New York State
Department of Health
CON Program

Certificate of Need (CON) Program

- Authorizes the establishment and construction of:
  - Hospitals
  - Nursing Homes
  - Clinics
  - Home Health Agencies
  - High Technology Specialty Services
  - Hospice
Reviews Proposed Facilities and Services for:
- Public Need
- Financial Feasibility
- Character and Competence of Owners and Operators

MAJOR ELEMENTS OF CON REVIEW

Public Need

Determination of public need is based on:
- Population demographics
- Use of existing services
  - Bed occupancy
  - Volume of services/procedures
- Epidemiology of selected diseases and conditions
- Access
  - Travel time
  - Insurance status of population
Financial Feasibility

– Projected revenues
– Current financial status
– Capacity to retire debt

Character and Competence

■ Experience and past performance of proposed owners/operators - “substantially consistent high level of care.”
■ Record of violations, if any.
Types of Review

Administrative CON Review
– Commissioner approval only
– In general, clinical projects $3 million to $10 million

Full CON Review
– PHC or SHRPC approval, or both
– New facilities, new beds and high tech services
– >$10 million

Types of Review (cont’d)

- Limited Review
  – Smaller clinical projects (<$3 million)
  – Non-clinical projects <$10 million
  – Architectural and Engineering Compliance
  – Program Compliance
  – No public need review
Pending CON Changes

- **Raise Monetary Thresholds**
  - **Clinical Projects**
    - Raise CON administrative review threshold from $3 Million to $6 million
  - Raise full CON review threshold from $10 million to $15 million

Pending CON Changes

- **Nonclinical Projects**
  - Raise nonclinical review threshold from $10 million to $15 million
  - Nonclinical projects >$15 million
    - Administrative CON review only
      - (no more full CON review).
CON Construction Projects

- Require State Hospital Review and Planning Council (SHRPC) review
- Recommendation to the Commissioner of Health

Construction

“Construction” means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a health care facility, including its equipment; the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures and other actions necessary thereto.

--New York Public Health Law Section 2801
CON Establishment Process

All establishment actions require approval by the Public Health Council.

- The creation of a new health care facility
- A change of ownership of 10 percent or more

Establishment Actions (cont’d.)

- A reorganization of the corporate sponsorship of an existing facility which results in a new corporate entity

- A change in the governance of an existing facility which allows substantive participation in the operation of the facility by another corporate entity.
The Commission on Health Care Facilities in the 21st Century

The New York State Department of Health
(NYSDOH)

Established by the Governor and the State Legislature in 2005
· ‘The Berger Commission’ or ‘The Commission.’
What, Why and the Goals of The Commission

- To conduct an independent review of health care capacity and resources in New York State.
- To ensure an appropriate supply of hospitals and nursing homes at the local and regional levels.
- To reduce excess bed capacity in favor of ambulatory and community-based care.
- To “rightsize” the health care system.

The Commission’s Recommendations

- A total of 57 mandatory recommendations, effective January 1, 2007.
- Affected 81 acute care and long-term care facilities.
  - 57 hospitals (one-quarter of total in state)
  - 24 nursing homes (4 percent of total in state)
The Commission’s Recommendations

The recommendations were to …

- Close,
- Downsize,
- Consolidate,
- Convert, or
- Restructure

facilities within each region.

Targeted Bed Reduction

Acute Care

- Eliminated 4,200 hospital inpatient beds (7 percent of statewide capacity) through
  - 9 facility closures
  - 48 downsizings reconfigurations, affiliations, conversions, mergers.
Targeted Bed Reduction

• Long-term Care
  – Eliminated 3,000 nursing home beds (2.6 percent of statewide capacity)
    • Closure of 7 nursing homes
    • 17 downsizings, reconfigurations, conversions, affiliations.
  – Established more than 1,000 new non-institutional slots

Funding for Rightsizing

• Healthcare Efficiency and Affordability Law for New Yorkers (HEAL NY)
• $1 billion over five years
  – 75% bonding authority
  – 25% capital appropriations
• $1 billion from Federal-State Health Reform Partnership (F-SHRP). One-for-one match.
HEAL NY

• $1.8 billion let to date
  – $1 billion for capital restructuring
  – $550 million for Commission mandates
  – $219 million for HIT infrastructure
  – $7 million for local/regional health planning

• 380 contracts
Certificate of Need

Health Care Financial Review

Charles Abel
NYS Department of Health
Division of Health Facility Planning

Why is there a Financial Review?

- Ensure the delivery of high quality healthcare products and services in a cost effective manner
- Capital is a pass-through for Medicaid services
Financial Review Principles

- Capital costs, operating costs, and debt obligations need to be reasonable, necessary and in the public interest

What does the financial review entail?

Capability

- Does the applicant have the means to complete the project?
  - Balance sheet
  - Net worth
  - Ability to borrow
What does the financial review entail? (cont)

Feasibility
- Has the applicant demonstrated the ability to operate in a financially viable manner?
  - Historical operating performance
  - Reasonableness of budgets
  - Ability to sustain operations
  - Ability to retire debt

Details - Are costs reasonable?
- Proposed construction cost
  - Cost per square foot metrics
- Lease rental
  - Arm’s length vs. non-arm’s length leases
- Operating budget
  - Efficiency, conservative
- Financing structure
  - Necessary, reasonable and in the public interest
Acceptable financing structure – components

- Hospitals
  - Capital financing must be asset-backed – mortgage term must be supported by asset lives
  - Reimbursable – level debt service on new money
    - CON projects
      - refinancing
      - non-CON equipment - >$250,000
  - Working capital financing - generally, 5 year term or less

Acceptable financing structure – components (cont.)

- Hospitals
  - Long-term financing issues: principal deferrals, creative amortization, balloons, long term financing of operating expenses, working capital, routine capital budget items, short life equipment and future CONs
Acceptable financing structure – components (cont.)

- Nursing Homes
  - Maximum 30 year mortgage
  - Acquisition financing – non-reimbursed
    - minimum 10 year term
    - guarantee any balloon

Credit Enhancement

- FHA insured
- Bond insurance – cost effective
- Letter of credit – take-out terms; evergreen provision (no balloons)
Supporting Documentation

- Business Plan
- Financial Feasibility Study
- Consistency with DOH and Commission Goals and Objectives

CON Financing Contingencies

- Mortgage/Loan commitment
- Bond Resolution
- PACB approval - TELP funding
- DASNY/Lender consent
Approval process – sequence

• Criteria for contingency satisfaction – principal and terms should be consistent with CON approvals
  - DASNY – interagency process agreement
  - IDA – inducement resolution, sources and uses, amortization
  - Other – mortgage/bank loan commitment

Financings without CON projects

• DOH Commissioner (designee) approval required for reimbursement.
Criteria for Refinancing

- Hospitals
  - Co-terminous maturities
  - Maturity extension proposals
    - Business plan – justification – use of savings
    - Extended maturity limited to 120% of remaining AHA depreciable life
    - Asset life analysis
    - Medicaid “Hold Harmless” agreement – Board Resolution

Criteria for Refinancing (cont.)

- Nursing Homes
  - No extension of maturity in order to be reimbursed
  - Savings