HEALTH CAPITAL Topics
Volume 5, Issue 10
October 2012
Jessica C. Burt, Esq., MHA - Senior Research Associate • Kati V. Williams - Editor

Certificate of Need (CON) Law Series Part II of IV: The Current State of CON Programs Across the Country

The four-part *HC Topics Series: CON Law* will provide an in-depth examination of Certificate of Need (CON) programs and their impact on the healthcare industry. The first installment provided an overview of states' CON programs and the history of their development, and this month's Part II installment will discuss the current state of CON regulations. Part III will evaluate CON programs against the changing landscape of the healthcare industry, and Part IV will examine the impact of the *Patient Protection and Affordable Care Act (ACA)* on CON programs.

Last month's installment of the *HC Topics Series: CON Law* discussed the history of states' CON programs and how, despite repeal of the *National Health Planning and Resources Development Act (NHPRDA)* and the loss of supporting federal funds, the majority of states elected to maintain or implement CON programs.[1] Numerous studies conducted throughout the late 1970s and 1980s demonstrated that CON restrictions had little to no effect on controlling healthcare costs, yet today, most states continue to restrict the supply of healthcare facilities or services in some way, and proponents of CON still assert cost-containment as a rationale for such restrictions.[2] This month's installment of the *CON Law Series* will examine the current state of CON regulations across the country.

In the United States today, 36 states, the District of Columbia, and the Commonwealth of Puerto Rico have some form of a CON program.[3] However, of the states that discontinued their CON programs following the repeal of the NHPRDA, every state still utilizes some process to control costs and prevent duplication of services.[4] The CON programs currently in existence regulate several different types of facilities and services, and these restrictions vary widely from state-to-state.[5] At present, most states with CON programs tend to focus on long-term care and outpatient facilities.[6]

Of the states with CON programs in effect, most restrict traditionally high-cost healthcare services, including: cardiac catheterizations; open heart surgeries; and, radiation therapy.[7] Approximately half of the states with CON programs restrict organ transplants; gamma knives; lithotripsy; and, magnetic resonance imaging (MRI) and positron emission tomography (PET) scanners.[8] Roughly one-third of CON states restrict computed tomography (CT) scanners; dialysis; and, burn care, and four CON states restrict ultrasounds: Hawaii; Maine; Vermont; and, the District of Columbia.[9] Arizona, though not a CON state, is the only state in the country that restricts ground ambulance services.[10] Most of the states with CON programs also restrict several service lines, including: psychiatric services; rehabilitation; and, neonatal intensive care.[11] Approximately half of the current CON programs restrict services for home health; hospice; and, substance/drug abuse, and roughly one-third of the current CON programs restrict obstetric services.[12] For facilities, most of the current CON programs restrict acute care hospital beds; ambulatory surgical centers (ASCs); and, intermediate care facilities/mental retardation (ICF/MR).[13] Five states with CON programs restrict assisted living and residential care facilities: Arkansas; Louisiana, Missouri; North Carolina; and, Vermont.[14] Two of the current CON programs restrict medical office buildings: Vermont and the District of Columbia.[15] Twenty-eight CON states restrict long term acute care (LTAC), and nursing home/long term care is restricted by thirty-seven current CON programs, which include thirty-six states and the District of Columbia.[16]

In addition to each CON state's general restrictions, some states have imposed a moratorium on certain services and facilities, meaning that no CON application for those services or facilities will be approved. Alabama has placed a moratorium on nursing home and inpatient hospice beds, and both Arizona and Louisiana have restricted any additional intermediate care/mental retardation facilities (ICF/MR).[17] Arkansas has also restricted any additional residential care facilities (RCFs) or psychiatric residential facilities for children/adolescents, and Mississippi has restricted any additional home health agencies.[18] Both Nebraska and New Hampshire have restricted additional rehabilitation beds, and seven states have placed a moratorium on additional long-term care/nursing home beds, many of which have been in place for more than a decade.[19]

Despite ample evidence that CON programs are ineffective at controlling healthcare costs, most states today use some form of CON restrictions to control the supply of healthcare facilities and services. As the industry undergoes changes in the delivery of care, technology, and reimbursement, states that utilize CON may be forced to reevaluate the effectiveness of these restrictions. Next month's installment in the *HC Topics Series: CON Law* will examine CON programs against

(Continued on next page)

the changing landscape of the healthcare industry.

CON Law Series – Part I – A Controversial History

1 "Beyond Health Care Reform: Reconsidering Certificate Laws in a Managed Competition System" By Patrick John McGinley, Florida State University Law Review, Vol. 23 (1995-96), p. 159; "Certificate of Need: State Health Laws and Programs" National Conference of State Legislatures, March 2012, http://www.ncsl.org/issues-research/health/con-certificate-of-need-state-laws.aspx#Program (Accessed 9/10/12).

2 "Hospital Certificate-of-Need Controls: Impact on Investment, Costs, and Use" By David S. Salkever & Thomas W. Bice, American Enterprise Institute for Public Policy Research, Washington, D.C., 1976, p. 73, 75; "Duplicated Hospital Facilities: How Much Can We Save by Consolidating Them?" By Williams B. Schwartz & Paul L. Joskow, New England Journal of Medicine, Vol. 303, No. 25 (1980), p. 1455; "The Effect of State Certificate-of-Need Laws on Hospital Costs: An Economic Policy Analysis" By Daniel Sherman, To: Federal Trade Commission Washington, DC: FTC, 1988, p. iv,58; NCSL, 2012.

3 NCSL, 2012.

4 *Ibid*.

5 *Ibid*.

6 *Ibid*.

7 *Ibid*.

8 *Ibid*.

9 *Ibid*.

10 *Ibid*.

11 *Ibid*.

12 *Ibid*.

13 *Ibid*.

14 *Ibid*.

15 *Ibid*.

16 *Ibid*.

17 *Ibid*.

18 *Ibid*.

19 *Ibid*.

(Continued on next page)

HCC
HEALTH CAPITAL CONSULTANTS

(800) FYI - VALU

Providing Solutions in the Era of Healthcare Reform

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm

- **HCC Home**
- **Firm Profile**
- **HCC Services**
- **HCC Experts**
- **Clients Projects**
- **HCC News**
- **Upcoming Events**
- **Contact Us**
- **Email Us**

HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.

Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS** (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: "*The U.S. Healthcare Certificate of Need Sourcebook*" [2005 - Beard Books], *"An Exciting Insight into the Healthcare Industry and Medical Practice Valuation"* [2002 – AICPA], and *"A Guide to Consulting Services for Emerging Healthcare Organizations"* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious "*Shannon Pratt Award in Business Valuation*" conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *"Research and Financial Benchmarking in the Healthcare Industry"* (STP Financial Management) and *"Healthcare Industry Research and its Application in Financial Consulting"* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.

Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC), where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in "*Healthcare Organizations: Financial Management Strategies*," published in 2008.