staffing and payor mix.

Impact on Caseloads

VNA states that it anticipates no impact on existing HHA caseloads, staffing, or payor mix in the expansion counties (Caroline, Kent, Queen Anne and Talbot) because the volumes it expects to achieve will be roughly equal to the growth in HHA service demand it projects for the region. (DI#4, p.18). To support its position, VNA referenced population projections that show a 17.3% increase in the 65 and older population of the area between 2015 and 2020,⁵ and cited American Association of Retired Persons research findings that “more residents are choosing to age at home as opposed to an institutional setting.”⁶

Staff notes that reported HHA visit volume in the four-county area increased 26% between 2010 and 2014.⁷

Impact on Staffing

VNA bases its staffing projections on its current operations in Cecil County and its utilization projections for the expanded service area. It plans to reallocate the time of some existing staff to this new service area as well as add staff in some disciplines. In the first year of operation, this increment is estimated at 1.12 FTEs. In its second year of operations, the additional staffing is projected to be 3.97 FTEs and 6.97 FTEs by its third year of operations. (see table below). It does not anticipate that expanding its staff to serve the four new jurisdictions will have a negative impact on the ability of existing HHAs to maintain adequate staffing. It also does not anticipate difficulty in recruiting additional staff. (DI #4, Table 5, p.41).

⁵ http://planning.maryland.gov/msdc/Pop_estimate/estimate_10to14/CensPopEst10_14.shtml

⁶ <https://assets.aarp.org/rgcenter/general/home-community-services-10.pdf>

⁷ Normally, MHCC would have 2015 data available at this time. However, collection of 2015 data is now underway after a retooling of MHCC’s annual survey of HHA activity.

Position Title	Current No. of FTE's	Additional No. FTEs 2017	Additional No. FTEs 2018	Additional No. FTEs 2019
Administrative Personnel	1.0	0.5	-	-
Registered Nurse	2.0	0.3	1.6	2.8
Licensed Practical Nurse	-	-	-	-
Physical Therapist	1.8	0.2	1.4	2.5
Occupational Therapist	0.3	0.4	0.3	0.5
Speech Therapist	0.1	-	0.3	0.5
Home Health Aide	0.4	0.1	0.4	0.6
Medical Social Worker	0.1	-	0.1	0.1
Total	5.6	1.5	4.0	7.0

Source: DI#31

Impact on Payor Mix

VNA projects a payor mix in the expanded service area in line with its Cecil County experience. (See Table IV-2 below.)

Table IV-2: VNA Upper Eastern Shore - Projected Utilization and Operations Statistics

Description	Projected		
	2017 ⁸	2018	2019
Client Visits	736	4,582	8,002
Payer Mix (% of Total Visits)			
Medicare	59.4%	59.4%	59.4%
Medicaid	2.1%	2.1%	2.1%
Blue Cross	20.4%	20.4%	20.4%
Other Commercial Insurance	18.3%	18.2%	18.1%
Self-Pay	0.0%	0.0%	0.0%

Source: DI #4, Table 2B, p.35; DI #4, Table 4, pp.39-40.

Staff recommends that the Commission find that the applicant complies with this standard. While the applicant's projection that growth in demand for HHA services in the four jurisdictions it proposes to serve may approximate its penetration of the market, it is not accurate to describe its entry into the market as having no impact on existing HHAs, given that this full growth potential for the existing agencies is unlikely to be realized because of the expansion of VNA. However, the expansion of VNA south of its base in Cecil County is logical and will meet the objectives of the HHA Chapter to provide more consumer choice and create the potential for more competitive balance in the region at an acceptable level of impact.

B. Need

The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

In accordance with the HHA Chapter, at COMAR 10.24.16.04, the five counties in the Upper Eastern Shore region – Caroline, Cecil, Kent, Queen Anne's and Talbot – were identified

⁸ Partial year, from October 2017 to December 2017

as needing additional home health providers. MHCC staff analysis determined that Caroline and Kent counties had insufficient consumer choice and that Cecil, Queen Anne's, and Talbot counties had a highly concentrated market.

To further support this de facto case for need, VNA pointed out that the 65 and older population in the proposed service area is projected to grow by 17.3% between 2015 and 2020, which would create a greater need for providers in the region.

Staff recommends that the Commission find that VNA has demonstrated need for its proposed expansion.

C. Availability of More Cost-Effective Alternatives

The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

VNA identified no alternatives to this expansion project, noting that it was the only HHA applying to expand into the region. The alternative to not implementing this project would leave the Upper Eastern Shore in need of additional providers. VNA reiterated its quality and performance history as an established provider of home health agency services in regions throughout Maryland to demonstrate its qualifications.

The proposed project, which involves expansion of the state's largest HHA, which already serves the largest jurisdiction in the region, into the balance of this region, is a cost-effective approach to providing more choices and a higher level of competition in the region's HHA market.

D. Viability of the Proposal

The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Availability of Resources Necessary to Implement the Project

The total estimated cost of this project is \$34,000 and will be funded with cash. The total project budget is shown below in Appendix 3. The applicant documented its ability to fund the project and its history speaks to its ability to expand its operational capability in response to higher levels of demand.

Availability of Resources Necessary to Sustain the Project

A summary of VNA's overall historic and projected financial performance, utilization and operational statistics is provided below (Table IV-3). (DI #4, p.36, Table 3; DI #4, Table 2A, p.34 and DI#4, Table 3, pp.37-38).

Table IV-3: VNA Statewide Historic and Projected Financial Performance (\$000s)

Description	Actual		Projected		
	2015	2016	2017	2018	2019
Total Client Visits	197,491	207,675	218,059	228,962	240,410
Net Income					
Net Operating Revenue	\$33,016	\$33,798	\$35,716	\$37,539	\$39,538
Total Operating Expenses	\$31,578	\$32,877	\$34,372	\$35,945	\$37,585
Non-Operating Income	\$199	\$311	\$250	\$250	\$250
Net Income (loss)	\$1,637	\$1,232	\$1,594	\$1,844	\$2,203
Payer Mix (% of Total Visits)					
Medicare	72.6%	71.0%	70.8%	70.5%	70.5%
Medicaid	2.4%	1.8%	1.8%	1.8%	1.8%
Blue Cross	15.0%	16.0%	16.2%	16.3%	16.4%
Other Commercial Insurance	10.0%	11.3%	11.3%	11.4%	11.4%
Self-Pay	0.0%	0.0%	0.0%	0.0%	0.0%

DI #4, pp.36-37, Table 3.

Staff concludes that the applicant has demonstrated that it has the resources necessary to implement and sustain this project and recommends a finding that the project is financially viable.

E. Compliance with Conditions of Previous Certificates of Need

An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

VNA received eight CONs in the 1990s, as described in the following table. The CONs were not conditioned. VNA implemented the CONs in accordance with the terms of the CONs.

Project Name	Year of Docketing
Expansion-Anne Arundel	1993
Expansion – Carroll	1995
Expansion- Prince George's - VNA Hospice of Maryland (Hospice operations acquired by Seasons in 2003)	1996
Expansion – St. Mary's	1996
Expansion – Prince George's	1996
Expansion – Charles	1996
Expansion – Calvert	1996
Expansion – Montgomery - VNA Hospice of Maryland (Hospice operations acquired by Seasons in 2003)	1996

F. Impact on Existing Providers and the Health Care Delivery System

An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

As described earlier under the Impact standard, page __, *supra*, VNA states that it does not anticipate a negative impact on existing agencies because it expects that demand for HHA services

in the coming years in the expansion service area will approximate its pickup of business in the service area. Strong growth in the elderly population supports its projection of increased demand for HHA services.

Specifically, VNA states that this project will not have any impact on the current occupancy rates or the financial performance of the current HHAs in Caroline, Kent, Queen Anne’s, or Talbot counties, because:

- (1) The Commission’s identification of this region as having need for more providers was a clear invitation for potential applicants to enter the region to meet the unmet need; and
- (2) The Maryland Department of Planning projects that the 65 and older cohort will grow by 17.3%⁹ between 2015 and 2020 in the Upper Eastern Shore region. This will fuel growing demand for and HHA services, offsetting the impact of introducing another provider.

Recent growth in home health visits in the relevant jurisdictions has been healthy, as shown in Table IV-4, although most of that growth occurred between 2010 and 2012 before leveling off.

Table IV-4 Home Health Visits, Four Upper Shore Region Jurisdictions

County	2010	2011	2012	2013	2014
Caroline	11,526	10,985	14,027	13,695	13,911
Kent	6,171	5,734	4,875	5,434	6,436
Queen Anne's	9,617	13,399	14,073	14,532	13,198
Talbot	15,607	17,072	19,748	20,460	20,702
Total	42,921	47,190	52,723	54,121	54,247
Change in visit volume	---	9.9%	11.7%	2.7%	0.2%

Source: DI #4, p.17; MHCC HHA Annual Survey.

Given the projected growth in the 65+ population, it is not unlikely that the volumes realized by VNA as a new entrant would be roughly equivalent to the organic growth. As previously noted, this does not necessarily mean that a new entrant would have no impact on existing providers. Even if the case loads of existing providers do not decline appreciably as a result of this project, their market shares would decline. Essentially, what a new entrant does in such a scenario is prevent the incumbents from growing and, perhaps, strengthening their bottom lines and economic standing.

Staff does not view such an outcome as an impact on existing providers upon which the Commission should base a decision to deny this proposed project. The Commission has adopted an HHA Chapter that supports the need for additional choice of quality providers in this region.

⁹ Maryland Office of Planning (revised January 2015).

For this reason and other reasons noted elsewhere in this staff report the staff recommends that the Commission find that the impact of this application is positive.

V. SUMMARY AND STAFF RECOMMENDATION

Based on its review of the proposed project's compliance with the Certificate of Need review criteria in COMAR 10.24.01.08G(3) and the applicable standards in COMAR 10.24.16, the Home Health Agency Services Chapter of the State Health Plan, Commission staff recommends that the Commission approve the project. It complies with the applicable State Health Plan standards, is needed, is a cost-effective approach to meeting the project objectives, is viable, and will have a positive impact on VNA's ability to provide home health services without adversely affecting costs and charges or costs to the health care system.

Staff recommends that the Commission **APPROVE** the application of Visiting Nursing Association of Maryland, LLC for a Certificate of Need authorizing the expansion of VNA's home health agency services to Caroline, Kent, Queen Anne's, and Talbot Counties with the following conditions:

1. VNA shall maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding scale, and reduced fee services, and
2. VNA shall provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the multi-jurisdictional region it proposes to serve.

IN THE MATTER OF
VISITING NURSE ASSOCIATION
OF MARYLAND, LLC.
Docket No. 17-R1-2393

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BEFORE THE
MARYLAND HEALTH
CARE COMMISSION

FINAL ORDER

Based on the analysis and recommendations in the Staff Report and Recommendation, it is this 20th day of July, 2017, by a majority of the Maryland Health Care Commission, **ORDERED:**

That the application of Visiting Nurse Association of Maryland, LLC for a Certificate of Need to expand its service area to include Caroline, Kent, Queen Anne's, and Talbot Counties, at a cost of \$34,000, is **APPROVED**, subject to the following conditions:

1. VNA shall maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding scale, and reduced fee services, and
2. VNA shall provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the multi-jurisdictional region it proposes to serve.

MARYLAND HEALTH CARE COMMISSION

APPENDIX 1:

Record of the Review

RECORD OF THE REVIEW

Item #	Description	Date
1	Commission staff acknowledged receipt of Letter of Intent.	1/12/17
2	Commission staff received qualification documentation for review.	1/17/17
3	Commission Staff notified the applicant of issues with documentation.	2/10/17
4	The applicant filed their Certificate of Need application.	3/10/17
5	Commission staff acknowledged receipt of application for completeness review.	3/16/17
6	Commission staff requested that the <i>Times Record</i> publish notice of receipt of application.	3/16/17
7	Commission staff requested that the <i>Queen Anne's Record Observer</i> publish notice of receipt of application.	3/16/17
8	Commission staff requested that the <i>Kent County News</i> publish notice of receipt of application.	3/16/17
9	Commission staff requested that the <i>Maryland Register</i> publish notice of receipt of application.	3/16/17
10	Notice of receipt of application was published in the <i>Kent County News</i> .	3/24/17
11	Notice of receipt of application was published in the <i>Caroline County Times Record</i> .	3/24/17
12	Notice of receipt of application was published in the <i>Queen Anne's Record Observer</i> .	3/24/17
13	Commission staff notified applicant of possible re-opening of jurisdiction for additional letters of intent in the future.	3/28/17
14	Notice of receipt of application was published in the <i>Caroline County Times</i> .	3/29/17
15	Notice of receipt of application as published in the <i>Queen Anne's Record Observer</i> .	3/31/17
16	Following completeness review, Commission staff requested additional information.	4/6/17
17	Commission staff received request for extension to file completeness information until 5/31/17 from applicant.	4/6/17
18	Commission staff received responses to additional information request.	5/2/17
19	Commission staff requested additional information.	5/5/17
20	Commission staff received responses to additional information request.	5/16/17
21	Commission staff notified the applicant of the formal start of review of the application effective 6/9/17.	5/23/17
22	Commission staff requested that the <i>Star Democrat</i> publish notice of the formal start of the review.	5/23/17
23	Commission staff requested that the <i>Kent County News</i> publish notice of formal start of the review.	5/23/17
24	Commission staff requested that the <i>Caroline County Times Record</i> publish notice of the formal start of the review.	5/23/17
25	Commission staff requested that <i>Maryland Register</i> publish notice of the formal start of the review.	5/23/17
26	Request made for comments from the Local Health Planning Department of the CON application.	5/23/17
27	Notice of formal start of review of application was published in the <i>Caroline County Times</i> .	5/31/17
28	Notice of formal start of review of application was published in the <i>Kent County News</i> .	5/31/17
29	Notice of formal start of review of application was published in the <i>Star Democrat</i> .	6/1/17
30	Commission staff received notification from the applicant that charity care information was added to VNA's website.	6/12/17
31	Commission staff received updated staffing information from the applicant.	6/14/17

APPENDIX 2

**Excerpted CON Standards for Home Health Services from the State
Health Plan Chapter 10.24.16**

**Excerpted CON standards for Home Health Services
From State Health Plan Chapter 10.24.16**

Each of these standards prescribes policies, staffing, services, or documentation necessary for CON approval that MHCC staff have determined the applicant has met. Bolding added for emphasis. Also included are references to where in the application or completeness correspondence the documentation can be found.

<u>STANDARD</u>	<u>Docket Item #</u>
<p><u>.08C. Financial Accessibility.</u> An applicant shall be or agree to become licensed and Medicare- and Medicaid-certified, and agree to maintain Medicare and Medicaid certification and to accept clients whose expected primary source of payment is either or both of these programs.</p>	<p>DI#4, p.13 DI#18, Attachment N</p>
<p><u>.08D. Fees and Time Payment Plan.</u> An applicant shall make its fees known to prospective clients and their families at time of patient assessment before services are provided and shall: (1) Describe its special time payment plans for an individual who is unable to make full payment at the time services are rendered; and (2) Submit to the Commission and to each client a written copy of its policy detailing time payment options and mechanisms for clients to arrange for time payment.</p>	<p>DI#4, p.13 DI#4, Attachment C DI#4, Attachment D</p>
<p><u>.08H. Financial Solvency.</u> An applicant shall document the availability of financial resources necessary to sustain the project. Documentation shall demonstrate an applicant's ability to comply with the capital reserve and other solvency requirements specified by CMS for a Medicare-certified home health agency.</p>	<p>DI #4, p.18 DI# 18, p.4 DI# 18, Attachment P, p.13</p>
<p><u>.08I. Linkages with Other Service Providers.</u> An applicant shall document its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home delivered meal programs located within its proposed service area. (1) A new home health agency shall provide this documentation when it requests first use approval. (2) A Maryland home health agency already licensed and operating shall provide documentation of these linkages in its existing service area and document its work in forming such linkages before beginning operation in each new jurisdiction it is authorized to serve.</p>	<p>DI# 4, p.18 DI# 18, Attachment Q, pp.15-17</p>
<p><u>.08J. Discharge Planning.</u> An applicant shall document that it has a formal discharge planning process including the ability to provide appropriate referrals to maintain continuity of care. It will identify all the valid reasons upon which it may discharge clients or transfer clients to another health care facility or program.</p>	<p>DI# 4, p.19 DI# 4, Attachment F</p>
<p><u>.08K. Data Collection and Submission.</u> An applicant shall demonstrate ongoing compliance or ability to comply with all applicable federal and State data collection and reporting requirements including, but not limited to, the Commission's Home Health Agency Annual Survey, CMS' Outcome and Assessment Information Set (OASIS), and CMS' Home Health Consumer Assessment of Healthcare Providers (HCHCAHPS).</p>	<p>DI#4, Attachment G, pp.60-64</p>

APPENDIX 3

Project Budget

Project Budget Estimate – Uses and Sources of Funds

A. USE OF FUNDS	
Other Capital Costs	
• Minor Movable Equipment	\$15,000
• Contingencies	\$5,000
• Other (Specify)	
Subtotal – Other Capital Costs	\$ 2,000
TOTAL CURRENT CAPITAL COSTS	\$22,000
TOTAL PROPOSED CAPITAL COSTS (sum of a - d)	\$22,000
Financing and Other Cash Requirements	
Legal Fees (Other)	\$5,000
Printing	\$2,000
Consultant Fees CON Application Assistance	\$5,000
Subtotal – Financing and Other Cash Requirements	\$12,000
TOTAL USES OF FUNDS	\$34,000
B. SOURCES OF FUNDS FOR PROJECT	
Cash	\$34,000
TOTAL SOURCES OF FUNDS	\$34,000

Source: DI#4, Table 1, pp.32-33