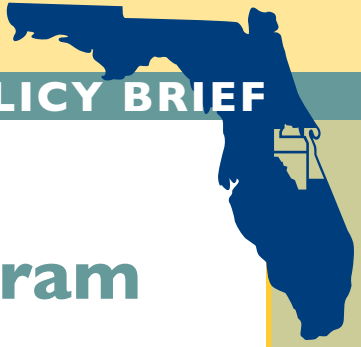


Understanding Florida's Certificate of Need (CON) Program



I. SUMMARY OF FINDINGS

- Established in 1973, Florida's Certificate of Need (CON) program was a regulatory process designed to promote cost containment. There have been a number of statutory changes over the years including changes that have removed capital expenditure capitation and all CON cost overrun reviews. Cost-efficiency remains part of the review criteria as it relates to fostering competition and the methods of construction. The CON process seeks to ensure access to high quality care and avoid unnecessary duplication of health care services by requiring certain health care providers to obtain state approval before offering new or modified services.
- The Florida Statutes identifies which health-related projects are subject to and exempt from CON review. The program evolved from an early focus on regulating hospitals and nursing homes, to regulating a wide variety of services across multiple care settings. More recently, the pendulum appears to be swinging in a direction that favors reducing the number and types of projects covered under CON review.
- 2004 reforms significantly narrowed the number of projects subject to review by eliminating CON requirements for additional acute care, and neonatal intensive care beds at existing hospitals with exiting neonatal units and exempting from review mental health services and the establishment of neonatal intensive care beds from review under certain conditions.
- The CON application review process begins with a letter of intent and ends with a decision from the Agency for Health Care Administration.

II. INTRODUCTION

The Certificate of Need (CON) program originated in 1964 in Rochester, New York, where a community health planning council composed of consumers, insurers and health care providers was established to study the need for hospital beds. The efforts of this group to monitor the number of health care facilities based on assessments of community needs resulted in New York's passage of the nation's first Certificate of Need law in 1966.¹

In 1972, the federal government amended Section 1122 of the Social Security Act to require all states to review health care capital expenditures in excess of \$600,000. This provision served as the beginning of a national Certificate of Need law. From October 1987 through June 1997, capital expenditures of \$1 million or more for inpatient services required review in Florida. Beginning July 1997, no project in Florida was reviewable based solely on the amount of capital expenditure proposed.

Federal support for regional health planning under the auspices of CON laws was further strengthened in 1974 with Congressional passage of the National Health Planning and Resources Development Act. This made state CON programs mandatory and included guidelines for CON review. In the years following, every state adopted Certificate of Need regulations. The momentum for a national approach faded in 1982, when the inability of a national CON law to reduce health care costs was acknowledged. Since then, 36 states, including Florida, retained their CON programs after a mandatory repeal of the health planning law by the federal government. Figure 1 (on page 2) depicts the current states with and without Certificate of Need laws, along with a measure of the range of services subject to CON review.

The CON process ensures that Floridians have input in the creation of health systems in their communities that maximize access to cost-efficient and high quality health care services and facilities. The CON process is designed to ensure that new or modified services proposed by health care providers are necessary within a particular region or community.

In accordance with the Florida Statutes (FS), subsection 408.038, Florida's CON review process is funded through the collection of fees assessed to the CON applicant. A minimum base fee of \$10,000 is collected and an additional 0.015 of each dollar of proposed expenditure. A fee may not exceed \$50,000.

IV. WHY WAS THE CERTIFICATE OF NEED PROGRAM ESTABLISHED?

In 1973, Florida enacted the CON program as a policy-driven response to the increasing costs of state and federal health programs. The primary reason for establishing the CON program was to promote cost containment by controlling unnecessary duplication of health care services and facilities. At the time the program was established, there were concerns that the growing supply of inpatient beds and other health care services would exceed demand in many local markets, resulting in excess capacity and increased health care costs.

Additionally, the CON program is designed to ensure that all Floridians, regardless of insurance or socioeconomic status, have access to quality health care services and facilities.

To achieve these health policy goals, Florida's CON regulatory review process seeks to establish an appropriate capacity and mix of services for most provider types through a comparative review process. AHCA predetermines the State's bed need by district and sub-district and publishes that information. Twice a year, providers seeking to add or convert beds may apply to AHCA for a CON, based upon the projected bed need for their district.

To determine the appropriate balance between health care capacity and community need, AHCA is required under Florida Statutes, Section 408.034(3) to develop and project need for CON regulated health facilities and services that at a minimum consider:

- The demographic characteristics of the population;
- The health status of the population;
- Service use patterns, standards and trends;
- Geographic accessibility to needed services, and
- Market economics.

In addition to analyzing the health care needs of the population to be served, the CON regulatory review process also assesses the capabilities of project applicants, including their relative strengths and weaknesses and alternatives related to the costs and methods of construction.

The CON program has undergone a number of reforms brought about by developments in the local and national health care markets. Since the mid-1990s, the growth of managed care in Florida and the federal budget cuts brought about by the Balanced Budget Act of 1997 (BBA), have resulted in changes in reimbursement policy. The most significant reforms to the CON laws took place in 2004 when changes to hospital licensing laws included provisions preventing the licensure of niche and specialty hospitals. It also eliminated CON requirements for adult interventional cardiology and adult open heart surgery, burn units, and additional acute care beds at existing hospitals and created exemptions under certain conditions for the addition of mental health beds and services as well as the establishment of neonatal intensive care services. Burn and adult cardiac services are still reviewed due to language in s. 408.0361 (2), F.S. which indicates that until licensure rules are adopted, CON regulation remains in place. Pediatric cardiac services were named tertiary care services and continue to be regulated under CON.

FIGURE 2: Projects Subject to CON Review

HOSPITAL BEDS & FACILITIES

- New Hospital Facilities
- Replacement Facilities
- Acute Care Beds in Low Growth Counties
- *NICU Level II and III
- Rehabilitation Beds
- Long Term Care Hospitals
- *NICU=Neonatal Intensive Care Unit

OTHER BEDS & PROGRAMS

- Open Heart Surgery
- Pediatric Cardiac Catheterization
- Specialty Burn Units
- Organ Transplantation
- Nursing Home Beds
- Hospice Programs
- Hospice Inpatient Facilities
- **ICF/DDs
- *SNU=Skilled Nursing Unit
- **ICF/DD=Intermediate Care Facility for the Developmentally Disabled

V. WHEN IS A CERTIFICATE OF NEED REVIEW NECESSARY?

Full CON review, referred to by the program as competitive batched review, applies to major applications for new or expanded beds or services. The competitive batch review process and timeline is described in detail in the next section. Other processes, such as the granting of CON expedited reviews, are more streamlined processes reserved for certain categories of projects such as transferring a nursing home or hospice CON and certain other nursing home relocation projects.²

Section 408.036 of the 2005 Florida Statutes clarifies which health-care related projects are currently subject to review and must file an application for a certificate of need with AHCA. Figure 2 on page 3 summarizes the types of hospitals and other facilities and programs currently subject to the CON review process.³ This section of the statutes also describes the exemptions for CON review and the specific criteria required to satisfy the exemption.

Projects That Do Not Currently Require CON Review

Not all proposed projects require CON review. Section 408.036(3) of the Florida Statutes also clarifies which health-care-related projects are currently exempt from the review process. Many exemptions appear designed to meet state health and social services policy objectives. Conversions of licensed acute care beds to Medicare and Medicaid-certified skilled nursing beds in rural hospitals to help meet demand for non-acute institutional care in rural areas, and construction of inmate health care facilities and state veteran’s nursing homes do not require CON review.

VI. WHAT IS THE TIMELINE FOR CERTIFICATE OF NEED REVIEW?

There are two time frames (also known as “batching cycles”) during the year in which the certificate of need approval process occurs. The first project category includes CON requests for all hospital beds and facilities (e.g., new hospital facilities, rehabilitation beds). The second category includes all other CON requests for beds and projects (e.g., organ transplant, hospice programs).

Figure 3 below outlines the current CON approval process. It is followed by a brief description of each of the major steps in the review process.

The deadlines included are based on the 2007 batching cycle time frame for CON requests for hospital beds and other facilities.

1. Summary Needs Projections Published in F.A.W. (January 26, 2007)

The first step is publication of a Fixed Need Pool in the Florida Administrative Weekly (F.A.W.)

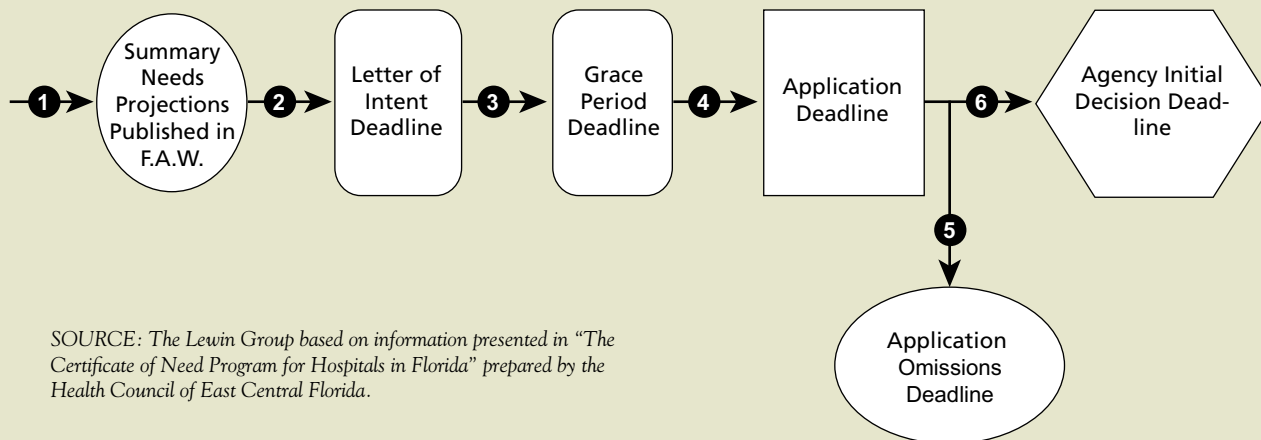
2. Letter of Intent Deadline (February 12, 2007)

Second is submission of Letters of Intent 2-12-07 in example above and published in FAW.

3. Grace Period Deadline (February 28, 2007)

Third is submission of any Grace Period Letters of Intent – 16 days after LOI deadline for anyone wishing to complete. Projects that are not for the same type of service in the same planning area are not accepted during the grace period.

Figure 3: Certificate of Need Approval Process



SOURCE: The Lewin Group based on information presented in “The Certificate of Need Program for Hospitals in Florida” prepared by the Health Council of East Central Florida.

4. Application Deadline (March 14, 2007)

Fourth step is application submission with at least the minimum fee. Reviewing the 59C-1.008, F.A.C. If the application is incomplete, an omission letter is sent at this point. It is the only letter sent, per s. 408.039(3)(a), F.S.

5. Application Omissions Deadline (April 18, 2007)

Fifth step is to respond to omission letter and the agency determining whether or not application is complete. Public hearings, if requested and granted, are held after all of the information is in and the projects have been deemed complete during the time frame specified in the statute.

6. Agency Initial Decision Deadline (June 16, 2007)

The sixth step is the agency decision. Only the decision is published in F.A.W. Statutes.

This is the end of the review timeframe. If the applicant wished to appeal the decision, then the appeal can be filed within 21 days of the publication of the Notice of Intent in the F.A.W. by the agency.

VII. CONCLUSION

Since its inception in 1973, Florida's CON program has evolved from an initial focus on regulating hospitals and nursing homes, to regulating a wide variety of services across multiple care settings. More recently, policy direction has reduced the number and types of projects covered under the CON review process.

There remain many policy issues to address with Florida's CON program, as well as practical concerns regarding the current review process. These issues continue to be raised by stakeholders both in favor and opposed to CON regulation. The figure below provides examples of frequently cited arguments both for and against continued CON regulation in Florida.

The purpose of this briefing paper has been to provide an informative and educational overview of Florida's Certificate of Need program. By doing so, it is also designed to encourage citizen involvement and public input into an important process that affects the cost and quality of health care services available to all Floridians.

Arguments Against CON Regulation

- CON programs are not effective in meeting goals relating to cost containment and access to care.
- CON promotes local health care monopolies and oligopolies, stifling innovation and competition.
- CON process is costly and time consuming, discouraging investment in health care.

Arguments For CON Regulation

- CON regulation is one of the few practical planning tools available to policymakers to influence quality, cost and access concerns.
- CON regulation helps ensure reasonable geographic distribution of services and facilities.
- CON helps achieve better patient outcomes by ensuring high program volume.
- CON regulation is useful in encouraging competition.

Endnotes

1. Improving Health Care: A Dose of Competition. A Report by the Federal Trade Commission and the Department of Justice, July 2004.
2. S.408.036 (2), F.S.
3. Certificate of Need Program Overview. Agency for Health Care Administration accessed May 8, 2006 at http://ACHA.myflorida.com/MCHQ/CON_FA

UNDERSTANDING FLORIDA'S CERTIFICATE OF NEED (CON) PROGRAM

This policy brief was prepared by the Health Council of East Central Florida in hopes of providing an informative and educational overview of Florida's CON program. This is a revision to the brief released in May of 2006.

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