



It's the CON Season in North Carolina - Is Your Petition Ready?

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Can your organization satisfy an unmet need by bringing a new health care resource into a North Carolina community? If your organization perceives a need that has not been recognized by our State's health planners, now is the time to highlight that need. While the long-range future of our State's certificate of need program remains an unanswered question and all eyes continue to watch for developments at the General Assembly, in the here-and-now, the CON season is fast-approaching.

For those who believe our State has all of the health care resources its citizens need, the news is good: the State's official planners agree. Yet, for those who provide health care capabilities and perceive a need for new facilities or services to meet patient demands, the news is: now is the time for action.

Between now and the end of next month, North Carolina's State Health Coordinating Council will host a series of summer Public Hearings to consider Petitions from those who believe that unique or special attributes of a particular geographic area or institution give rise to resource requirements that differ from what will be reflected through application of the standard State health planning process. In other words, the State is ready now to hear from those who believe that distinctive characteristics in a particular area or at a specific facility call for the development of new health care facilities or services. If exceptional circumstances or unusual factors -- either in a community or in a provider's organization -- give rise to a need for new health care resources, an opportunity exists to put those facts before those who regulate health care development in our State. The opportunity is, however, a limited time offer -- the State will accept no Petitions after five o'clock on July 29.

According to North Carolina's official health planners, in 2016 there will be very little or, in many instances, no need for the development of any new health care capabilities anywhere in our State. According to current indications, our 2016 State's Medical Facilities Plan can be expected to foreclose not all but certainly most of those who might otherwise seek to develop new capabilities in North Carolina.

With certain exceptions, the 2016 State Plan will stand as a bar to new development across the various sectors of our health care system in North Carolina. While strategies do exist for providers to take advantage of opportunities to grow through acquisition (and relocation) or through the implementation of

projects that may either fall outside of the purview of CON regulation or within defined exemptions under the CON Law, pure “new” projects are the subject of tight regulatory restriction in North Carolina, at least for the foreseeable future.

As most health industry participants know, to determine “need,” State planners have long relied upon the application of standard methodologies that typically evaluate population and utilization to determine if any of the Counties or other planning areas in our State will lack sufficient health care resources to serve area residents. When the application of the methodology results in a finding of “no need,” no proposals can be approved for the facilities or services at issue. Specifically, the Certificate of Need Section cannot award CON approval for the development of a new facility or service absent an applicable need determination in the State Plan.

For 2016, according to State planners, there will be little or no need for new capabilities in acute care, including hospital beds and operating rooms. There is little chance that the State will recognize a need for new offerings in home health or hospice or a need for the acquisition of any regulated technology or equipment. Our State’s planners will likely identify limited, if any, need for new long term care facilities, including both skilled nursing facilities and assisted living facilities. The State planners are likely to conclude by year end that there is little or no need for the development of new facilities to offer psychiatric inpatient services, substance abuse services or facilities for the care of individuals with intellectual disabilities.

For those who do perceive a need for new capabilities in our State, the option for push-back is offered through the State’s petitioning process. A Petition – commonly referred to as a Special Need or Adjusted Need Petition – must effectively describe how unique or special attributes give rise to needs that are not reflected through the standard health planning process. Beyond the parameters described below, the requirements of a Petition are not defined in hard-and-fast terms. In other words, unlike the CON Application process, no particular thresholds or specified performance standards are mandated in this context. The Petition must explain how area residents will be adversely affected if the adjusted need is not recognized; the Petition must also show that the recognition of the adjusted need will not create an unnecessary duplication of existing health resources in the area. Petitioners must explain how the Adjusted Need will be consistent with the State’s basic planning principles centered on Safety and Quality, Access, and Value.

A series of summer Public Hearings will be held in locations across the State to discuss petitions for adjusted need determinations. Now is the time for those interested in petitioning to refine their proposals to take advantage of the opportunity to educate the decision-makers through the summer Public Hearing process. The final deadline for Petition submissions is 5:00 p.m. on July 29, 2015.

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