

## **Proposed CON and Reporting Rules in the Works at DHHS**

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The N.C. Department of Health and Human Services (the Department) has recently proposed changes to the rules governing health service facilities, including hospitals. The Department's Healthcare Planning and Certificate of Need Section (the CON Section) has proposed eliminating several rules related to information required for CON applications, while the Medical Care Commission has proposed temporary rules changing certain reporting requirements for hospitals and ambulatory surgical facilities in response to recent legislation. Each of these developments is discussed below.

### **Proposed Repeal of Certain CON Rules**

The rules promulgated by the CON Section contain provisions requiring CON applicants to provide multiple forms of information with the application. These rules include requirements related to a facility's physical plant, support services, staffing and staff training, and other operational issues. Many services covered are those provided by hospitals, including rules related to the development or addition of acute care beds, psychiatric beds, intensive care services, neonatal services, open heart surgery services, burn intensive care services, rehabilitation services, operating rooms, GI endoscopy procedure rooms, cardiac catheterization and cardiac angioplasty equipment, radiation therapy equipment, CT scanners, MRI scanners, gamma knife, PET scanners, major medical equipment, lithotripter equipment, bone marrow transplantation, and solid organ transplantation.

The CON Section has proposed eliminating all of these rules, leaving intact only definitional rules and the performance standards (which require the applicant to provide historical and future utilization data to demonstrate need for the service proposed). The proposed changes can be found in the North Carolina Register at pp. 890-894.

In its comment to the proposed rules, the CON Section explains the proposed repeal:

- To the extent the information requested in these rules is needed to determine conformity to the review criteria in G.S. 131E-183(a), it can be obtained through the CON application forms authorized by G.S. 131E-182(b), which need not be promulgated as rules. Therefore, the rules proposed to be repealed are not needed.
- Some of these rules are too vague and many are outdated, with effective dates as far back as 1983.

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- The rules also place an unnecessary burden on applicants and increase the complexity of litigation, which increases costs for both the CON Section and applicants.

During a public hearing held November 20, 2015, Martha Frisone, assistant chief of the CON Section, advised that to date, she had received no objections to the proposed rule changes. None were expressed at the public hearing. Ms. Frisone also advised that if there are no objections to the rules and they are approved at the Rules Review Commission's January 2016 meeting, they would become effective on February 1, 2016.

Ms. Frisone advised that the CON Section also intends to update the CON application forms in use during the next year. The CON Section intends for the revised forms to ask questions based on each of the statutory review criteria in G.S. 131E-183(a). The new form has already been created for CON applications for dialysis services. Those forms were created with the input of the major dialysis providers in the state. The CON Section has begun preparing updated application forms for acute care services and medical equipment, which they hope to have finished after the middle of 2016. As with the dialysis forms, the CON Section intends to seek the input of the major stakeholders for acute care services prior to finalizing these forms.

Finally, the CON Section intends to revisit the performance standard rules, to determine whether any are outdated and need to be revised.

## **Proposed Revisions to Hospital and Ambulatory Surgical Facility Reporting Requirements**

In the past decade, several states have enacted health care price transparency or disclosure legislation as a strategy for containing health care costs, requiring providers to disclose the costs associated with certain services, either directly to patients or through reporting requirements to state agencies. One major driver of these laws has been the increase in high-deductible health insurance plans, both individually and in employer-based group plans. Because consumers increasingly must pay more out of pocket for health care services, requiring public disclosure of this information provides consumers with tools to make better informed decisions regarding the price they pay for health care, potentially reducing overall health care costs.

In 2013, the North Carolina General Assembly enacted the Health Care Cost Reduction and Transparency Act (the Act), imposing reporting requirements regarding charges and reimbursement on hospitals for the 100 most frequently reported admissions by DRG for inpatients, and on hospitals and ambulatory surgical facilities (ASFs) regarding the 20 most common ambulatory surgical procedures and outpatient imaging procedures. These changes, codified in G.S. 131E-214.11, et seq., required this information be reported quarterly to the Department. The statute also required the Medical Care Commission to promulgate rules ensuring that this information would be reported in a uniform manner. In response, the Medical Care Commission promulgated temporary rules on December 31, 2014, and permanent rules on September 30, 2015, incorporating these requirements.

Near the end of the 2015 session, the General Assembly inserted a provision in the budget modifying the reporting requirements in the Act by requiring annual, rather than quarterly, reporting of this data. See S.L. 2015-241 (H97) [here](#), pp. 139-141. In response, the Medical Care Commission has announced its intent to promulgate temporary rules to incorporate these proposed changes. These changes, codified in 10A N.C.A.C. 13B.2102 and 10A N.C.A.C. 13C.0206, require hospitals and ASFs to file annual reports by January 1 of each year, commencing with the reporting period ending September 30, 2015.

So far, we have not determined the General Assembly's reasons for this change. Maybe the legislators who wanted this data felt that annual information would be more useful. At any rate, this statutory and rule change will make it simpler for hospitals and ASFs to provide this information.

The proposed effective date of the temporary rules is February 26, 2016. More information regarding these proposed rule changes can be found at the Department's web site [here](#).

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National Law Review, Volume VI, Number 11

Source URL: <https://natlawreview.com/article/proposed-con-and-reporting-rules-works-dhhs>