Guiding Principles for the Maryland Certificate of Need Program

Working Paper for Discussion by the Certificate of Need Task Force

July 14, 2005

Statement of the Issue

What are the principles that should guide the Maryland CON program?

Summary of Public Comments

Comments and recommendations concerning underlying principles that should guide the Maryland CON program were included in several of the public comments submitted to the Task Force.

Adventist HealthCare said that the overarching goal of the CON program should be to enhance access to necessary health care services for all Maryland residents. As such, the program should be flexible for unique situations in individual communities, should render comment and decisions in a timely manner, and should simplify the application and approval process.

Holy Cross Hospital provided comments on guiding principles that would in turn shape specific CON regulations. According to Holy Cross, the CON program should be used to promote improved access to underserved patient populations to improve outcomes. There should be a high bar for use of CON. The CON process should be applied judiciously in ways that will be relevant to improving the overall health care system. The CON standards and criteria should be updated. CON regulations should be developed within the context of the Maryland health care environment. Specifically, any changes to the CON program must take into consideration the effect of Maryland's rate regulation system. In addition, the CON program should take into consideration the fact that Maryland borders on five other jurisdictions, and the providers that serve border communities exist in an environment that is affected by the amount and nature of regulation in those other jurisdictions. There should be a bias toward a simplified process.

LifeBridge Health states that CON review should be employed only when allowing the competitive market to function on its own is likely to yield outcomes that are inconsistent with public purposes. More specifically, CON review should be required only if allowing providers to act in accordance with normal market forces will unnecessarily increase costs, impair quality, or otherwise undermine the effectiveness of the statewide health care system.

MedStar Health outlined principles that should guide the reform efforts being undertaken by the Task Force as follows:

(1) Fairness-similar classes of providers and services should be subject to similar regulatory restrictions and freedoms;

(2) Regionalism- regulations must recognize that health care markets are nolonger delineated by municipal and sate boundaries;
(3) Rational planning – CON regulations should focus on high-cost institutional or specialized health care services and certain community-based services to ensure access and quality of programs;
(4) Responsibility- the costs of providing uncompensated care and graduate medical education should be broadly shared;
(5) Objectivity- objective data and evidence-based assumptions must inform CON policies and decisions;
(6) Unified regulatory model- the Commission should embrace an overall regulatory model;
(7) Timeliness and Predictability of Process- the current review process needs to be timely and predictable; and
(8) Currency of Regulations- CON program regulation is slow to respond to changes in the science of health care.

Barry F. Rosen commented that it was important for the Task Force to "focus somewhat more on the forest and somewhat less on the trees". He noted that there is a tendency for the Commission to drift toward becoming an economic development agency by encouraging new services even though the Commission's actual statutory mandate is to resist that temptation. After acknowledging that the CON process is intended to be anti-competitive, Rosen stated that the next step in focusing on the forest would be recognition by the Commission that it should, nevertheless "only" interfere with free competition when there is a reason to do so. In other words, it is important for the Commission to articulate why there is a CON process and why it is appropriate to interfere with free competition in certain situations. Although not necessarily exhaustive, there are at least three reasons why free competition in health care should be stifled, namely to keep costs down, to improve patient safety or to protect the mission of particular institutions, and that there is more overriding concern that should "trump" these CON rationales, namely need.

Southern Maryland Hospital Center stated that the Commission should be guided by "market-focused health planning". That is, if a service or expenditure can be adequately regulated by market forces, it should be freed from CON regulation and the marketplace should provide the necessary checks and balances. And if a service or expenditure requires CON regulation, the CON process should attempt to emulate marketplace forces to the extent possible by incorporating market data into its health planning and CON decision.

Summary of Recommended Guiding Principles

The stakeholders and others interested in examining and improving the Maryland Certificate of Need program have articulated the following principles that they believe should guide its application and operation:

Coverage Issues

1. Maryland's Certificate of Need program should:
   - respond to its residents' need for specific categories of health care services,
   - promote improved access to these services by underserved populations,
   - improve the quality and safety of these services, and
   - help promote the affordability of health care available to Maryland residents.

2. Certificate of Need should be applied in situations where unrestricted competition is likely to result in higher or unnecessary costs to the system, in decreased access to care by vulnerable or less populous regions of the state, or in a diminution of the quality or safety of patient care.

3. Certificate of Need should apply equitably and objectively across the categories of providers covered by the program in Maryland.

Process and Procedural Issues

4. The Certificate of Need program should be:
   - procedurally clear, consistent, and timely;
   - flexible enough to accommodate unique situations, whether of provider mission, geography and demographics, or technological advances; and
   - specific to Maryland's unique policy and regulatory framework.

5. The planning standards, review criteria, and associated data used to conduct Certificate of Need reviews should be kept current, and regularly updated.