JCHC Involvement in Review of COPN Process in Virginia

Presentation to Health, Welfare and Institutions COPN Task Force

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Federal Requirements for Certificate of Need Programs Were Adopted in 1974

- The National Health Planning and Resource Development Act (NHPRDA) required states to establish certificate of need (CON) programs by 1980 or risk losing some federal funding.
- As noted in the 2001 *Report of the Special Joint Subcommittee Studying Certificate of Public Need:*

  "Overbuilding of facilities, duplication of services, and escalating health care costs were the motivating forces behind state and federal efforts to regulate the development of the health care industry in the 1970s. In the 1980s, the implementation of the Medicare Prospective Payment System and Medicaid cost controls and the philosophical shift to promoting competition in the health care industry fueled the controversy surrounding certificate of need." (*Report of the Special Joint Subcommittee Studying Certificate of Public Need* SD 6, 2001 pp. i-ii.)
- By 1988, the federal role in CON had been eliminated completely as NHPRDA was allowed to expire.

Virginia Certificate of Public Need (COPN) Program Established in 1973

- Virginia's program, authorized in the "Medical Facilities Certificate of Public Need Law" in *Code of Virginia* Title 32, Chapter 12.1, gave the rationale:

  "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. The purpose of this chapter is to promote comprehensive health planning…; 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."

  Source: *Code of Virginia*, § 32-211.4 (1973)

Virginia Made Significant Changes in its COPN Program During the 1980s

- After the federal requirement for states to have a CON program expired, Virginia like many other states made changes in its program.
- In its 1997 *Study of Virginia's Certificate of Public Need (COPN) Program Pursuant to HB 1302,* JCHC described the COPN changes:
  - Between 1989 and 1992, there was a brief period of deregulation for some services (specialty services, non-hospital facilities, specialized medical equipment, and other capital expenditures)
  - However, COPN requirements continued to apply to new hospital beds and a moratorium was placed on new nursing facility beds
    - The nursing facility bed moratorium was in place from 1981 to 1983 and from 1988 to 1996
  - In 1996, HB 1302 lifted the moratorium and replaced it with a Request for Applications process for nursing facility beds.

Findings of the 1997 JCHC Study of Virginia's COPN Program

- JCHC's *Study of Virginia's Certificate of Public Need (COPN) Program Pursuant to HB 1302* concluded:
  - There is little evidence of significant COPN impact on aggregate health expenditures, but some savings for specific services covered by COPN
  - COPN played a role in promoting better health care outcomes by stressing the necessity for sufficient volume, especially in high technology services
  - The ability of Virginia's hospitals to cover the costs of care to the indigent and the uninsured could be negatively impacted: (i) if COPN were repealed resulting in greater competition in the marketplace; (ii) by the development of new factors that attract paying patients but provide minimal care to the indigent and uninsured; and (iii) through the evolution of managed care financing mechanisms.
  - COPN has not restricted the growth of outpatient surgery in Virginia
  - COPN regulatory process favors outpatient surgical projects that are sponsored by hospitals over outpatient surgical projects sponsored by non-hospital sponsored investors.
- It was proposed that the need to control health care supply would be less important as managed care continued to expand and reduce unnecessary use of medical care services.
- JCHC did not recommend eliminating COPN but introduced legislation to require the State Health Commissioner to report annually to the Governor and the General Assembly on the status of COPN program.

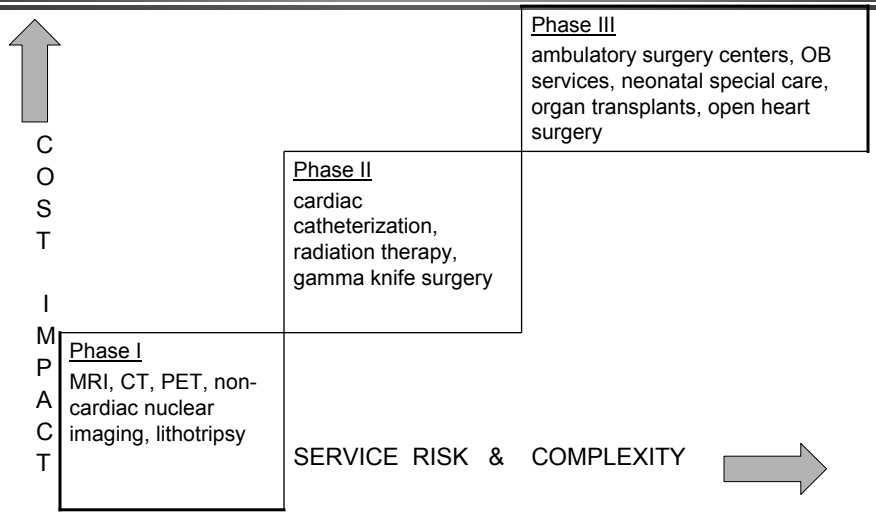
SB 337 (2000 Session) Directed JCHC to Develop a COPN Deregulation Plan

- In 2000, SB 337 required JCHC not to study whether to eliminate COPN but to develop a transition plan to eliminate COPN
  - JCHC's transition plan was required to include provisions to:
    - Meet the health care needs of indigent and uninsured Virginians
    - Establish licensing standards and provide adequate oversight of deregulated services
    - Monitor the various effects of deregulation, particularly on academic health centers (AHCs), long-term care facilities, critical access hospitals, and the location of medical facilities and projects
    - Examine the fiscal impact of deregulation on market rates paid by state-funded health and long-term care programs
    - Recommend a schedule for needed statutory and regulatory changes to implement the plan.

Activities Undertaken by JCHC to Develop the COPN Deregulation Plan

- In developing the deregulation plan, a subcommittee including 13 JCHC members met five times and held one public hearing.
- In addition, a facilitation process was undertaken to involve the entities who would be affected by COPN deregulation so that the resulting plan would not only benefit from the expertise of each entity, but would be supported by each entity
  - The Medical Society of Virginia, Virginia Hospital & Healthcare Association, and Virginia Health Care Association were identified to participate and provide support for the facilitation process
    - Approximately 50 meetings held
    - Consensus on a proposed deregulation plan was reached by the stakeholders
    - The deregulation plan was outlined and introduced by JCHC as HB 2155 and SB 1084 during the 2001 General Assembly Session.

Deregulation Plan Had 3 Phases Based on Cost Impact and Service Complexity/Risk



Other Key Provisions of Deregulation Plan

- COPN requirements would have continued for hospital beds, nursing homes, and mental health and substance abuse facilities.
- Each phase of the plan included specific actions related to quality protections, access improvements, data reporting/monitoring, fair payment/funding, and support of medical education.
- COPN service deregulation would have been repealed when licensure and data reporting requirements were in place
  - Licensure requirements would have been based on national accreditation standards
  - Providers would have been required to accept all patients regardless of ability to pay, to participate in Medicaid/CMSIP (now FAMIS), and to participate in a revised Indigent Health Care Trust Fund.
- Deregulation of services in each phase was dependent on approval of Appropriations Act funding provisions.

Summary of Fiscal Impact of Deregulation Plan (as determined by JCHC)

General Funds (in millions)

Funding	Phase I	Phase II	Phase III
Indigent Care at AHCs	$22.0		
Increase Medicaid eligibility for low-income adults		$27.0 Increase from 32% to 66% of FPL	$27.0 Increase from 66% to 100% of FPL
Increase Medicaid eligibility for low-income aged and disabled		$11.0 Increase from 80% to 90% of FPL	$11.0 Increase from 90% to 100% of FPL
Fully Fund Undergraduate Medical Education @ AHCs	$6.5 (1st Stage)	$6.5 (2nd Stage)	
Revise Medicaid Reimbursement for Hospitals	$ 12.0	$ 12.0	
TOTALS	**$40.5**	**$56.5**	**$38.0**

Actions Taken on HB 2155 and SB 1084 2001 General Assembly Session

- HB 2155 was reported by the Health, Welfare and Institutions Committee 20-Y, 2-N
  - But tabled in House Appropriations Committee 26-Y, 0-N.
- SB 1084 was reported by the Senate Education and Health Committee 10-Y, 0-N, 2-A
  - But left in the Senate Finance Committee.
- JCHC has not undertaken a comprehensive study of COPN or introduced legislation to repeal COPN since the 2001 Session.