

October 24, 2006

The Honorable Harry F. Purkey  
2352 Leeward Shore Drive  
Virginia Beach, Virginia 23451

Dear Delegate Purkey:

Thank you for giving the Virginia Department of Health (VDH) the opportunity to address the first meeting of the House Health, Welfare and Institutions Committee's COPN Task Force. I regret I was unable to attend due to an unavoidable prior commitment. I understand it was a productive session.

In response to the Task Force's request for additional information from VDH I have attached two tables that address the specific questions asked. I have, as requested, also included an outline of several options that we see as reasonable approaches for streamlining the COPN review process and thereby reducing the financial burden the process places on applicants.

In brief, we were asked what portion of the approximately \$2.9 billion of health care capital projects authorized in the last three years have been completed. As could have been expected, the smaller, less expensive projects are those that have reported completion thus far. They account for only 24% of the projects (69) representing 5% of the capital authorized (\$146 million). An additional 41% of the projects (119) representing another 14% of the authorized capital (\$413 million) were expected to have been completed based on the schedule supplied with their application. However, they have neither been finished nor reported as completed. The balance of the projects authorized in the last three years (103 projects, \$2.3 billion of authorized capital) are either the more recently approved or the more complex of the projects and are expected to be completed at various times between now and 2009 (Table 1).

The Task Force also asked if there was a difference among the recommendations made by the five Regional Health Planning Agencies (RHPA). Statewide, in the last three years, the RHPAs recommended denial of 17.8% of received requests. The Northwestern Virginia Health Systems Agency (NWVHSA) recommended denial of the smallest percentage of reviewed requests, 10.4%. It also reviewed the fewest requests during the period. The Central Virginia Health Planning Agency (CVHPA) recommended denial of the largest proportion of their reviewed requests, 29.7%.

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Please note that this analysis of the denial rate does not account for the rate at which the various RHPAs succeeded in efforts to consult with potential applicants prior to their submission of a COPN request. Such consultation may result in a greater proportion of requests being well thought out and therefore more likely to warrant approval. Other factors such as RHPA positions related to public health issues and COPN condition enforcement also are thought to contribute to the variability in recommendations among the RHPAs.

Finally, the attachment outlines several options to reduce the review burden related to COPN projects. Two of these options are taken from prior *Annual Reports On The Status Of Virginia's Medical Care Facilities Certificate Of Public Need Program To The Governor and The General Assembly Of Virginia*. In addition, three new opportunities are described. Four of the five options would require changes to the *Code of Virginia*. All five changes could be made without adversely affecting the goals of the certificate of public need program.

Please let me know if you have any questions or would like additional information. I am available to discuss these and any other options to improve the COPN process while maintaining the ideals of accessibility to quality health care services at a minimum cost for all Virginians with you.

Sincerely,



Robert B. Stroube, M.D., M.P.H.  
State Health Commissioner

Cc: The Honorable Marilyn Tavenner  
Members of the Health, Welfare and Institutions Committee  
Certificate of Public Need Task Force  
Ms. Ellen Weston, Division of Legislative Services  
Ms. Sarah Stanton, Division of Legislative Services

**Table 1****Value of Completed COPN Projects Authorized Between August 2003 – September 2006**

Total COPN Decisions	337	
COPN Requests Approved	291	86.4%
COPN Requests Denied	46	13.6%
Number of COPN Projects Reported Complete	69	23.7%
Additional Projects Expected to Have Been Completed	119	40.9%
Total Number of Projects Reported / Expected Complete	188	64.6%
Total Dollar Value Authorized through COPN	\$2,903,433,822	
Dollar Value of COPN Projects Reporting Completion	\$145,520,086	5.0%
Dollar Value of Additional Projects Expected to Have Been Completed	\$412,578,022	14.2%
Total Dollar Value of Projects Reported / Expected Complete	\$558,098,108	19.2%

8/6/03 - 9/26/06 actual period

Prepared by DCOPN 10/2/2006

**Table 2****Regional Health Planning Agency Recommendations and Commissioner Decisions August 2003 – September 2006**

Health Planning Region	Regional Health Planning Agency	Number of Decisions	HPA Recommendation				Number of Projects Denied by the State Health Commissioner	
			of Approval	%	of Denial	%		%
HPR I	Northwestern Virginia Health Systems Agency	48	43	89.6%	5	10.4%	3	6.3%
HPR II	Health Systems of Northern Virginia	66	53	80.3%	13	19.7%	11	16.7%
HPR III	Health Planning Agency of Southwest Virginia	50	43	86.0%	7	14.0%	7	14.0%
HPR IV	Central Virginia Health Planning Agency	64	45	70.3%	19	29.7%	8	12.5%
HPR V	Eastern Virginia Health Systems Agency	109	93	85.3%	16	14.7%	17	15.6%
Median of HPA's				85.3%		14.7%		14.0%
Statewide		337	277	82.2%	60	17.8%	46	13.6%

8/6/03 - 9/26/06 actual period

Prepared by DCOPN 10/2/2006



## **Attachment A**

### **Opportunities to Improve the COPN Process**

As presented at the September 19, 2006 meeting of the House Health, Welfare and Institutions COPN Task Force, two basic options presented in prior Annual Reports change the review process for COPN:

1. Deregulate COPN for specific services.
  - a. This has been previously recommended for lithotripsy, obstetrical services, intermediate care facilities for the mentally retarded (ICF/MR) and nuclear medicine imaging.
    - i. ICF/MR and nuclear medicine imaging have already been partially deregulated.
      1. COPN applies to ICF/MR only when the facility is greater than 12 beds
      2. COPN applies to nuclear medicine imaging only when the service is to be established for imaging other than cardiac imaging
      3. In past three years there have been;
        - a. two requests for ICF/MRs with more than 12 beds, both were authorized at a combined capital cost of \$214,448
        - b. three requests for non-cardiac nuclear medicine imaging,
          - i. two were part of larger facility requests, one of which was authorized
            1. the denied nuclear medicine imaging request was denied since the over all facility was denied
          - ii. the third request was authorized (\$6,540)
      - ii. In past three years there have been;
        1. nine requests for lithotripsy services, all were approved at a total capital authorization of \$89,000
        2. three requests for obstetric services, all were part of a request for a new hospital and all three were approved
    - b. these project types are rare, involve fairly low capital cost and are generally approved
    - c. deregulating these project types would decrease the number of COPN applications by an average of 6 per year
    - d. this option would require a change to the Code of Virginia
  2. Use a Request for Applications (RFA) type process to proactively conduct a statewide assessment and establish the existence of a public need of service in advance and solicit applications for COPN authorization to fulfill that identified need. Applications for the services subject to the RFA process would only be accepted in response to an RFA.
    - a. This has been previously recommended for radiation therapy, gamma knife, neonatal special care, medical rehabilitation and long term acute care hospitals.
    - b. In past three years there have been;
      - i. 15 radiation therapy requests approved (\$82,577,676) and 10 denied (\$57,772,318)

- ii. 3 gamma knife/stereotactic radiosurgery requests approved (\$149,764,976) and 4 denied (\$21,156,316)
  - iii. 2 neonatal special care requests approved, one as part of an entire facility request, one to introduce the service at an existing hospital (\$996,000), both were approved
  - iv. 6 medical rehabilitation service requests approved (\$10,533,167) and 1 denied (\$13,064,757)
  - v. 3 long term acute care hospitals approved (\$19,425,034) and 2 denied (\$1,415,706)
- c. use of the RFA process would be expected to reduce the number of speculative COPN requests
- d. use of the RFA process may attract applicants to areas of the State with identified need since the potential applicants would know that a State determination of need had already been made
- e. this option would require a change to the Code of Virginia

### **Additional options for streamlining or making the COPN review process more efficient**

1. Expand the Expedited Review process, with appropriate modification, to include requests for the addition of equipment capacity at an existing site already providing the service, (e.g., the addition of a CT scanner at a diagnostic imaging center that already has a CT scanner)
  - a. Would allow applicants who meet all the requirements of the State Medical Facilities Plan (SMFP), propose uncontested requests and are not part of a competitive review to receive a decision within 45 days of the start of the review cycle instead of the current 90 days.
    - i. Requests would continue to be reviewed in established review cycles
    - ii. Application fees would remain the same
    - iii. Requests not found to be in concert with the SMFP or that are being recommended for denial by the Regional Health Planning Agency and/or the Division of Certificate of Public Need would revert to the full, longer, review cycle
    - iv. By requesting the Expedited Review process the applicant waives the public hearing, although public comment by mail and electronic submission would still be accepted
  - b. The generally shorter review period would marginally speed the receipt of a certificate
  - c. The general easing of the review burden would likely reduce the review development costs (legal fees, consultant fees, staff time) for the applicant
  - d. Waiving of the public hearing would reduce the cost of review for the Regional Health Planning Agency
  - e. This option would not require a change to the Code of Virginia but would require a change to the Regulations
  - f. In the last 3 years there have been 75 requests of this type approved (\$178,044,388)
    - i. There have also been 5 requests denied (\$10,045,430)

2. Exempt CT scanners used for the exclusive purpose of radiation therapy treatment planning / simulation from the requirement to obtain a COPN
  - a. Equipment for radiation therapy treatment planning / simulation is required by the SMFP for any radiation therapy program and is clinically necessary
  - b. The current clinical standard for radiation therapy treatment planning / simulation is a CT scanner with appropriate software
  - c. To date no request for a CT scanner for exclusive use in radiation therapy treatment planning / simulation has been denied
  - d. For monitoring, the addition of a CT scanner for radiation therapy treatment planning / simulation should be registered with the Department's Division of Certificate of Public Need
  - e. This option would require a change to the Code of Virginia
  - f. In the last 3 years there have been 12 requests of this type approved (\$9,736,048)
3. Increase the dollar threshold defining miscellaneous capital expenditure from \$5 million to \$15 million
  - a. It has been 10 years since the threshold for defining a capital expenditure needing COPN authorization (when not otherwise defined as a project) was increased from \$1 million to \$5 million
  - b. Inflation, especially in the medical environment, has resulted in little value in reviewing a miscellaneous capital project of \$5 million.
  - c. In the last 3 years 7 requests (\$70,677,513) were received and approved for projects with estimated capital costs between \$5 million and \$15 million
    - i. No requests for miscellaneous capital expenditures within this cost range were denied
    - ii. These projects were generally physical plant renovations, infrastructure upgrades and minor expansions
  - d. During the same period 13 miscellaneous capital expenditure projects ranging from \$17 million to \$242 million were reviewed and approved
    - i. No requests for miscellaneous capital expenditures within this cost range were denied
    - ii. These projects were generally major new construction, including parking structures, major information system replacements, major physical plant renovations, and infrastructure upgrades
  - e. This option would require a change to the Code of Virginia