

# Virginia Department of Health Recommendation for the Modification of the Certificate of Public Need Review Process in Virginia

House Health, Welfare and  
Institutions Committee COPN Task  
Force

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# Changes to the Code of Virginia

- All recommendations presented require changes to the Code of Virginia at §32.1-102 and are presented in that format.
- Changes will reduce total review time by 55 days, from a total of 260 days to 205 days.
- Changes will reduce the number of projects that require COPN, which combined with time reduction will reduce over all cost to the applicants.

# Five Categories of Changes

- Changes that shorten the time required to initiate review
- Changes that shorten the time allowed for informal fact-finding conference
- Modification of what project types need COPN
- Changes that strengthen reporting and compliance with conditions
- Housekeeping and supportive changes

# Change to Shorten Time to Initiate Review

- **§ 32.1-102.6 Administrative procedures. - A**

Within 10 calendar days of the date on which the document is received, the Department and the appropriate health planning agency shall determine whether the application is complete or not and the Department shall notify the applicant, if the application is complete, that the application has been accepted for review and if the application is not complete, of the information needed to complete the application, that the application will not be accepted for the current review cycle and the dates of the next available review cycle.

## Change to Shorten Time to Initiate Review

### § 32.1-102.6 Administrative procedures. - D

If the application is not determined to be complete ~~within 40 calendar days from~~ upon submission, the application shall be refiled in the next batch for like projects.

# Change to Shorten Time Allowed for IFFC

## § 32.1-102.6. Administrative procedures.

E. Upon entry of each completed application or applications into the appropriate batch review cycle:

1. The Department shall establish, for every application, a date between the eightieth and ninetieth calendar days within the 190-calendar-day review period for holding an informal fact-finding conference, if such conference is necessary. Once scheduled by the department the informal fact-finding conference will be held on the scheduled date unless changed by the presiding Adjudication Officer in response to special, unavoidable circumstances and with the concurrence of all parties.

# Change to Shorten Time Allowed for IFFC

## § 32.1-102.6. Administrative procedures. E.

4. In any case in which an informal fact-finding conference is held, the informal fact-finding conference shall not be a de novo review of the request and shall be based on the material in the record on the 60<sup>th</sup> day of the review cycle, any material submitted prior to the informal fact-finding conference by a party with good cause and any informal fact-finding conference testimony made regarding the material in the record. Following the 60<sup>th</sup> day of the review cycle only the analysis and recommendation of the Regional Health Planning Agency, the analysis and recommendation of the Division of Certificate of Public Need, the transcript of the informal fact finding conference, the analysis and recommendation of the adjudication officer and the Commissioner's decision may be added to the record. The date for the close of the record shall not be more than 45 days after the date the informal fact-finding conference is concluded. ~~date shall be established for the closing of the record which shall not be more than 30 calendar days after the date for holding the informal fact-finding conference.~~

# Change to Shorten Time Allowed for IFFC

## § 32.1-102.6. Administrative procedures. E.

5. In any case in which an informal fact-finding conference is not held, the record shall be closed for additional information ~~on the earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the~~ Department determines an informal fact-finding conference is not necessary, only the Commissioner's decision may be added to the record.



# Modification of what project types need COPN

## § 32.1-102.1. Definitions

*"Project"* means:

- ~~3. Relocation at the same site of 10 beds or 10 percent of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;~~

# Modification of what project types need COPN

## § 32.1-102.1. Definitions

"*Project*" means:

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, ~~gamma knife surgery~~ stereotactic radiosurgery, ~~lithotripsy~~, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, ~~nuclear medicine imaging, except for the purpose of nuclear cardiac imaging~~, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

# Modification of what project types need COPN

## § 32.1-102.1. Definitions

"*Project*" means:

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, ~~gamma knife surgery~~ stereotactic radiosurgery, ~~lithotripsy~~, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need; or

# Modification of what project types need COPN

- **§ 32.1-102.1. Definitions**
- "*Project*" means:
- 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures between \$5 and \$15 million not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility shall be registered with the Commissioner pursuant to regulations developed by the Board.

# Modification of what project types need COPN

## § 32.1-102.1. Definitions

*"Medical care facility,"* as used in this title, means...

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, ~~gamma knife surgery~~ stereotactic radiosurgery, ~~lithotripsy~~, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, ~~nuclear medicine imaging, except for the purpose of nuclear cardiac imaging~~, or such other specialty services as may be designated by the Board by regulation.

# Modification of what project types need COPN

- § 32.1-102.3:2. Certificates of public need; applications ~~for~~  
~~—increases in nursing home bed supplies to be filed in response to~~  
**Requests For Applications (RFAs).** - A. .... the Commissioner of Health shall only approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article for any project which would result in an increase in the number of beds in which nursing facility or extended care services are provided in a planning district ~~in which nursing facility or extended care services are provided,~~ establish a new radiation therapy service and/or stereotactic radiosurgery service or increase the number of radiation therapy or stereotactic radiosurgery machines at an existing medical care facility, establish a new neonatal special care service, establish a new obstetric service, establish a new medical rehabilitation service, establish a new psychiatric service or increase the number of psychiatric care beds or establish a new long term-acute care hospital when such applications are filed in response to Requests For Applications (RFAs).

# Changes that strengthen reporting and compliance with conditions

- **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates. - A.**

All facilities, whether licensed or not and whether or not required to be licensed, holding, or seeking, certificate of public need authorization for one or more projects will report their patient volume, gross patient revenue, net patient revenue and charity care for all certificate of public need regulated services annually to Virginia Health Information.

Failure of a facility holding a certificate of public need to provide the report required by this section will:

- a. render the facility, the facility's parent organization and the facility's owners ineligible to apply for additional certificates of public need until such time as all reporting is current to the later of the start of the service or January 1, 2007
- b. cause capacity at non-reporting services to not be counted in the calculations to determine need.

# Changes that strengthen reporting and compliance with conditions

- § 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates
- F. The Commissioner may condition, pursuant to the regulations of the Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care or (ii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.
- Any person willfully refusing, failing, or neglecting to honor such agreement shall be subject to a civil penalty of up to \$100 per violation per day until the date of compliance. Failure to report compliance with any condition of a certificate of public need by the established deadline shall be grounds for denial of additional certificate of public need requests until full compliance is demonstrated and reported.



# Changes that strengthen reporting and compliance with conditions

- **§ 32.1-102.10. Commencing project without certificate grounds for refusing to issue license.**
- Commencing any project without a certificate required by this article shall constitute grounds for refusing to issue a certificate or a license for such project.

# Housekeeping and Supportive Changes

- **§ 32.1-102.1. Definitions**

~~"Virginia Health Planning Board" means the statewide health planning body established pursuant to § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.~~

# Housekeeping and Supportive Changes

## **§ 32.1-102.1:1. Equipment registration required.**

Within thirty calendar days of becoming contractually obligated to acquire any replacement medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, or other specialized service designated by the Board by regulation, any person shall register such purchase with the Commissioner and the appropriate health planning agency.

# Housekeeping and Supportive Changes

**§ 32.1-102.2. Regulations.** - A. The Board shall promulgate regulations which are consistent with this article and:

1. Shall establish concise procedures for the prompt review of applications for certificates consistent with the provisions of this article which may include a structured batching process which incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any structured batching process established by the Board, applications, combined or separate, for computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, ~~radiation therapy~~ or nuclear imaging and radiation therapy shall be considered in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy and (ii) any or all of the computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, and nuclear medicine imaging;

# Housekeeping and Supportive Changes

- **§ 32.1-102.6. Administrative procedures. - A.**  
To obtain a certificate for a project, the applicant shall file a completed application for a certificate with the Department and the appropriate health planning agency. In order to verify the date of the Department's and the appropriate health planning agency's receipt of the application, the applicant shall transmit the document electronically, by certified mail or a delivery service, return receipt requested, or shall deliver the document by hand, with signed receipt to be provided.

# Housekeeping and Supportive Changes

## § 32.1-102.6. Administrative procedures. - B

The health planning agency shall submit its recommendations on each application and its reasons therefor to the Department within ~~10~~ 5 calendar days after the completion of its 60-calendar-day review or such other period in accordance with the applicant's request for extension.

If the health planning agency has not completed its review within the specified 60 calendar days or such other period in accordance with the applicant's request for extension and submitted its recommendations on the application and the reasons therefor within ~~10~~ 5 calendar days after the completion of its review, the Department shall, on the ~~eleventh~~ sixth calendar day after the expiration of the health planning agency's review period, proceed as though the health planning agency has recommended project approval without conditions or revision.

# Housekeeping and Supportive Changes

## § 32.1-102.6. Administrative procedures. E.

3. Any person seeking to be made a party to the case for good cause at a necessary informal fact-finding conference shall notify the Department of his request and the basis therefor on or before the eightieth calendar day following the day which begins the appropriate batch review cycle.