

Legislative History of Virginia's Certificate of Public Need Law

November 28, 2016

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Overview

- What are Certificate of Public Need laws?
- Early history of health planning laws
- Virginia's initial Certificate of Public Need law
- Significant changes to the Certificate of Public Need laws:
 - 1980s First Efforts at Reform
 - 1989 Deregulation & Repeal
 - 1990s Reassessing reform
 - 2000s Second Period of Reform
 - 2001 Joint Commission on Health Care Plan for Repeal
 - 2016 Third Period of Proposed Reform

What is COPN?

- Regulatory mechanism for controlling the development of health care services and facilities
- Requires a determination that a “public need” exists for a proposed facility, service, or piece of equipment

Virginia's COPN law

- Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the *Code of Virginia*
- Key elements of Virginia's COPN law:
 - Definitions of “medical care facility” and “project”
 - Application procedures
 - Request for Application (RFA) process for certain types of facilities
 - Conditions of certificates

Early History

- **1946** Federal Hospital Survey and Construction Act (Hill-Burton Act) provided funding for expansion and improvement of health care facilities; required states to develop annual state plans and ensure funded projects complied with the plan
- **1950s & 1960s** Period of growth in the health care sector
- **1972** Amendments to the Social Security Act condition capital reimbursement funding on state planning laws, consistency with state planning documents
- **1974** National Health Planning and Resource Development Act required establishment of state health planning systems & COPN programs

Virginia's First COPN Law

- **1973** Chapter 419 of the Acts of Assembly codifies the Commonwealth's first COPN law
- **Finding** - "the unnecessary construction or modification of medical care facilities increases the cost of care and threatens the financial ability of the public to obtain necessary health, surgical, and medical services."
- **Purpose** - "to promote comprehensive health planning in order to help meet the health needs of the public; to assist in promoting the highest quality of health care at the lowest possible cost; to avoid unnecessary duplication by insuring that only those medical care facilities which are needed will be constructed; and to provide an orderly administrative procedure for resolving questions concerning the necessity of construction or modification of medical care facilities"

Virginia's First COPN Law

- **“Medical care facility”** - any institution, place, building or agency ... by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled. Includes:

general hospitals

nursing home

intermediate care facility

health maintenance organization

mental retardation facility

sanatorium

sanitarium

extended care facility

mental hospital

“other related institutions and facilities”

- **“Project”** - a capital expenditure which ... is not properly chargeable as an expense of operation and maintenance and which (1) exceeds \$100,000, (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made.

Virginia's First COPN Law

- **Criteria for determining need:**

1. Recommendations of the State Comprehensive Health Planning Council;
2. Contributions of the proposed project to the orderly development and proper distribution of adequate and effective health services;
3. Size, composition and growth of the population of the area to be served;
4. Number of existing and planned facilities of types similar to the proposed project and the extent of utilization there;
5. Availability of facilities or services, existing or proposed, which may serve as alternatives or substitutes to the proposed project;
6. Compatibility of the proposed project with the comprehensive state plan including the State Hospital construction program; and
7. Availability of medical, nursing and support personnel to staff the proposed project.

- **Process:** Review of application by State Comprehensive Health Planning Council, opportunity for a fair hearing, and determination by the Commissioner of whether public need exists

1980s – First Efforts at Reform

- **1981** Nursing home bed moratorium
- **1984** First major revision of the COPN program
 - Requires consistency with the State Health Plan and State Medical Facilities Plan
 - Restricts the number of hearings on an application
 - Provides for opportunity for applicant to respond to comments
 - Extends timeline for decision from 90 to 120 days

1980s – First Efforts at Reform

- **1986** Federal requirements expire
- **1989 DEREGULATION** (Chapter 517)
 - Removes various types of facilities from the list of reviewable medical care facilities
 - Revises the list of reviewable projects, excluding several previously covered categories
 - Enacts into statute the moratorium on new nursing home beds or extended care services through 1990
 - Sunsets requirement for a certificate for hospitals and ambulatory surgery centers, effective 1991
 - Requires registration of equipment
 - Requires registration of certain specialty service centers or clinics

1990s – Reassessing Reform

- **1991** Deregulation postponed (Chapter 561)
 - Extends moratorium on nursing home and extended care beds and services to June 30, 1991
 - Postpones deregulation of hospitals and ambulatory surgery centers to 1993
 - Expands project registration requirements
 - Authorizes Commissioner to place conditions on certificates

1990s – Reassessing Reform

- **1992** Deregulation repealed; extensive reform
 - Extends moratorium on nursing home and extended care beds and services to 1994
 - Repeals scheduled 1993 deregulation of hospitals and ambulatory surgery centers
 - Repeals equipment registration requirement
 - Expands definition of “medical care facility” and “project”

1990s – Reassessing Reform

- **1996** Moratorium on nursing home and extended care beds and services lifted; replaced with Request for Applications (RFA) process
- **1999** Revisions to procedures:
 - Eliminates requirement for certificate for replacement of equipment
 - Adds requirement for registration of certain equipment
 - Revises administrative procedures including (1) procedures and timelines for health systems agencies, (2) timelines for agency review, and (3) procedures for informal fact finding conferences
 - Adds annual report requirement

2000s – Second Period of Reform

- **2000** Chapter 894 requires development of a plan for the elimination of COPN
- **2001** House Bill 2155/Senate Bill 1084 set out a three-phase plan for elimination of COPN for some services:
 - **Phase 1:** computed tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, and nuclear medicine imaging
 - **Phase 2:** cardiac catheterization, gamma knife surgery, and radiation therapy
 - **Phase 3:** ambulatory surgery centers, neonatal special care, obstetric services, open-heart surgery, and organ transplantation services

2000s – Second Period of Reform

- **2001 HB 2155/SB 1084** Cont'd
 - Requires full funding of indigent care cost at state-supported academic medical centers
 - Requires deregulated services to comply with new specialty service licensure requirements
 - Requires submission of claims data, quality outcome data, and financial information on indigent care
 - Requires extensive study of various issues affecting the delivery of health care

2000s – Second Period of Reform

- **2009** Further revision of procedures (Ch. 175)
 - Establishes an expedited review process for certificates for projects involving a capital expenditure not otherwise defined as reviewable
 - Substantially revises criteria for determining existence of need
 - Establishes an RFA procedure for psychiatric and substance abuse treatment beds and services
 - Requires certificate holder to provide documentation demonstrating satisfaction of conditions on a certificate
 - Authorizes the Department to develop a plan of compliance for a certificate holder who has failed to meet the conditions of a certificate
 - Revises administrative procedures to establish a review process in cases in which no regional health planning agency is designated
 - Requires any medical care facility that furnishes, conducts, operates, or offers any service which requires a certificate of public need to report data on utilization of certain services

2016 – Third Period of Proposed Reform

- 2015 COPN Reform Work Group
- 2016 Session of the General Assembly – four major proposals for COPN reform:
 - HB 193 (O'Bannon)
 - HB 350 (Byron)
 - HB 1083 (Stolle)
 - SB 561 (Newman)

HB 1083 (Stolle)

- Adds a “purpose” statement
- Defines “application” and clarifies contents of completed application
- Eliminates requirement for COPN for lithotripsy, magnetic source imaging (MSI), and nuclear medicine imaging
- Establishes registration requirements for projects exempted from the definition of “project”
- Establishes an expedited 45-day review process for projects determined to be uncontested or to present limited health planning impacts
- Requires the Department of Health to establish a methodology and formulas for uniform application of, active measuring and monitoring of compliance with, and approval of alternative plans for compliance in satisfaction of conditions related to provision of charity care
- Establishes a State Health Services Plan Advisory Council to provide recommendations related to the content of the State Health Services Plan (formerly State Medical Facilities Plan)

HB 1083 (Stolle), cont'd

- Adds an electronic notice and comment process and provides for a hearing only in the case of competing applications or in response to a written request
- Directs the Department to develop recommendations to reduce the duration of the average review cycle for applications for certificates of public need
- Directs the Secretary of Health and Human Resources to review charity care delivery and recommend changes to the definition of charity care and to the types of charity care requirements imposed on various health care services
- Directs the Secretary to convene a group of stakeholders to study and make recommendations related to the appropriate authority of the Commissioner of Health to impose additional conditions on certificates

HB 1083 (Stolle), cont'd

- Directs the Secretary to implement a system to make information about applications for certificates and issued certificates, including conditions on certificates, available to the public online
- Directs the Commissioner of Health to develop an analytical framework to guide the work of the State Health Services Plan Advisory Council
- Directs the Joint Commission on Health Care to develop specific recommendations for eliminating differences in the certificate of public need review process from one region to another and report on the recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2016

HB 193 (O'Bannon) - Introduced

- Creates a three-phase process for sunset of COPN:
 - Phase 1: Imaging services and equipment
 - Phase 2: Ambulatory and outpatient surgery centers
 - Phase 3: Hospitals and all other projects other than nursing homes, open heart surgery, and organ and tissue transplant
- Creates new permitting process for deregulated services requiring conditioning of certificates on compliance with quality of care standards or agreement to:
 - provide a specified level of care at a reduced rate to indigents,
 - accept patients requiring specialized care, or
 - facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area
- Allows the Commissioner of Health to deny approval of a permit if the project would be detrimental to the provision of health services in underserved areas
- **SB 561 (Newman) (Continued to 2017 in the Senate Committee on Education and Health) is identical to this version of HB 193**

HB 193 (O'Bannon) – House Substitute

- Creates a two-phase process for sunset of COPN:
 - Phase 1: Ambulatory and outpatient surgery centers other than rural ambulatory and outpatient surgery centers and capital expenditures at medical care facilities other than rural medical care facilities
 - Phase 2: All medical care facilities other than nursing homes, rehabilitation hospitals and beds, organ or tissue transplant services, certain open heart surgery services, and rural medical care facilities
- Retains permitting process with requirement for conditions from the bill as introduced
- Eliminates regional health planning agencies
- Makes changes to the application and approval process for COPN for projects still subject to the requirement

HB 350 (Byron) - Introduced

- Defines "charity care" for purposes of the certificate of public need program
- Removes mental hospitals from the list of reviewable medical care facilities
- Establishes an expedited 21-day review process for uncontested applications presenting minimal health planning impacts for which the applicant agrees to comply with quality assurance requirements and consents to provide charity care in an amount specified by the Board of Health
- Establishes an expedited 45-day review process for uncontested applications presenting limited health planning impacts that require an intermediate level of scrutiny and for which the applicant agrees to comply with quality assurance requirements established by the Board and consents to provide charity care in an amount specified by the Board
- Provides for automatic approval of a project that is consistent with the State Medical Facilities Plan

HB 350 (Byron) - Introduced

- Clarifies the content of a completed application for a certificate
- Requires the Department to establish a website to make information about the certificate of public need program available to the public
- Establishes a permit process for projects that are no longer subject to the requirement for a certificate of public need, which includes provisions for charity care and quality assurance requirements
- Directs the Secretary of Health and Human Resources to review requirements for charity care, including provisions for defining charity care and calculating the amount and value of charity care required and provided, develop recommendations for standardizing and enforcing such requirements
- Requires the Department to work cooperatively with Virginia Health Information to develop a process for the collection of utilization data for recipients of certificates of public need describing specific types of equipment utilized

HB 350 (Byron) – House Substitute

- Expands the list of projects exempt from COPN to include behavioral health facilities, sanitariums, lithotripsy, MSI, and nuclear medical imaging other than for nuclear cardiac imaging
- Extends timelines for expedited reviews from 21 days and 45 days to 45 days and 120 days
- Establishes the State Medical Facilities Plan Advisory Council to advise the Board on the content of the State Medical Facilities Plan
- Eliminates the requirement for a public hearing on applications

HB 350 (Byron) – Senate Committee Substitute

- Revises the definition of “medical care facility” to:
 - Include the exception for ICF/MR that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of DBHDS
 - Include requirement for COPN for ICF for the treatment and rehabilitation of individuals with substance abuse
 - Exclude specialized centers or clinics or that portion of a doctor's office developed for the provision of CT scanning, and MRI
- Revises the definition of “project” to:
 - Exclude introduction of any new CT scanning or MRI service or equipment and capital expenditures
 - Add establishment of any new rural medical care facility for the provision of CT scanning, lithotripsy, MRI, MSI, or nuclear medicine imaging other than nuclear cardiac imaging services or as a psychiatric hospital
 - Include introduction into an existing rural medical facility of any new CT scanning, lithotripsy, MRI, MSI, or nuclear medicine imaging other than nuclear cardiac imaging service or equipment
 - Include the addition of psychiatric beds, relocation of psychiatric beds, or conversion into psychiatric beds at a rural medical care facility

HB 350 (Byron) – Senate Committee Substitute

- Adds definition of "rural medical care facility"
- Eliminates the 120-day expedited review process
- Requires development of a methodology and formulas for uniform application of, active measuring and monitoring of compliance with, and approval of alternative plans of correction for certificate holders who fail to comply with conditions on a certificate
- Requires the State Health Services Plan Advisory Council to develop a plan to eliminate COPN for ambulatory surgery centers
- Revises authority of the Commissioner of Health regarding conditioning certificates of public need
- Eliminates regional health planning agencies
- Creates new Virginia Charity Care Fund
- Requires the Chairmen of HWI and Senate Ed & Health to establish a task force to develop recommendations concerning the appropriateness of COPN for specific medical care facilities and projects and improvements in the COPN process

HB 350 (Byron) – Floor Substitute

- Amends definition of “rural medical care facility”
- Extends the timeline for the State Health Services Plan Advisory Council to develop recommendations for a comprehensive State Health Services Plan from November 1, 2016 to July 1, 2019
- Amends provisions for permitting of facilities to require conditions on certificates and eliminates the requirement that certain permit holders agree to pay an amount equal to three percent of total net revenue into a new Virginia Charity Care Fund
- Amends provisions (1) governing use of funds in the Virginia Charity Care Fund to provide for use of funds to compensate facilities for losses incurred in the provision of care and (2) improving reimbursement rates for services provided under the Governor's Access Plan
- Eliminates requirement that State Health Services Plan Advisory Council develop a plan to eliminate COPN requirement for ambulatory surgery centers

Questions?