COPN Task Force
Meeting Summary
September 19, 2006

I. Call to Order/Introductions

Delegate Harry R. Purkey, acting chair, called the meeting to order. He welcomed those in attendance and allowed the members to introduce themselves.

The COPN Task Force has nine members, with eight present at the meeting, including Delegates Howell, Janis, Moran, Nutter, O'Bannon, Spruill, and Welch.

II. JCHC Involvement in the Review of the Certificate of Public Need (COPN) Process

Kim Snead, the Executive Director of the Virginia Joint Commission on Health Care (JCHC), presented information on the history of the Virginia certificate of public need (COPN) program that began in the 1970s. The National Health Planning and Resource Development Act required all states to adopt certificate of need (CON) programs by 1980 or risk losing federal funds. The overbuilding of health care facilities, duplication of services, and rising costs provided the rationale for regulation at that time. By 1988, not only had the federal act expired, but the Medicare payment system, Medicaid cost controls, and a new emphasis on competition in the health care industry challenged these programs across the nation. Ms. Snead set forth the purposes of the "Medical Facilities Certificate of Public Need Law," as established in 1973 under Section 32.211-4. She explained that Virginia, like many other states, made changes to its COPN program when the federal act expired.

Ms. Snead indicated that the JCHC conducted a 1997 study of Virginia's COPN program pursuant to HB 1302. The study described changes that included a brief period of deregulation for some services (1989-92) and moratoriums on new nursing facility beds (1981-83 and 1988-96). Ms. Snead further noted both positive and negative conclusions of the JCHC study. The JCHC found that the need to control health care supply would be less important as managed care continued to expand and reduce unnecessary medical services. The JCHC ultimately did not recommend eliminating COPN, but it did introduce legislation that required annual status reports to the Governor and General Assembly on the program.

In addition, Ms. Snead reported that SB 337 (2000) required the JCHC to develop a transition plan to eliminate COPN. The JCHC subcommittee held a public hearing and proposed legislation to deregulate the COPN program. The plan JCHC offered in HB 2155 (2001) and SB 1084 (2001) consisted of three phases of deregulation based on cost impact, service risk, and complexity. Ms. Snead presented a table of the fiscal impact anticipated at each phase, as determined by the JCHC. Ms. Snead noted that both bills died in committee and JCHC has not conducted any comprehensive studies of COPN or supported legislation to repeal it since 2001.

Ms. Snead responded to many questions from Task Force members regarding Federal funding for COPN, costs to administer the program, and recent changes or recommendations. Ms. Snead deferred to the Department of Health for specific COPN data. She emphasized that the JCHC had not analyzed the process since 2001.

III. The Certificate of Public Need (COPN) Review Process in Virginia

Erik Bodin, Director of the Division of Certificate of Public Need for the Office of Licensure and Certification of the Department of Health, addressed the Task Force on the COPN review process. Mr. Bodin described the time frames and application phases throughout the process. He cited Code Sections 32.1-102.1-11 and rules found in 12 VAC 5-220 and 12 VAC5-230-360 as the guiding authority for the process. During his presentation, Mr. Bodin outlined the Pre-Application Phase, the Application Review phase, and the Decision phase of the review process.

Mr. Bodin described the Pre-Application Phase to include a Letter of Intent, response from the Department of Health, review by the Division of COPN and Regional Health Planning Authority (RHPA), and applicant responses to completeness follow-up questions. During the Application Phase, the process continues to follow deadlines and includes a public hearing, RHPA meetings, an RHPA report, and a final recommendation to the applicant due by the 70th day of the review cycle. At the Decision Phase, the RHPA and DCOPN recommend uncontested COPN requests for approval. For contested or unrecommended COPN requests, the Department holds an informal fact-finding conference between the 80th and 90th day of the cycle. If the State Health Commissioner does not issue a decision by the 190th day of the review cycle, the Department deems it approved by default.

Mr. Bodin stated that his office approved 90.6 % of applications during fiscal years 2003-05. He further noted that approved requests represent a 3-year capital expenditure of over 2 billion dollars, while projects denied represent a 3-year capital request of only 165 million dollars. Recommendations offered recently by the COPN program as part of its annual report include deregulation or modification of the State Medical Facilities Plan for certain medical services. Mr. Bodin answered numerous questions from the Task Force members. For example, he confirmed that his Division processes 119 applications per year and meets its $500,000 budget based on application fees.

IV. Virginia and the COPN Process

George Barker, Associate Director of the Health Systems Agency of Northern Virginia, Inc. gave a presentation as a representative of the Virginia Association of Regional Health Planning Agencies. Mr. Barker provided a positive perspective on the value of COPN to Virginia. He credited the COPN program with positive outcomes such as low medical expenditures, high quality care, and better access to care in Virginia. Mr. Barker reviewed data that showed Virginia as having nearly the lowest personal and state government expenditures on health care in the nation. He also cited a study by U.S. automakers on states with CON regulation that confirmed favorable data on expenditures. He further listed positive findings on health care quality in Virginia and signs of enhanced access such as geographic distribution, charity, and Medicaid services.

Mr. Barker emphasized that medical care is not part of the classic competitive economic market because patients have little knowledge of costs, pay little directly, and there are unprofitable services due to charity and Medicaid. Mr. Barker described the problems of partial COPN repeal in Virginia (1989-92) and total COPN repeal in Ohio. He stated that Virginia experienced an explosive growth of profitable services in affluent areas, which affected access and quality of care. He noted similar trends in Ohio such as fewer inner city hospitals. Mr.

Barker then addressed several questions from the Task Force regarding rising costs, quality control alternatives, and CON programs in other states.

V. Staff Briefing on Conclusions of 2004 Federal Report Regarding State Certificate of Need Programs

Ellen Weston of the Division of Legislative Services introduced a report released by the Federal Trade Commission and Department of Justice in 2004 entitled, Improving Health Care: A Dose of Competition. Ms. Weston described the authors and basis for their findings: 27 days of FTC/DOJ Joint Hearings on Health Care and Competition Law and Policy, which included testimony from over 300 participants. She indicated that the main purpose of the 360 page federal report was to identify the current role of competition in health care and improvements necessary to enhance consumer/patient welfare. She added that the report focused on antitrust enforcement to protect competition and surveyed a broad range of health care topics. Ms. Weston set forth the general conclusions on CON programs from the Miscellaneous Subjects chapter of the Report. All of the conclusions criticized CON programs as ineffective to improve health care delivery. She also recited "Recommendation 2" from the Executive Summary of the Report. Recommendation 2 underscored that CON programs do not contain health care costs, but instead pose anti-competitive risks that outweigh their purported economic benefits. Recommendation 2 specifically warned states with CON programs to reconsider whether they best serve the needs of their citizens.

VI. Adjournment

The meeting adjourned upon announcement by the Chair that there would be future meetings to discuss these concerns, along with the opportunity for public comment.