History of Certificate of Need in West Virginia

More Information – WVHCA Annual Reports

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To Bring State, U.S. in Line

New Health Programs Get Central Control

By Fanny Seiler
Staff Writer

Construction of new facilities and new or expanded health programs in both the public and private health sector will have to be approved by the State Health Department Or they can't become a reality under the new health system prescribed by federal law.

Health Director N. H. Dyer said his department is preparing a plan for submission to the 11. S. Department of Health. Education and Welfare by which the agency can carry out its responsibilities. The present schedule calls for the plan to be sent to Gov Moore Nov. 15

The health department was given authority to decide what new and expanded facilities and services are needed in the health industry when Gov. Moore designated it as the state's planning and development agency to implement the federal law.

The department's activities will be coordinated with the West Virginia Health Systems Agency, a semiprivate board which will set policy for all health care delivery systems.

Dyer said state hospitals under the jurisdiction of the departments of Mental Health and Public Institutions will plan their health services, but approval to implement them must first be given by the Health Systems Agency and the health department.

"It's a complicated type of system." Dyer said of the new federal law. Dyer said legislation is required to establish a system for certificates of need and there is a question of whether West Virginia is eligible for federal funds for health services u n t i l the legislation is passed.

The certificate of need is given if a new facility can be justified, or if a new service is warranted. This also includes a new expensive piece of equipment in a hospital. The same procedure is followed for expansions.

Private hospitals and clinics also will need the certificate before they can invest large sums of capital even though there isn't any federal funding involved in their projects. Dyer said.

If the health department disagrees with the Health Systems Agency over the issuing of a certificate of need, it can state its reasons in writing and publicly present its side, said Robert Armstrong, a staff assistant with the Health Systems Agency.

Armstrong said the legislature's subcommittee on health and social services is finalizing a bill on certificate of need for introduction in the 1977 session.

Armstrong said if the legislature doesn't act in 1977 to pass the legislation the agencies won't have enough time to implement the programs prior to the deadline in 1978. He noted that about one year is needed to put the program into operation, including the promulgation of rules and regulations

Dyer said the health department hopes to receive between $310,000 and $400,000 from HEW to administer its plan

However, the application for funds isn't expected to be ready for submission u n t i l February. March would be the earliest date the funds could be approved

The Health Department plans lo add an additional 22 employees by the end of 1977-78 and have 25 employees by t he end of the following f i s c a l year.

As Governor Arch Moore ended his first term, and Jay Rockefeller was poised to take office on January 17, 1977, West Virginia fell in line with other states and with federal legislation that saw a need for oversight of certain aspects of the health care system, namely those involving large capitol expenses.

Through well-researched and detailed State Health Planning documents, newly mandated state government agencies would determine the most urgent care needs and how to deliver services in the most effective and economical ways. The agency would grant permission for new or expanded facilities or certain new equipment only if a genuine community need, in line with the State Health Plan, can be proven by the requesting organization.

National look-back

In 1964, New York became the first to pass laws granting its state government the power to determine if there was a public need for new hospitals or nursing homes. In 1968, the American Hospital Association started a national campaign that encouraged states to pass similar statutes, which became known as "Certificate of Need" (CON) laws.

In 1974, the federal government passed the "Health Planning and Resources Development Act," requiring all 50 states to have a mechanism for the review and approval of any major capital projects, including building or acquiring new high-tech devices. Most states adopted CON programs in order to receive federal funds for health planning.

The federal act was repealed in 1987 along with the withdrawal of funding. During the next ten years, 14 states dissolved their CON process but all still maintain mechanisms aimed at regulating costs and the duplication of services. Thirty-six states, the District of Columbia and Puerto Rico continued CON programs.

Goals of CON Programs

CON programs are a major component of government efforts to;

- Contain or slow the rise in health care costs,
- Improve the quality and efficiency of the health system,
- Encourage collaboration among care providers, and
- Improve access to care for all people.

The underlying theory supporting CON is that the health care market, unlike other industries, does not respond to competitive pressures that help keep costs in line. For example, if a hospital has too many beds to fill and some of those remain empty, the hospital still must cover the fixed costs of those empty beds. That cost will be passed on to the patients who are actually in the hospital.

In relation to high-cost medical equipment, CON programs theorize that if more are available, the cost of care will rise in relation higher utilization and the need to pay for the equipment.

Continuing National Debate on CON

Lively debate continues on the benefits versus the costs of CON programs. The National Conference of State Legislature maintains timely information on the discussions with detailed data on state-by-state CON laws. For more information, visit the NCSL Web site, www.ncsl.org

CON in West Virginia

West Virginia Code §16-2D

As the decade of the 1980s began, the WV legislature said that the state's citizens needed protection from unreasonable increases in the cost of acute hospital services. To work toward that goal, the 1983, the legislative session created the Health Care Cost Review Authority (HCCRA) as a separate state agency. It was authorized to;

- Gather information on health care costs,
- Develop a system of cost control, and
- Ensure accessibility to appropriate acute care services.

HCCRA administered two programs that were previously enacted; the 1977 Certificate of Need (CON) and the 1981 Health Care Financial Disclosure Act.

In **1995,** the legislature charged HCCRA with updating the State Health Plan. The agency added an audit division to ensure compliance with rate and CON orders as well as performing periodic reviews of health care entities coping with financial issues.

The **1997** HCCRA annual report states that all West Virginia health care providers, unless specifically exempt, had to obtain a CON before;

- Providing or expanding new health services,
- Exceeding the capital expenditure threshold of $750,00.00, or
- Acquiring major medical equipment valued at $300,000. 00 or more.

The CON review process included three elements—determination of need, consistency with the State Health Plan, and financial feasibility. Determination of need was based on CON standards that usually include population-based quantifiable need methodologies. Financial feasibility included assessing the reasonableness of proposed costs to patients.

Several advantages of CON programs were listed in the 1997 report, including:

- CON effectiveness in creating the rational distribution of services, especially the acquisition of new technologies;

- The public aspect of CON encourages accountability through open comment periods;
- Enhanced community planning;
- A measure of support for rural hospitals.

A partial recap of the 1994 – June 30, 1997 CON dollar amounts approved and denied, were listed in the 1997 annual report.

Hospital Approved/Denied Projects
Total Dollar Amounts

Calendar Year	Total Hospital CON Expenditures Approved	Total Hospital CON Expenditures Denied
June 30, 1997	$84,089,693.00	$ 125,000.00
1996	51,352,325.00	75,000.00
1995	120,959,150.00	2,026,829.00
1994	90.355,520 .00	6,601,812.00
Total	$346,756,688 .00	$8,828,641.00

The 1997 legislative session shortened the agency's name to the West Virginia Health Care Authority (WVHCA) and gave it the additional charge to "lead state efforts…to effect the expedient and appropriate exchange of health care information." (2000 WVHCA annual report.)

Two bills affecting CON were passed by the 1999 legislature. The changes included:

- Increasing the capital expenditure threshold from $1 million to $2 million;
- Increasing the threshold for major medical equipment from $750.000.00 to $2 million;
- Specifying a list of services subject to CON review;
- Altering the conversion of excess acute care beds to distinct part skilled nursing beds for hospitals meeting certain criteria.

In **2002,** the Authority issued standards that allowed a limited number of demonstration projects for therapeutic heart catheterization without open heart backup at three sites—Weirton Medical Center, United Hospital Center, and St. Francis Hospital.

The dollar amounts of CON requests that the Authority reviewed during FY 2003 totaled $428,230,900.00, within the following categories.

Calendar Year	Total Hospital CON Expenditures Approved	Total Hospital CON Expenditures Denied

FY 2003 $269,311,824.00 $$1,825,796.00

Letters of intent with an estimated capital expense of $157,093,280.00 were withdrawn or expired.

A Long Term Care Task Force began studying the current supply and future demand for nursing homes, assisted living homes, residential board and care homes, residential care communities, and continuous care retirement communities.
A series of public meetings, scheduled between October – November **2008,** examined the CON standards for the following services:
September 25 - Renal Dialysis
October 7 - Hospice & Home Health
October 14 – Medical Rehabilitation
October 15 – Lithotripsy (2nd meeting)
October 22 – Long Term Care
October 23 – Ambulatory Surgical Care
October 28 - Ambulatory Care Centers
November 5 - Radiation Therapy
November 12 - Imaging
November 13 - Behavioral Health
November 19 - In Home Personal Care
November 20 – Private Office Practices.

The **2009** legislative session resulted in several significant changes to the CON laws, including:

- Raising the capital expenditure threshold and major medical equipment threshold from $2,000,000 to $2,700,000. (Note: The 2010 capital expenditure minimum is $2,767,500.00. WV Code §16-2D-2(h) and (s))
- Eliminating lithotripsy from certificate of review.
- Amending the fee structure for certificate of need reviews.
- Providing that in specified instances non-health related projects are not subject to review.
- Providing that in specified instances certain ambulatory care facilities are not subject to CON.
- Eliminating review the acquisition of any health care facility outside of West Virginia by a West Virginia health care facility.