Virginia Department of Health

Center for Quality Health Care Services and Consumer Protection

Comments Received on the Proposed State Medical Facilities Plan

Institutional need – completed 5/10/2006

Item No.	Section	Comment	VDH Analysis	Discussion Points	Outcome
A	10	"Off-site replacement:" delete "within the same planning district"	The definition was amended as suggested.	Whether to reinstate "within the same planning district"	Committee consensus to reinstate
1	70	Suggest Institution-specific exception; deleting "consideration will be given" and inserting the Commissioner may grant an exception for	The section has been amended as suggested.		Committee consensus
2		This is drafted too broadly. Unfairly protects non-network hospitals. Institutional need must be weighted against and balanced in the context of the regional need for regulated services. Recommend removal of the section because there is a lack of data or criteria by which to measure institutional need. Because this favors existing providers, we believe this makes the process a very unlevel [sic] playing field and is not in the spirit of the COPN law. We also request that the sentence" if a facility with an institutional need is part of a network, the under-utilized services at the other facilities within the network should	We disagree and believe that there are sufficient safeguards in place to prevent an uneven playing field as suggested. Rather, the section addresses 2 core principles of the COPN program: (i) the promotion of comprehensive health planning to meet the needs of the public, and (ii) improves the cost-effectiveness of health care delivery by relocating or removing under-utilized services. An applicant cannot apply for expanded services based solely on this section. It rests with the applicant to convince the Commissioner that their	Committee concerns: 1. "underutilization" is subject to interpretation; 2. use of section could undermine clinical care in rural settings 3. lack clear idea of what constitutes institutional need 4. would be better addresses within each service specific section 5. substitute 'when appropriate' for 'when possible.'	Consensus that 1st sentence of section is appropriate. No consensus concerning 2nd sentence of section.

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		be relocated to the facility within the planning district with the institutional need when possible." This seems to nullify most of the other provision of the plan.	proposed expansion should be granted based on institutional need.		
3		Include institutional need in specific sections with applicable criteria or remove entirely from SMFP; do not want applicable to nursing facility section Urge 10% rule as an objective criteria to evaluate institutional need for more beds	The section has been included to provide flexibility. Per agency counsel, HB2316 (2005) prohibits exclusion of nursing facilities from applicability. A 10% limit is not necessary as the institutional specific exception does not negate the requirement for an RFA, which assures beds are needed. The institutional specific exception could be applied to nursing homes to show preference in a competitive review.		No consensus
4		Change the institution specific language	Without knowing what is specifically requested, it is difficult to respond to this		Consensus that 1st sentence of section is

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			suggestion.		appropriate. No consensus concerning 2nd sentence of section.
5		Continue to be extremely concerned about the provision establishing "institutional Need"	Without specifics, it is difficult to respond. However, the section does address 2 core principles of the COPN program.		Consensus that 1st sentence of section is appropriate. No consensus concerning 2nd sentence of section.
6		Important to clearly address "level playing field" and "Institutional need"	Without specifics on the concerns, it is difficult to address them.		Consensus that 1st sentence of section is appropriate. No consensus concerning 2nd sentence of section.

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Miscellaneous – completed 5/10/2006

Item No.	Section	Comment	VDH Analysis	Discussion Points	Outcome
1		Suggest that the SMFP be placed on an update schedule for each covered service every 2 or 3 years.	We agree.		Committee consensus
2		230-30: suggest: The COPN program seeks to promote rational reallocation of existing resources to meet evolving community needs.	The section was amended to include the suggestion for reallocation of resources.	Substitute language proposed for 'guiding principles' section; further amendments offered	Committee consensus on substitute language, as amended.
3		30.5: delete "elimination", insert reduction; delete identified, insert needs as identified pursuant to this chapter.	The subsection has been amended as suggested with the addition of a Code of Virginia citation.	Substitute language proposed for 'guiding principles' section; further amendments offered	Committee consensus on substitute language, as amended.
4		Include the limited language regarding local land use provisions	The section has been eliminated as it is a local government issue and not within the purview of the COPN program.		Committee consensus
5		230-60:.2 Suggest deleting as the Commissioner should be in a position to take the project most beneficial to the public, not necessarily the cheapest.	The subsection appears to be taken out of context, resulting in some misrepresentation. It is not intended that a COPN would be granted based solely on lowest cost.	Amendments offered to clarify: 1. Change 'preferences' to 'considerations' 2. Refer to costs in terms of 'capital costs' and 'operating	Committee consensus on amendments.

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				expenses.'	
5a		60.3: delete this preference.	The subsection has been deleted as suggested.		Committee consensus
5b		60.5: preference should be to applicants who best demonstrate a commitment to serving their community as evidence by charity care, community outreach programs and by subsidization of needed but unprofitable services.	The subsection has been amended as suggested.		Committee consensus
6		It is important that the SMFP, the COPN, and licensure regulations be consistent with each other, that definitions be uniform, and that the uniformity includes the data reporting components	We agree that uniformity is important and we believe we have been successful in achieving more uniformity than is available with the current SMFP. Uniformity, to the extent possible while recognizing the uniqueness of individual services, is a goal of VDH for all its regulations, not just the SMFP	Suggestion to extend uniformity to charity care forms	Committee consensus
7		230-30.5: "needs" should be identified by regional health systems agencies and DCOPN as well as by applicants. This assumes a proactive approach to health planning.	The subsection has been amended for clarification.	Substitute language proposed for 'guiding principles' section; further amendments offered	Committee consensus on substitute language, as amended.
8		In order for it to be fully useful, data should also be collected from all free standing medical care facilities,	Yes, it would require legislation.		Committee consensus

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		including grand-fathered diagnostic imaging centers and radiation therapy centers that opened when COPN regulations were suspended. We realize this may require legislation, but feel that it is a significant point worth making in the review of this documents.			
9		Future plan changes: Recommend that the sections addressing areas experiencing rapid change in the last few years be retained in the main body of the SMFP, while service specific volume standards could be in a separate document that would be reviewed and revised periodically. This would provide for a plan that could be updated in a more responsive fashion to the technology and patient care delivery changes. This arrangement would be similar to how the RFAs are now handled for nursing homes beds, permitting adjustments to be made relatively quickly as technology and medical practices change.	Such a suggestion is not practical. The only means available having the force of law is regulation. Therefore, service specific volume standards must be promulgated through the Administrative Process Act and "cannot be a separate document that would be reviewed and revised periodically." In addition, to have the service specific standards as a separate regulation would negate one of the goals of this revision project, to have all projects requiring review via the SMFP to be available under one comprehensive document. The comparison to the RFA process is not applicable.		Committee consensus
10		Many of the recommendations in the	As we stated in our initial	The proposed	Committee

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		[SMFP] will greatly reduce the ability of non-profit hospitals to be competitive with other service providers who are not required to accept all patients. The draft also appears to have other inadequate or improper definitions as well as a lack of access and quality standards.	justification for this project the SMFP has not been updated since first promulgated in 1993. While we understand and appreciate the unique concerns of Virginia's non-profit hospitals, we are confident that the revisions adopted as a result of public comments received will allay those concerns.	redraft of Section 230-20, 'guiding principles, effectively addresses this concern	consensus
11		Suggest the SMFP exempt equipment used for medical research from the COPN Process.	That must first be addressed through the legislative process, as currently the law does not permit such an exemption.		Committee consensus
12		Once the SMFP [is adopted] we ask the [VDH] to coordinate with VHI so that data collection is relevant to the SMFP. This would help eliminate the data problems in the current system.	This suggestion is beyond the scope of this project. Any problems with VHI data collection should be addressed directly with the Commissioner's office.	Committee informed of VDH plan to bring comments to VHI Board attention	Committee consensus
13		230-60: Suggest preference also be given to applicants who consistently demonstrate that the information and testimony they present represents a complete and accurate presentation of the issues.	Such a standard is not practical. All applicants are required to certify that the information provided on any application is accurate and true.		Committee consensus
14		Intra-planning-district exception process: Suggest a provision for exception to planning district averages for non-tertiary services	The intent of the comment is not clear, however, we believe the draft provides sufficient opportunities for expansion as	Suggestion to address this as part of the service specific	No consensus

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		where there are not significant overlaps in service areas. This would allow for expansions in capacity when justified.	suggested.	criteria	
15		Miscellaneous capital expenditures: Suggest that the $5 million threshold is too low or that some projects be carved out to eliminate COPN review. We understand that legislative change is necessary to implement this recommendation.	That is correct, legislation is necessary to implement this change.	Suggestion that the $5 million threshold be indexed for inflation	Committee consensus
16		There are plan errors of language that should be cleaned up before the draft is adopted as final.	We are confident that any inconsistencies have been addressed as appropriate.		Committee consensus
17		Service and facility inventories (utilization database): Recommend that the SMFP include inventories and historical use data for the regulated services and facilities, updated annually. VHI data is not available for all COPN regulated services because many providers are not required to submit data. It would be helpful to have a common source of use data, maintained by each planning district, for all medical care facilities.	The suggestion is beyond the scope of this project. However, the staff of the DCOPN is happy to discuss this once the SMFP has been promulgated.		Committee consensus
18		Question whether a standard should be negated in all cases based on the Commissioner having set aside a	The Commissioner has been clear in his rulings regarding those standards that are set		Committee consensus

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		standard.	aside because they are "not relevant, inaccurate, outdated, inadequate or otherwise inapplicable." Those rulings have been supported by agency counsel as well as circuit court judges.		
19		There are outdated methodologies and need to be changed.	Without more specific regarding the concerns, we cannot respond.		Committee consensus
20		Expand the guiding principles section	Without specifics, it is difficult to respond.	Alternative language proposed for section; amendments offered	Committee consensus on alternative section

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