

# Government Regulation of Healthcare Facility Construction and Renovation

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# Agenda

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Overview and Summary

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Certificate of Need

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Licensure

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Medicare/Medicaid

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# Overview and Summary

# Impact of Government Regulation on Healthcare Facility Construction

- Complex layers of federal and state laws regulate the construction and renovation of health care facilities
- These laws can dictate:
  - Whether a planned project can legally proceed
  - The timeline of a planned project
  - The scope of a planned project
  - The cost of a planned project
  - The feasibility of a planned project
  - Whether the health care provider will be paid for its services
- Healthcare providers and contractors should communicate early to formulate realistic timelines

# Phases of Regulation

- Government regulation of healthcare facility construction and renovation can be divided into three conceptual phases:
  - Phase I: Can the project be done? (Certificate of Need).
  - Phase II: What are the specifications and scope of the project? (Licensure, Certificate of Need).
  - Phase III: Can the healthcare provider get paid for its services? (Licensure, Medicare/Medicaid)

# Conceptual Phases of Regulation

## Sample Timeline of Hospital Renovation Project

[Insert Timeline]

# Certificate of Need

# CON Law Background

- State CON laws were enacted by individual states beginning in the 1960's with the stated goal of controlling health care costs through restricting the supply of health care facilities
- Many states enacted CON laws in response to the federal Health Planning Resources Development Act of 1974, which tied the incentive of federal funding to the establishment of state CON approval processes
- The federal law was repealed in 1987
- Despite numerous state law repeals and inconclusive results on the effectiveness of CON programs, 36 states, including Alabama, still have some form of CON law

# Alabama CON Law

- Alabama's CON statute requires health care providers to obtain a CON for any "new institutional health service" proposed to be offered or developed within the state
- The Alabama State Health Planning and Development Agency ("SHPDA") administers the state CON law

# Alabama CON Law

- The Alabama CON law defines a “new institutional health service” to include:
  - The construction, development, acquisition through lease or purchase, or other establishment of a “new health care facility”
  - Any capital expenditure by or on behalf of a health care facility of more than \$2,356,977 for major medical equipment, \$942,791 for new annual operating costs, or \$4,713,954 for any other capital expenditure
  - A change in the existing bed capacity of a health care facility and the reallocation of beds among certain categories (e.g. general medical beds to inpatient psychiatric beds)
  - Health services that were not offered on a regular basis within the 12 previous months

# Health Care Facilities Covered by CON Law

- Health care facilities include:
  - Hospitals
  - Ambulatory surgery centers
  - Skilled nursing facilities
  - Rehabilitation centers
  - Dialysis clinics
  - Home health agencies
  - Laboratories
  - Mental health facilities
  - Other health care facilities

# Health Care Facilities Not Covered by CON Law

- The definition of health care facilities does not include private offices of licensed:
  - Physicians
  - Dentists
  - Chiropractors
  - Podiatrists
- The definition of health care facilities does not include Department of Veterans Affairs nursing homes

## Other Exemptions from CON Law

- Numerous other exemptions from CON law coverage exist for projects that would otherwise constitute “new institutional health services”
- Examples of targeted exemptions include:
  - The “digital hospital” exemption
  - Specific medical equipment such as MRI machines and PET scanners
  - Dialysis clinics in specified areas

# Criteria for SHPDA Review of CON Applications

- If a proposed project constitutes a “new institutional health service”, it is subject to review by SHPDA
- To obtain a CON, a health care provider’s application is reviewed under the following criteria:
  - Consistency of the proposed project with the State Health Plan applicable to the type of facility and/or service proposed by the project
  - Relationship of the proposed project to the long-range development of the health care provider applicant
  - The availability of alternative, less costly or more effective methods of completing the project

# Criteria for SHPDA Review of CON Applications (Continued)

- SHPDA must reach a determination of “substantially unmet public need” for the project consistent with orderly planning based on consideration of:
  - Financial feasibility of the project
  - Specific data supporting the demonstration of need for the project
  - Evidence of consistency of the proposed project with the facility’s and community’s overall health care plans
  - Evidence of consistency of project with non-patient care objectives such as research or teaching
  - Evidence of appropriate location of the facility including transportation accessibility, personnel availability, local zoning, environmental health, etc.

# Criteria for SHPDA Review of CON Applications (Continued)

- SHPDA must also:
  - make a determination that the applicant is the appropriate party to complete the project
  - consider the special needs and circumstances of applicants who provide a substantial amount of services to people not located in the service area of the facility
- In the case of a construction project, SHPDA will consider:
  - The costs and methods of the proposed construction including the costs and methods of energy provision
  - The probable impact of the construction project on the costs of providing health services

# State Health Plan

- Alabama law requires the Alabama Statewide Health Coordinating Council (SHCC) to prepare a State Health Plan every 3 years
- The State Health Plan:
  - sets target levels of particular services per capita for specific geographic areas within the state
  - includes actual data of service levels per capita to compare to the target levels
- By comparing the actual level of service to the target level for a given geographic area, the State Health Plan provides SHPDA with objective data on which to make determinations of need

# State Health Plan: Example

- Inpatient Psychiatric Beds
  - The State Health Plan estimates that Alabama had 4,722,223 residents in 2007
  - The “need calculation” for inpatient psychiatric beds in the State Health Plan is 37.1 beds per 100,000 residents
  - Therefore, Alabama the State of Alabama has a need for 1,751 beds in 2007
  - As of the publication date of the State Health Plan, only 1232 inpatient psychiatric beds existed leaving a net need of 519 beds in the state

# CON Timeline

[insert timeline graphic]

# Licensure

# Securities Laws

# Medicare/Medicaid

# Medicare Conditions of Participation

# Resources

- State Health Planning and Development Agency  
(<http://shpda.state.al.us/Index1.html>)
- Alabama Department of Public Health, Division of Health Care Facilities  
(<http://www.adph.org/providers/Default.asp?id=526>)
- U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services  
(<http://www.cms.hhs.gov/default.asp?>)