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NC House Select Committee Studies CON Law

09.27.2011

Thomas R. West

North Carolina's Certificate of Need Law and process as well as certain related hospital issues are under review by a House Select Committee recently appointed by House Speaker Thom Tillis. The Select Committee is charged with studying the Certificate of Need (CON) process from the initial stage, at which the State Health Coordinating Council and the Governor determine the need for additional healthcare services as part of the annual State Medical Facilities Plan (SMFP), through the CON Section's review and decision regarding applications seeking to develop needed facilities and services, and appeals challenging the CON Section's decisions at the Office of Administrative Hearings and the Courts.

The need for, and fairness of, the CON Law has been hotly debated for many years. Critics of the CON Law contend it unfairly restricts competition, but its advocates argue an unregulated free market would result in excess capacity of expensive facilities and equipment producing excessive costs, waste, an increase in fraud, and a decrease in quality. At a time when universal healthcare is on the horizon, and the state of the economy demands that tough decisions be made, the debate over government regulation of healthcare facilities and costs is more important than ever.

The Select Committee held its first meeting on September 14, 2011. Staff counsel provided an overview of the CON Law and the law governing Certificates of Public Advantage (COPA) to get the Committee started on the specific components of its study. Speaker Tillis has charged the Select Committee to study:

- The legal requirements and process governing the issuance of Certificates of Need;

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- Exemption from SMFP provisions for certain academic medical center teaching hospital projects (Policy AC-3);
- Issues relating to publicly owned hospitals, including determining the appropriate role of State-owned hospitals and the appropriate manner for public hospital authorities to operate beyond the boundaries of the local government that created them;
- The extent to which a publicly owned hospital should engage in business with an entity having a COPA or operating under an exemption under the CON Law;
- Whether a hospital that operates under a COPA should be required to comply with the same rules, policies and limitations in each county in which it operates; and
- Other matters reasonably related to the issues above, in the discretion of the Committee.

The Select Committee's first meeting was largely an informational session, and no action was taken. Its next meeting is set for 10 a.m. on October 6 in Room 544 of the Legislative Office Building. The Committee will issue an interim report to the N.C. House by May 1, 2012, and a final report prior to the convening of the 2013 General Assembly.

The members of the Select Committee are: Co-chair Rep. Fred Steen (Rowan), Co-chair Rep. John Torbett (Gaston), Rep. Jamie Boles (Moore), Rep. Mark Hollo (Alexander), Rep. Bill Current (Gaston), Rep. Marilyn Avila (Wake), Rep. Jeff Collins (Nash), Rep. Shirley Randleman (Wilkes), Rep. Rick Glazier (Cumberland), Rep. Martha Alexander (Mecklenburg), and Rep. Marcus Brandon (Guilford).

Poyner Spruill will be monitoring the meetings of the Select Committee. If you are interested in agendas for future meetings or in learning more about how we can keep you informed, please contact your attorney at Poyner Spruill or Health Law Section member Tom West.

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