

# Legislative History of Virginia's Certificate of Public Need Law

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# Overview

- What is COPN?
- Early health planning and COPN laws
- Virginia's initial COPN law
- Significant changes to Virginia's COPN law

# What is COPN?

- Regulatory mechanism for controlling the development of health care services and facilities
- Requires a determination that a “public need” exists for a proposed facility, service, or piece of equipment

# Early History

- **1946** Federal Hospital Survey and Construction Act (Hill-Burton Act) required development of state facilities plans
- **1972** Health Cost Effectiveness Amendments linked reimbursement with compliance with state health plans and demonstration of need
- **1974** National Health Planning and Resource Development Act required establishment of state health planning systems and COPN programs

# Virginia's First COPN Law

- **1973** Chapter 419 of the Acts of Assembly codified the Commonwealth's first COPN law
- **Purpose: “to promote comprehensive health planning** in order to help meet the health needs of the public; 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”**

# Virginia's First COPN Law

- **“Medical care facility”**: any institution, place, building or agency ... by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled. Includes:
  - general hospital
  - nursing home
  - intermediate care facility
  - health maintenance organization
  - mental retardation facility
  - sanatorium
  - sanitarium
  - extended care facility
  - mental hospital
  - “other related institutions and facilities”
- **“Project”**: a capital expenditure which ... is not properly chargeable as an expense of operation and maintenance and which (1) exceeds \$100,000, (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made.

# Virginia's First COPN Law

- **Criteria for determining need:**

1. Recommendations of the State Comprehensive Health Planning Council;
2. Contributions of the proposed project to the orderly development and proper distribution of adequate and effective health services;
3. Size, composition, and growth of the population of the area to be served;
4. Number of existing and planned facilities of types similar to the proposed project and the extent of utilization there;
5. Availability of facilities or services, existing or proposed, that may serve as alternatives or substitutes to the proposed project;
6. Compatibility of the proposed project with the comprehensive state plan, including the state hospital construction program; and
7. Availability of medical, nursing, and support personnel to staff the proposed project.

- **Process:** Review of applications by State Comprehensive Health Planning Council, opportunity for a fair hearing, and determination by the Commissioner of whether public need exists

# First Period of Reform

- **1981** Moratorium on nursing home beds
- **1984** First major revision of the COPN program
  - Required consistency with the State Health Plan and State Medical Facilities Plan
  - Eliminated the role of the Statewide Health Coordinating Council in the COPN review process
  - Eliminated the informal review process
  - Restricted the number of hearings on an application
  - Provided opportunity for applicants to present information and respond to comments
  - Extended timeline for decisions from 90 to 120 days

# Second Period of Reform

- **1986** Federal COPN requirements repealed
- **1986-1987** Governor's Commission on COPN
- **1988** Moratorium on issuance of certificates and creation of the Joint Subcommittee on Health Care for All Virginians

# Second Period of Reform (cont'd)

- **1989** Deregulation (Chapter 517)
  - Eliminated COPN requirement for various facilities, services, equipment, and projects effective July 2, 1989
  - Eliminated the COPN requirement for hospitals and ambulatory surgery centers, effective July 1, 1991
  - Required registration of equipment and certain specialty services
  - Enacted the nursing home moratorium into statute
  - 2<sup>nd</sup> enactment called for study and recommendations related to deregulation

# 1990s: Reassessing Reform

- **1991** Deregulation postponed (Chapter 561)
  - Extended moratorium on nursing home and extended care beds and services to July 1, 1991
  - Postponed deregulation of hospitals and ambulatory surgery centers to 1993
  - Expanded project registration requirements
  - Authorized Commissioner to place conditions on certificates
  - Directed the Secretary of Health and Human Resources to continue to study COPN

# 1990s: Reassessing Reform

- **1992** Deregulation repealed; extensive reform (Chapter 612)
  - Extended moratorium on nursing home and extended care beds and services to 1994
  - Repealed scheduled 1993 deregulation of hospitals and ambulatory surgery centers
  - Repealed equipment registration requirement
  - Expanded definitions of “medical care facility” and “project”

# Third Period of Reform

- **1996** Moratorium on nursing home and extended care beds and services lifted; replaced with Request for Applications (RFA) process
- **1998** Joint Subcommittee to Study Certificate of Public Need
- **1999** Revisions to procedures:
  - Eliminated requirement for certificate for replacement of equipment; added requirement for registration
  - Revised administrative procedures, including (i) procedures and timelines for health systems agencies' review of applications, (ii) timelines for agency review of applications, and (iii) procedures for informal fact-finding conferences
  - Expanded annual reporting requirement

# Third Period of Reform: Plan for Repeal

- **2000** Chapter 894 required development of a plan for the elimination of COPN
- **2001** House Bill 2155/Senate Bill 1084 set out a three-phase plan for elimination of COPN for some services:
  - **Phase 1:** computed tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, and nuclear medicine imaging
  - **Phase 2:** cardiac catheterization, gamma knife surgery, and radiation therapy
  - **Phase 3:** ambulatory surgery centers, neonatal special care, obstetric services, open-heart surgery, and organ transplantation services

# Third Period of Reform: Plan for Repeal (cont'd)

- **2001 HB 2155/SB 1084 (Cont'd)**
  - Required full funding of indigent care cost at state-supported academic medical centers
  - Required deregulated services to comply with new specialty service licensure requirements
  - Required submission of claims data, quality outcome data, and financial information on indigent care
  - Required extensive study of various issues affecting the delivery of health care
  - Contingent upon funding, which was not appropriated

# 2009 Procedural Reforms

- **2009** Further revision of procedures (Chapter 175)
  - Established an expedited review process for certain projects
  - Substantially revised criteria for determining existence of need
  - Established an RFA procedure for psychiatric and substance abuse treatment beds and services
  - Required certificate holder to provide documentation demonstrating satisfaction of conditions on a certificate
  - Authorized the Department of Health to develop a plan of compliance for a certificate holder that has failed to meet the conditions of a certificate
  - Revised administrative procedures to establish a review process in cases in which no regional health planning agency is designated
  - Required reporting of utilization data for certain services

# Fourth Period of Reform

- 2015 COPN Reform Work Group
- 2016 Session of the General Assembly;  
four major proposals for COPN reform:
  - HB 1083 (Stolle)
  - HB 193 (O'Bannon) and SB 561 (Newman)
  - HB 350 (Byron)

# HB 1083 (Stolle)

- Added a “purpose” statement
- Defined “application” and clarified contents of completed application
- Eliminated requirement for COPN for lithotripsy, magnetic source imaging (MSI), and nuclear medicine imaging
- Established registration requirements for projects exempted from the definition of “project”
- Established an expedited 45-day review process for projects determined to be uncontested or to present limited health planning impacts
- Required the Department of Health to establish a methodology and formulas for uniform application of, active measuring and monitoring of compliance with, and approval of alternative plans for compliance in satisfaction of conditions related to provision of charity care
- Established a State Health Services Plan Advisory Council to provide recommendations related to the content of the State Health Services Plan (formerly State Medical Facilities Plan)

# HB 1083 (Stolle) (cont'd)

- Added an electronic notice and comment process and provided for a hearing only in the case of competing applications or in response to a written request
- Directed the Department of Health to develop recommendations to reduce the duration of the average review cycle for applications for certificates of public need
- Directed the Secretary of Health and Human Resources to review charity care delivery and recommend changes to the definition of charity and to the types of charity care requirements imposed on various health care services
- Directed the Secretary of Health and Human Resources to convene a group of stakeholders to study and make recommendations related to the appropriate authority of the Commissioner of Health to impose additional conditions on certificates

# HB 1083 (Stolle) (cont'd)

- Directed the Secretary of Health and Human Resources to implement a system to make information about applications for certificates and issued certificates, including conditions on certificates, available to the public online
- Directed the Commissioner of Health to develop an analytical framework to guide the work of the State Health Services Plan Advisory Council
- Directed the Joint Commission on Health Care to develop specific recommendations for eliminating differences in the certificate of public need review process from one region to another and report on the recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2016
- **Failed to report from the House Committee on Health, Welfare and Institutions**

# HB 193 (O'Bannon), Introduced

- Created a three-phase process for sunset of COPN:
  - Phase 1: Imaging services and equipment
  - Phase 2: Ambulatory and outpatient surgery centers
  - Phase 3: Hospitals and all other projects other than nursing homes, open heart surgery, and organ and tissue transplant
- Created new permitting process for deregulated services requiring conditioning of certificates on compliance with quality of care standards or agreement to:
  - Provide a specified level of care at a reduced rate to indigents;
  - Accept patients requiring specialized care; or
  - Facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area
- **SB 561 (Newman) (continued to 2017 in the Senate Committee on Education and Health) was identical to this version of HB 193**

# HB 193 (O'Bannon), House Substitute

- Created a two-phase process for sunset of COPN:
  - Phase 1: Ambulatory and outpatient surgery centers other than rural ambulatory and outpatient surgery centers and capital expenditures at medical care facilities other than rural medical care facilities
  - Phase 2: All medical care facilities other than nursing homes, rehabilitation hospitals and beds, organ or tissue transplant services, certain open heart surgery services, and rural medical care facilities
- Retained permitting process with requirement for conditions from the bill as introduced
- Eliminated regional health planning agencies
- Made changes to the application and approval process for COPN for projects still subject to the requirement
- **Failed to report from Senate Education and Health**

# HB 350 (Byron), Introduced

- Defined "charity care" for purposes of the certificate of public need program
- Removed mental hospitals from the list of reviewable medical care facilities and established a permit process that included provisions for charity care requirements and quality assurance
- Established an expedited 21-day review process for uncontested applications presenting minimal health planning impacts for which the applicant agreed to comply with quality assurance requirements and consented to provide charity care in an amount specified by the Board of Health
- Established an expedited 45-day review process for uncontested applications presenting limited health planning impacts that require an intermediate level of scrutiny and for which the applicant agreed to comply with quality assurance requirements established by the Board and consented to provide charity care in an amount specified by the Board
- Provided for automatic approval of a project that was consistent with the State Medical Facilities Plan

# HB 350 (Byron), Introduced (cont'd)

- Clarified the content of a completed application for a certificate
- Required the Department of Health to establish a website to make information about the certificate of public need program available to the public
- Directed the Secretary of Health and Human Resources to review requirements for charity, including provisions for defining charity care and calculating the amount and value of charity care required and provided, and develop recommendations for standardizing and enforcing such requirements
- Required the Department of Health to work cooperatively with Virginia Health Information to develop a process for the collection of utilization data for recipients of certificates of public need describing specific types of equipment utilized

# HB 350 (Byron), House Substitute

- Expanded the list of projects exempt from COPN to include behavioral health facilities, sanitariums, lithotripsy, MSI, and nuclear medical imaging other than for nuclear cardiac imaging
- Extended timelines for expedited reviews from 21 days and 45 days to 45 days and 120 days
- Established the State Medical Facilities Plan Advisory Council to advise the Board on the content of the State Medical Facilities Plan
- Eliminated the requirement for a public hearing on applications

# HB 350 (Byron), Senate Committee Substitute

- Revised the definition of “medical care facility” to:
  - Include the exception for ICF/MR that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of DBHDS
  - Include requirement for COPN for ICF for the treatment and rehabilitation of individuals with substance abuse
  - Exclude specialized centers or clinics or that portion of a doctor's office developed for the provision of CT scanning, and MRI
- Revised the definition of “project” to:
  - Exclude introduction of any new CT scanning or MRI service or equipment and capital expenditures
  - Add establishment of any new rural medical care facility for the provision of CT scanning, lithotripsy, MRI, MSI, or nuclear medicine imaging other than nuclear cardiac imaging services or as a psychiatric hospital
  - Include introduction into an existing rural medical facility of any new CT scanning, lithotripsy, MRI, MSI, or nuclear medicine imaging other than nuclear cardiac imaging service or equipment
  - Include the addition of psychiatric beds, relocation of psychiatric beds, or conversion into psychiatric beds at a rural medical care facility

# HB 350 (Byron), Senate Committee Substitute (cont'd)

- Eliminated the 120-day expedited review process
- Revised authority of the Commissioner of Health regarding conditioning certificates of public need and required establishment of procedures related to measuring and monitoring of compliance with, and approval of, alternative plans of correction
- Required the State Health Services Plan Advisory Council to develop a plan to eliminate COPN for ambulatory surgery centers
- Eliminated regional health planning agencies
- Created new Virginia Charity Care Fund
- Required the Chairmen of HWI and Senate Education & Health to establish a task force to develop recommendations concerning the appropriateness of COPN for specific medical care facilities and projects and improvements in the COPN process

# HB 350 (Byron), Floor Substitute

- Further revised provisions governing types of facilities, services, and equipment subject to COPN requirements
- Extended the timeline for the State Health Services Plan Advisory Council to develop recommendations for a comprehensive State Health Services Plan from November 1, 2016, to July 1, 2019
- Amended permitting process to (i) require imposition of conditions and (ii) eliminate the requirement that certain permit holders agree to pay into the new Virginia Charity Care Fund
- Amended provisions governing use of funds in the Virginia Charity Care Fund to (a) clarify that funds could be used to compensate facilities for losses incurred in the provision of care and (b) add provision that funds could be used to improve reimbursement rates for services provided under the Governor's Access Plan
- Eliminated requirement that the State Health Services Plan Advisory Council develop a plan to eliminate COPN requirement for ambulatory surgery centers
- **Floor substitute rejected; rereferred to Finance and continued to 2017**

# 2017: Continued Efforts to Reform

- HB 2337: Establishing two-phase repeal of COPN (reported from HWI, failed to report from Appropriations)
- HB 2458: Revising administrative procedures (reported from HWI, failed to report from Appropriations)
- HB 1420 and SB 1141: Repealing COPN for behavioral health facilities (both bills continued to 2017 in Senate Education and Health)
- HB 1544: Providing alternative methods for satisfaction of charity care conditions (Chapter 768, Acts of Assembly of 2017)
- HB 2101: Amending provisions governing collection of charity care data (Chapter 791, Acts of Assembly of 2017)

# 2018

## **Reform of COPN procedures**

- HB 730: Eliminating COPN for certain ambulatory surgery centers (ophthalmology) (failed to report from HWI)
- HB 874: Establishing three-phase repeal of COPN (continued to 2019 in HWI)
- HB 918: Eliminating COPN for certain ambulatory surgery centers (physicians' offices) (failed to report from HWI)
- HB 1002: Eliminating COPN for projects in PD 11 (failed to report from HWI)
- HB 1102: Revising administrative procedures (reported from HWI but failed to report from House Appropriations)
- HB 1402 and SB 848: Creating COPN requirement for certain facilities (failed to report from HWI/incorporated into SB 266, which failed to report from House Appropriations)
- HB 1606: Repealing COPN for behavioral health facilities (continued to 2019 in HWI)

# 2018

## **COPN exception bills**

- HB 429, HB 682, HB 759, HB 832, HB 1140, HB 1211, HB 1350, HB 1396, and HB 1492 (failed to report from HWI)
- HB 611 (reported from HWI, continued to 2019 in Senate Education and Health)
- SB 842 (continued to 2019 in Senate Education and Health)
- SB 235, SB 354, SB 365, SB 806, and SB 923 – Incorporated into SB 266 (failed to report from HWI)

# HWI Special Subcommittee to Study COPN

- Met four times during the 2018 Interim, including two joint meetings with the Joint Commission on Administrative Rules
- Received reports and testimony from VDH, providers, insurance providers, other experts
- Solicited recommendations for changes from stakeholders and the public
- Final recommendations adopted October 2018

# HWI Special Subcommittee to Study COPN

## FINAL RECOMMENDATIONS

### House Bill 1102 (2018) (Stolle)

- + Add COPN requirement for freestanding emergency departments
- + Eliminate COPN requirement for:
  - Addition of psych beds and services
  - Conversion of existing non-psych beds to inpatient psych beds (require registration + charity care)
  - Addition of operating rooms at an existing hospital (require registration + charity care)
  - Addition of operating rooms at any medical care facility for service lines for which the average number of procedures performed in hospitals in the Commonwealth during the previous three years was 0.09 percent of the total number of surgeries performed at hospitals in the Commonwealth during the same period or less
  - Addition of beds at existing general or psych hospitals (require registration + charity care)
  - Any other project, other than a freestanding emergency department, undertaken more than 10 miles from a general hospital
- + Require the Commissioner to review the geographical limitation on “projects” and to make recommendations for changes by October 2019

# HWI Special Subcommittee to Study COPN FINAL RECOMMENDATIONS (cont'd)

- + Amend criteria for determining public need to:
  - Require issuance of a certificate for any project that is consistent with the State Medical Facilities Plan unless the Commissioner determines, on the basis of consideration of other criteria, that approval would be inappropriate
  - Include consideration of utilization and efficiency of existing facilities or services used by individuals who reside outside of the service area but who use the service or facility
- + Amend application procedure to make the regional health planning agency review optional
- + Require the Secretary of Health and Human Resources to convene a work group to make recommendations for the creation of a multi-member panel to review discussions of the State Health Commissioner denying a certificate
- + Delay effective date to July 1, 2020

**QUESTIONS?**