

Washington -- Certificate of Need program:

A method for distributing health resources to minority communities in need

Overview:

National health care spending in the United States is the highest of all developed nations and it continues to rise. Yet large numbers of U.S. residents still lack affordable health care. Following a national campaign effort led by the American Hospital Association, 36 states enacted Certificate of Need (CON) programs as a tool for controlling health care costs and regulating resources. CON programs attempt to limit unnecessary spending by requiring health facilities and providers to obtain the State's permission before they can offer new services or expand their facilities. CON promote a health care system that is non-duplicative and cost-efficient, promoting the rational allocation of State resources.

Although the primary focus and purpose of CON regulations has been to control spending, CON program policy also considers improvements in the quality of care and access to affordable care for underserved communities when determining the genuine need for an expansion, relocation, or service. In addition to the general lack of affordable health care, studies and statistics indicate that there are racial disparities in access to health care and the quality of health care individuals receive. For example, African Americans are almost twice as likely to die from diabetes as white Americans, and their infants have almost double the mortality rate as white infants.¹ Also, Latina, Asian, and American Indian women are less likely to be screened for breast and cervical cancer than are white and African American women.²

Moreover, minority communities are more likely to be negatively affected by the relocation of a health facility, and low-income communities face geographic barriers to health care at a disproportionate rate. CON programs theoretically help curb the disparate impact of location/relocation of services by requiring that the proposed service serves the specific population or community in need. More specifically, certificate of need programs may be able to serve as a means for distributing health resources in order to meet the needs of communities of color.

The Policy:

In 2007, Washington State passed Senate Bill 5930 – the “Blue Ribbon Commission Bill” – with recommendations for improving access to affordable health care to state residents and strengthening the CON program. The majority of the programs implemented in the Bill focus on health care quality, cost, and access. Specifically, the Bill improves the CON program by creating a “statewide health resources strategy” (under the Office of Financial Management) to steer the CON program. The strategy will be presented in 2010 and then updated every two years. The Bill also establishes a “technical advisory committee” to assist in developing the strategy. Members of the committee must include both consumers and providers, to represent the different views of those affected by health care reform.

Impact:

The new legislation improves the system for assessing health care needs by geographic and demographic criteria. The strategy will provide more focus on overall community-benefit and improved access to quality health care for all Washington residents.

Because the determination of need depends in part on assuring access to care services for racial minorities (see WAC 246-310-210), there is potential for activists to use the CON regulations and requirements to enforce this provision and make providers/hospitals accountable for providing services to these communities. Linking CON approval to the statewide health resources strategy creates a tool for health resource regulation and can be used to reduce geographic/demographic disparities.

Although not all desirable recommendations were adopted by the legislature during the 2007 session, there is a good chance the other provisions will gain traction the next time around. The development of the statewide health planning strategy has laid a foundation for further change and more accountability. The strategy and its related “technical advisory committee” can be used as an access point for policy reformers to monitor the State’s actions and comment on advances and improvements that should be made.

Key Organizations:

Organizing efforts by Washington CAN! and legal advocacy by Northwest Health Law Advocates were fundamental in passing the bill. Local attorney Janet Varon and her organization, Northwest Health Law Advocates, have been leaders in the legal effort to use CON regulations to address disparities in health care. Janet Varon served on the Washington State Certificate of Need Program Task Force (Task Force) which gave recommendations for improving and strengthening the CON program.

Campaign Strategy/Overview:

In 2006, Washington CAN! was the primary organization pushing for the creation of the Blue Ribbon Commission (the Commission) whose purpose was to provide recommendations for five-year plan to substantially improve access to affordable health care for all Washington residents. The implementation of SB 5930 (the “Blue Ribbon Commission” bill) was ultimately spurred into creation by recommendations from the Commission’s and the Task Force’s final reports.

The bill, as signed into law, gives 16 recommendations for general improvements in the health care system, but relies largely on a business model and mending insurance policy coverage. Washington CAN! voiced concerns in Olympia regarding amendments to the original bill, which excludes provisions intended to help control costs for small businesses. The Task Force also had concerns about proposals that were not adopted by the State. The Task Force asserted that the purpose of the CON program is not just expenditure control, but also to promote “access to quality care at a reasonable cost for *all* residents” and need and access to care should be primary criteria in the CON process.³

Challenges:

There were a number of important Task Force recommendations that did not gain traction in this Legislative session, but that have future potential. Along with the health resources strategy, the Task Force called for a statewide health *plan* to enumerate the goals and components of a successful CON program and health system in general. The Task Force also stressed the need for an enforcement system for the CON program, to ensure adherence to conditions, making certification contingent upon compliance. They emphasized that “mechanisms for monitoring

and evaluation” were essential, suggesting that penalties like fines or revocation of licensing be imposed for noncompliance.

The State’s failure to implement many of the Task Force recommendations (particularly the development of an enforcement and penalty system) is likely due to a lack in resources. But with more community organizing pressure, the excluded recommendations are likely to get more attention the next time around.

Currently there are no campaigns specifically addressing racial disparities through the CON lens. Although CON does take into consideration the affects on minority communities and underserved populations, attempts to hold hospitals accountable for providing care to low-income people have only been mildly successful. While the original interest of CON legislation has focused on economic and financial elements, the statutes do include the consideration of effects on racial minority populations and their access to care at the top of the criteria list.

Replicability and Future Action:

Looking back at the organizing efforts of Washington CAN!, their campaign could have been expanded to include the issue of racial disparities in health care, charging the Commission to design a plan to reduce those inequities. The current focus of Washington CAN! and other campaign efforts are anchored in comprehensive health security and access to care for low-income persons in general. However, the statewide health resources strategy may provide a forum for advocating more specifically for making the proactive reduction of racial disparities in health care one of the primary purposes of this program. Moreover, the technical advisory committee could also be developed to contain a focus on racial disparities, shifting the determination of need to an emphasis on access, charity, and social welfare, rather than simply finances and economics. In future work on the Secure Health Care Campaign, Washington CAN! and other organizations may consider including a specific focus on increasing health resources for racial minorities.

There is also potential in HB 2100 – the companion bill to SB 5930 which was sponsored by Rep. Cody. This House Bill recommended the creation of the Office of Strategic Health Resource Coordination (Office) and the Health Resource Strategy Commission (Commission). The Office and Commission would work together to implement the Statewide Health Resources Strategy and represent the needs of geographically diverse regions across the state. However, the bill was not passed and is not currently on the agenda in either the House or Senate.

Other states have used the CON regulations as a means to reduce disparities in health care. Maine’s Dirigo Health Reform helped strengthen the state’s CON program by expanding the number of providers required to obtain certificates of need, and establishing sub-agencies to oversee the effect of the CON program on the quality and cost of care. North Carolina has an annually updated statewide health plan that is clearly laid out and provides an overarching structure and principles for the CON program. New Jersey’s CON process hinges on the application specifically demonstrating that the proposed project will increase access to low-income persons and racial minorities who lack access to care.

¹ 2003 data from Kaiser Family Foundation fact sheet: “Key Health and Health Care Indicators by Race/Ethnicity and State” (<http://www.kff.org/minorityhealth/upload/7633.pdf>).

² 2000 – 2003 data from Kaiser Family Foundation: “Key Facts: Race, Ethnicity, and Medical Care” report (<http://www.kff.org/minorityhealth/disparities.cfm>).

³ Washington State Certificate of Need Program Task Force Report, November 1, 2006.

Other Sources Used:

- “Eliminating Disparities in Treatment...”, David Barton Smith, Aug 3, 2005. (www.thecommonwealthfund.org)
- Washington State Certificate of Need Program Task Force Report, 2006.
- RCW 70.38 – Health Planning and Development
- RCW 43.370 – Statewide Health Resources Strategy
- WAC 246-310 – Certificate of Need
- Janet Varon – Northwest Health Law Advocates
- Jack Hanson – SEIU 1199
- Will Pittz – Washington CAN
- Bill Daley – Washington CAN