Certificate of Need: A Review

by John Steen

Certificate of Need (CON) is a public process which makes healthcare providers accountable for meeting access, quality and cost standards, and provides a context within which provider initiatives may be evaluated against alternatives for meeting state priorities for improving the health status of its citizens. New York State invented CON in 1965 through legislation which declared as its "policy and purpose" that "hospital and related services of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health."

My 23 years in CON programs began as chairman of a project review (then synonymous with CON) committee in a Comprehensive Health Planning Agency. I direct Georgia's CON program, one of the most comprehensive in the nation. In between, I was Director of Project Review for the Health Systems Agency of New York City, manager for CON in a consulting firm, and executive director of a New Jersey planning agency which conducts CON review at the regional level.

The pressures evidenced in most states for deregulation offer opportunities to growing health systems to lobby for the elimination or substantial reduction in the scope of CON programs. The opportunities are based on a pro- competition mindset in legislatures which are led to believe that the practices of managed care contracting

in a competitive marketplace are much more effective than CON in reducing healthcare costs. Lobbyists for the deregulation of institutional health services often cite many studies published over the past 20 years which purport to repudiate the effectiveness of CON in reducing costs.

A recent study by Georgia State University of 37 papers on CON concluded with this statement: "Our review of the research literature indicates that Certificate of Need programs have not only failed to achieve lower hospital costs, but they may have contributed to higher costs, greater inefficiency and lower quality of care. Although there have been no major studies of CON laws in the last five years, the evolution of the healthcare delivery system has removed much of the rationale for these programs' existence." By contrast, a March, 1993 national study by the Alpha Center found that CON programs for hospitals had little measurable effect on reducing costs, but had some effect on maintaining access for underserved populations and promoting quality of care.

Here in Georgia, a December, 1995 study of the state's CON program by Lewin-VHI, Inc. specifically addressed the question of whether CON creates barriers to the development of managed care in Georgia, and found that it does not, since it is apparent that CON and managed care can and do co-exist in other states. It noted that Georgia's CON legislation sets forth a broad set of objectives for the program including promoting access and quality of care, in addition to cost containment.

It is crucial that any assessment of CON programs take into account the many functions they

perform as processes incorporating tools used by planners to ensure accountability for the allocation of public resources. The tools take the form of criteria for the approval of projects &endash; a logically consistent set of goals, standards, and values which represent the public interest. In this set, access and quality play at least as great a role as cost.

In the HSA of NYC, our reviewers evaluated access using a criteria checklist of nine pages which covered 27 questions. In Georgia, the CON program obtains commitments from provider applicants to provide charity and indigent care amounting to $155 million per year.

Defining and measuring quality has long been a challenge for planners and regulators, but the effectiveness of volume standards and of the resulting regionalization of specialized high tech services in both improving outcomes and reducing costs is well documented in peer reviewed studies. Service specific standards are often derived from a State Health Plan which is able to incorporate policies for the delivery system representing broader considerations against which reviewers may measure proposals.

Fundamentally, it is as a process for public accountability that CON should be judged. As a process, CON:

- Selects those providers and services offering the most value from among available alternatives;
- Provides a means for helping to achieve some of the goals of a State Health Plan;
- Distributes resources to match needs;
- Addresses community priorities in healthcare;
- Provides some discipline for marketplace change;
- Transforms private business plans into public information;
- Solicits public input through public hearings and/or through development of a State Health Plan and review criteria; and
- Provides an exception to anti-trust law under the doctrine of "state action immunity."

The last function applies, for example, to state health planning policies to foster collaborative arrangements in order to create rural provider networks where markets cannot support more than one or two and must be stabilized to permit efficient delivery of healthcare. Here CON meets the legal tests for "clearly articulated and affirmatively expressed" state policies and "active state supervision."

Conclusion:

Today, CON programs are being reformulated to fit each state's policies for whatever degree of regulation is perceived as necessary to compensate for its market defects. A universal defect in markets is the disincentive to treat indigent patients, but CON can maintain caring for the indigent as a financially viable option within the healthcare system. The challenge to public policy is to facilitate the development of a responsible marketplace, one in which the desired benefits of competition and real value in healthcare are realized. Through a balance of planning and regulation, it may be possible to shape such a marketplace. CON deserves to be better understood and better appreciated for its ability to do just that.