



COPN Reform Efforts Delayed

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Few legislative issues during the 2016 General Assembly garnered more attention in the health care community than the efforts to reform Virginia's Certificate of Public Need ("COPN") process. Despite considerable effort on both sides of the debate, the General Assembly Session will end without any change in the COPN law. Late stage negotiations added revenue components to the legislation requiring the Senate Finance Committee's approval. But, the deadline for revenue bills to be considered by the Senate Finance Committee had passed the day before, effectively ending the COPN discussion for the 2016 session. The 2017 session is nearly certain to feature continued efforts to reform this complex and often controversial program.

Virginia's COPN program regulates certain health care services, including hospital beds, imaging equipment, outpatient surgery centers, and the like, ostensibly to ensure efficient use of resources and access to care. Whether and how to reform the COPN program have been consistent topics of discussion for years, with the issue garnering even greater attention in the rapidly changing health care environment. Those in favor of eliminating Virginia's COPN program (or at least reducing the scope of what the law covers) argue that it limits competition by creating barriers to entry into the market, hinders consumer choice, and increases costs. Supporters of the COPN program assert that it is an important component of the complex health care economy, restrains health care facility costs, and ensures quality of care and the provision of care to the indigent. Supporters have acknowledged the need for process reforms, but claim that partial or full elimination of the COPN program would result in hospital closures, low volume, poorer quality services, increased costs and less charity care.

The most vigorous efforts to reform Virginia's COPN program in over a decade occurred this year. Two bills passed the House of Delegates and appeared to have significant momentum going into the Senate. The House of Delegates passed Delegate John O'Bannon's (R-Henrico) House Bill 193, which would have phased out most COPN regulated services over an 18-month process. It also passed Delegate Kathy Byron's (R-Lynchburg) House Bill 350, which focused on changes to the COPN review process. The Senate Education and Health Committee voted to "carry over" (essentially delay) House Bill 193 to the 2017 General Assembly session. It amended House Bill 350 to include the elimination of several COPN services, most notably imaging services.

The amended bill would have created the Virginia Charity Care Fund, an attempt to minimize the financial impact on hospitals that likely would result from de-regulation of certain services. The Virginia

Charity Care Fund would consist of funds contributed by medical care facilities based on a formula incorporating those facilities' revenues and charity care efforts. The fund also would include fines assessed against medical care facilities that failed to satisfy their charity care conditions, money paid by permit holders, gifts, donations, grants, bequests and other funds. The Virginia Charity Care Fund would be used to draw down matching federal funds that would be distributed annually to medical care facilities for the provision of charity care. The Senate Education and Health Committee approved the amended version (incorporating the Virginia Charity Care Fund) of House Bill 350 by a 13-2 vote. For the first time in many years, it appeared that substantive changes to Virginia's COPN program were going to be enacted by the legislature.

In a result that surprised many observers, a procedural hiccup derailed the bill, and the full Senate voted to "carry over" House Bill 350 until the 2017 General Assembly session. That delay results from inclusion of revenue-related provisions – provisions intended to make reform more palatable – in the most recent version of the legislation.

When the Senate Education and Health Committee amended House Bill 350 to include the Virginia Charity Care Fund, it turned the COPN reform bill into a revenue bill. The bill qualified as a "revenue" bill because its call for contributions by medical care providers required the Commonwealth to collect and distribute funds. The deadline for considering revenue bills for the 2016 General Assembly session was March 2, 2016. The Senate Education and Health Committee did not amend House Bill 350 until March 3, 2016. Accordingly, the Senate Finance Committee did not have the opportunity to review the legislation before the deadline.

When the full Senate took up House Bill 350, Senator Emmett Hanger (R – Augusta), co-chair of the Senate Finance Committee, made a motion to re-refer the bill to the Finance Committee and carry the bill over to the 2017 General Assembly session pursuant to Senate Rule 20(g). The full Senate approved the motion by a voice vote, effectively ending the COPN reform effort for the 2016 General Assembly session. Governor Terry McAuliffe could potentially amend the approved budget to include some type of COPN reform for the legislature to consider when it reconvenes on April 20, 2016, but most observers believe it is unlikely the budget process will be used as a vehicle for substantive reform.

By carrying House Bill 350 over to the 2017 General Assembly session, the bill can be considered again next year. It is almost certain that negotiations will occur off session between advocates for and against COPN reform. Legislators announced that public discussions will continue through 2016. Williams Mullen Health Care and Government Relations teams will continue to be engaged in the discussions. For parties interested in the future of COPN reform, the Senate amendments to House Bill 350 will likely be the starting point of legislative reform in 2017 and can be found at [here](#).

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