HEALTH CARE NEWS In-Depth
A SPECIAL SUPPLEMENT TO SKYLINE NEWS
January 12, 2009

Reforming New York State's CON Program: Reducing Costs and Ensuring Quality and Access

The State of New York has embarked on an important initiative to reform its certificate of need (CON) program to ensure that the it meets its goals of promoting cost control, quality, and access. Today's economic turmoil and the massive Medicaid cuts proposed in Governor Paterson's 2009–10 budget, which would reduce hospital funding by $1.4B statewide, make cost-saving measures more critical than ever. These same factors also underscore the need for the State to protect its hospital system by imposing a moratorium on freestanding, non-hospital-sponsored ambulatory surgery centers. This issue of GNYHA's *In-Depth* examines the areas ripe for CON reform, the State's approach to reform, and GNYHA's input into that process.

Last year, the New York State Department of Health (DOH) announced that, together with the State Hospital Review and Planning Council (SHRPC) and Public Health Council (PHC), it would review the State's CON program to ensure that it effectively promotes the goal of developing a patient-centered health care system that delivers "accessible, affordable, high-quality and cost-effective care." In particular, DOH stated that it wanted to make certain that the program "facilitates the appropriate alignment of health care resources with community needs and avoids another forced downsizing of the delivery system."

GNYHA's Reform Recommendations

To solicit input, SHRPC's Planning Committee held two meetings dedicated to examining the State's CON program. On September 18, 2008, GNYHA presented formal comments, stating that it believes that the State's program, much like other state CON programs, no longer effectively promotes cost control, access, and quality, and, in some cases, undermines those goals. GNYHA attributes the CON program's lack of effectiveness to the fact that cost control is being addressed through many alternative means, including public and private payment policies, regulatory and other types of oversight, and myriad forms of utilization controls. At the same time, the CON application process has become unnecessarily cumbersome, lengthy, and expensive for providers and the State alike, thereby adding to the cost of health care for all. The most concrete example may be construction costs, which increase during the time period that a CON application is being prepared and reviewed. According to the New York Building Congress, new hospital construction costs have been increasing at the rate of 12% per year in recent years, so the exact same project will typically cost considerably more each year. As a result, hospitals must build in—and finance—increased building and equipment costs due merely to the lag-time created by the CON review pro-

continued on reverse

CON Program Project Cost Thresholds and Levels of Review: Current and Proposed*

The following chart lists current and proposed cost thresholds broken out by project cost and corresponding level of review. Exceptions exist at each level of review (e.g., certain equipment requires review regardless of cost).

Type of Application	Current Regulations	DOH Inital Proposal	GNYHA Proposal
No Application Required (but may require limited review or notification letter)	$3M or less	$6M or less	$10M or less
Administrative Review	Over $3M but not exceeding $10M	Over $6M but not exceeding $15M	Over $10M but not exceeding $25M
Full Review	Over $10M	Over $15M	Over $25M
Sliding Threshold for Administrative Review (for larger facilities)	Up to 10% of facility operating costs or $25M	Up to 10% of facility operating costs or $50M (for hospitals)	Up to 10% of facility operating costs or $50M (for hospitals)

*For more detailed descriptions of the types of review currently required for different projects, equipment, and services, see GNYHA's chart entitled Certificate of Need (CON) Requirements for Article 28 Facilities, which can be found on GNYHA's Web site at: http://www.gnyha.org/3116/Default.aspx under CON Process and Applications.

Reforming NYS' CON Program

continued from front page

cess.

To minimize these unnecessary costs, GNYHA recommends increasing the program's cost thresholds, which have not increased since 1998, from $3M to $10M for administrative reviews; from $10M to $25M for full reviews; and from $25M to $50M for administrative reviews of projects that do not exceed 10% of a facility's operating costs (and none of the facility's debt is financed by instruments that are State-supported). See related chart (front).

GNYHA also recommends exempting all non-clinical projects from the CON process regardless of cost on the basis that providers simply do not undertake projects, particularly non-clinical ones, unless needed. Therefore, non-clinical projects should be left to the judgment of management, who must budget for such projects in the same way they budget for operating costs. Finally, GNYHA recommends streamlining the review process by, among other things, building in the ability to file and track applications electronically, assigning one DOH point of contact for each application, and enhancing coordination between DOH personnel in Albany and the regional offices. A copy of GNYHA's comments, together with copies of the other documents referenced below, can be found at **http://gnyha.org/PlanningCON#Reform**.

GNYHA's Detailed Recommendations

Following the special SHRPC meetings, GNYHA and a number of its members met with DOH representatives to present more detailed recommendations and rationale for minimizing the number and types of reviews and for streamlining the review process. GNYHA compiled these more detailed substantive and process recommendations and submitted them to DOH, which circulated them to members of SHRPC and the PHC.

DOH Preliminary Options for Reform

At the November 20 meeting of the SHRPC Planning Committee and again at the December 11 full SHRPC meeting, DOH presented proposed CON reform options and stressed that they are preliminary and represent only the first phase of possible recommendations for reform. Included among DOH's options are increasing the cost thresholds to $6M for administrative reviews, $15M for full reviews, and $50M for administrative reviews of projects that do not exceed 10% of the facility's operating costs. With respect to non-clinical projects, DOH proposes to eliminate full review for all non-clinical projects, regardless of cost; require only prior review for such projects up to $10M; require administrative review for such projects above $10M; and eliminate need review for all such projects. DOH also proposes streamlining the process for reviewing certain enumerated equipment (e.g., MRIs, lithotripters, and PET scanners), a number of ways to expedite the process for reviewing applications, and batching applications for same services from same geographic areas.

GNYHA Comments on DOH Options

In December, GNYHA filed formal comments regarding DOH's preliminary reform options, supporting their overall direction, but requesting additional reforms commensurate with GNYHA's recommendations for reducing unnecessary health care costs in the process. GNYHA also raised concerns about the batching process, requesting that the process not batch mis-matching projects nor slow down project approvals.

Next Steps Toward Reform

SHRPC and PHC are reviewing DOH's proposed options and stakeholder comments. GNYHA continues to urge the State to examine every meaningful way to assist providers in eliminating costs and burdens that are not essential to the delivery of quality health care. At the very least, GNYHA requests that DOH begin to implement as soon as possible any policy and process changes that can help speed the review of applications that are required by current statute and regulations.

Stopping the Adverse Effects of ASCs

Although the major focus of the State's CON reform efforts has been on the review process itself, GNYHA has also raised the need for the State to impose a moratorium on the establishment of freestanding, non-hospital-sponsored ambulatory surgery centers (ASCs), given their severe negative impact on the financial viability of hospitals. For years, GNYHA has made the point that allowing the proliferation of freestanding ASCs deprives hospitals of revenues required to support critically needed services, undermining hospitals' ability to serve their communities. The 2006 report issued by the State's Berger Commission describes how freestanding ASCs often strip off the most profitable cases from hospitals, leaving hospitals with materially fewer resources to deliver the care needed by their communities. In a letter filed with the State on December 29, GNYHA reinforced the importance of imposing a moratorium on freestanding ASCs, particularly in light of today's economic turmoil and the devastating cutbacks in Medicaid payments proposed by the State. ■

For additional information on CON requirements and reform activities, please contact Susan Waltman or Rebecca Urbach at GNYHA.

CON Changes Already in the Regulatory Pipeline

The following proposed regulations are currently making their way through the DOH regulatory process. The concept underlying each proposal was put forward by GNYHA and HANYS well before the State's CON reform initiative began. GNYHA either has filed or will file comments in support of each set but is requesting more expansive changes in light of the State's reform efforts and the need for significant cost-saving measures.

Streamlining Non-clinical Projects: DOH proposes raising the cost threshold for administrative reviews of certain non-clinical projects from $3M to $10M.

- **Status:** Fully approved by SHRPC; awaiting final publication in *State Register.*

Streamlining Acquisitions of MRIs: DOH proposes that initial purchases of MRIs should require only administrative review rather than full review.

- **Status:** Public comment period ended December 29, 2008; still requires SHRPC approval and final publication in *State Register.*

Streamlining the Relocation of Extension Clinics: DOH proposes that relocations of extension clinics that do not increase services or clinical capacity, are within the same "service area," and do not exceed $3M (total project costs) should be subject to only prior limited review for architectural and engineering matters.

- **Status:** Public comment period ends January 20, 2009; still requires SHRPC approval and final publication in *State Register.*