



Key North Carolina CON Petition Deadlines (chart included)

01.15.2021

Now is the time for providers to consider filing (or re-filing) a Petition as North Carolina's State Health Coordinating Council (SHCC) begins its efforts to prepare the document that will define opportunities to develop Certificate of Need (CON)-regulated health care facilities and services in North Carolina in 2022. The Petition process allows interested parties to affect the content of the State Medical Facilities Plan (SMFP) by seeking changes in either the policies and methodologies employed by the SHCC or in the need determinations for various health care projects.

As most North Carolina health industry participants well know, the development of many health care facilities and services is regulated by our state's CON law. Each year's SMFP governs the types of health care capabilities that may be approved for development across the various markets in North Carolina. As such, influencing the content of the SMFP may be a critical first step in a strategy to grow or develop new health care capacity. In evaluating whether a need exists for new health care capabilities, state health planners have long applied policies and standard methodologies that analyze population growth, utilization trends and other factors. If the application of these methodologies results in a finding of "no need," no proposals can be approved for the facilities or services at issue. When application of the standard policies and methodologies fails to account for market realities or other special circumstances, the planning process provides for a Petition process to highlight those unique considerations. Successful Petitions can effectively change the landscape by creating an opening for project proposals that otherwise would not have been a possibility under the SMFP.

This year, the Healthcare Planning staff is soliciting comments regarding how the effects of COVID may have affected utilization sufficiently to signal the need for temporary adjustments to need determination methodologies in the 2022 State Medical Facilities Plan. Originally, Planning personnel set a January 11 deadline for comments and indicated that an Interested Parties meeting would be held by early February. More recently, the Planning staff extended the comment period to **February 15**. As such, the meeting will be held on **February 23** at 10:00 a.m. via Webex.

Petitions for Changes in Policies and Methodologies

The deadline for submitting Petitions for changes in policies and methodologies used in the 2022 SMFP is 5:00 p.m. on March 3, 2021.

Such Petitions – often called Spring Petitions – are appropriate when a proposed change may have a statewide effect (*i.e.*, the change will not affect only a single market or provider). Successful Petitions will highlight market realities not considered by application of the methodology and may seek to add, delete or revise existing policies or need methodologies. Spring Petitions must:

- Identify and provide contact information for the petitioner.
- State the requested change, citing the policy or planning methodology for which change is sought.
- State the reasons for the proposed change, including a statement of the adverse effect likely to ensue if the change is not made and alternatives that were considered and found not feasible.
- Establish that the proposed change would not result in unnecessary duplication of health resources in the area.
- Provide evidence that the requested change is consistent with the SMFP Basic Principles of Safety & Quality, Access and Value.

Petitions for Adjustments to Need Determinations

The deadline for Petitions for adjustments to need determinations for the 2022 SMFP is 5:00 p.m. on July 28, 2021. A provider who perceives a need for new capabilities in its Service Area despite a finding of “no need” may pursue a petition for an adjustment to an identified need determination, commonly referred to as a Special Need or Adjusted Need Petition. To be successful, Adjusted Need Petitions must effectively describe how unique or special attributes give rise to a need that is not reflected through the standard health planning process. While the requirements of an Adjusted Need Petition are not defined in hard-and-fast terms, the Petition must explain how area residents will be adversely affected if the adjusted need is not recognized. The Petition must also illustrate that the adjusted need will not unnecessarily duplicate existing health resources in the area and will be consistent with the SMFP Basic Principles of Safety & Quality, Access and Value.

Providers who have filed Petitions without success in the past have an opportunity to re-file in either the spring or summer, or both. All Petitions filed in 2021 will be newly considered and may gain “traction” based on updated content including new data or changed circumstances. Re-filing a Petition may be a good strategy for providers who have invested time and effort in prior Petitions and have a continuing interest in a change in the upcoming SMFP.

More detailed information on the Petition process is included in the 2021 SMFP.

Key Dates

<p>March 3, 2021</p> <p>5:00 p.m.</p>	<p>Those who wish to recommend changes that may have a statewide impact should submit their petitions to Healthcare Planning by the deadline below.</p> <p>Petitions such as those proposing the addition, deletion and revision of rules should be submitted by the deadline below for consideration in the following year.</p>
<p>March 17, 2021</p> <p>5:00 p.m.</p>	<p>Deadline for receipt by Healthcare Planning of all written comments on the Proposed Rules for the following year.</p>
<p>July 28, 2021</p> <p>5:00 p.m.</p>	<p>Those who believe unique or special attributes of a geographic area warrant an adjustment to the need determination(s) in the Proposed Rules should submit their petitions to Healthcare Planning by the deadline below.</p> <p>Petitions should be delivered to Healthcare Planning as early in the year as possible.</p>
<p>Aug. 11, 2021</p> <p>5:00 p.m.</p>	<p>Deadline for receipt by Healthcare Planning of any written comments on the Proposed Rules for the following year.</p>

For more information, please contact Williams Mullen health care attorneys Joy Heath and Anderson Shackelford at jheath@williamsmullen.com, or ashackelford@williamsmullen.com, respectively.

Related People

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Related Services

- Health Care