

**Virginia Department of Health**  
**Office of Licensure and Certification**

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**Guidance Document: Compliance with Conditions on Certificates of Public Need**

**PURPOSE:** To provide guidance to holders of certificates of public need and the Division of Certificate of Public Need for consistency in the administration of the compliance and reporting portion of the Certificate of Public Need (“COPN”) program authorized under § 32.1 – 102.2(C), of the Code of Virginia (“the Code”). This Code section authorizes the State Health Commissioner (“Commissioner”) to condition approval of a certificate of public need on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

**Effective Date:** March 29, 2004

**Introduction**

Under the authority of § 32.1 – 102.2(C) of the Code, regulations establishing appropriate situations in which the Commissioner may condition the issuance of a COPN were developed in the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations at 12 VAC 5-220-270(A), and 12 VAC 5-220-420(A). These regulations provide for three specific conditions the Commissioner can place on a COPN authorizing a project; i) the Commissioner can authorize a project by issuing a COPN on the condition that the applicant agrees to provide an acceptable level of care at a reduced rate to indigents; ii) the Commissioner can authorize a project conditioned on the applicant’s agreement to provide care to persons with special needs; iii) the Commissioner can authorize a project conditioned on the applicant’s agreement to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant’s service area.

The regulations and the Code provide penalties for an applicant’s failure to comply with the terms of such agreements. Applicants who willfully refuse, fail or neglect to honor the conditioned agreements shall be subject to a civil penalty of \$100 per day per violation. The Code, at § 32.1 – 102.2(C), also directs the Commissioner to condition any hospital or nursing home license or license renewal upon the hospital or nursing home meeting the conditions of its COPN(s).

Due to a host of reasons, not the least of which is the geographic location of a facility, some COPN holders have been unable to comply with conditions requiring the provision of indigent care, which were accepted as part of receiving COPN authorization for a project. Repeated plans of correction submitted by COPN holders have often been unsuccessful in reaching the level of indigent care necessary to be considered in compliance with the condition stated in its COPN.

The inclusion of language in indigent care conditions providing for the development and operation of primary care services for underserved populations, in an amount to be aggregated with the amount of indigent care, was an effort to afford those COPN holders an alternative way to satisfy their obligations while still meeting the intention of the process.

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**Definitions**

“Charity care” means health care services delivered for which it was determined at the time of service provision that no payment was expected.

“COPN” means a certificate of public need.

“DCOPN” means the Division of Certificate of Public Need of the Virginia Department of Health.

“Indigent” means any person whose gross annual family income is equal to or less than 200 percent of the Federal Non-Farm Poverty Level as published for the then current year in the Code of Federal Regulations. This equates to individuals whose household income is at income levels A through E as defined in the Virginia Administrative Code at 12 VAC5-200-10.

“Indigent Care” means health care services delivered as charity care to patients who are indigent.

“RHPA” means regional health planning agency.

“VHI” means Virginia Health Information, Inc.

**General Rules**

I. Compliance with Conditions

A. Annual Reporting

1. Reports of indigent and primary care provided in compliance with COPN conditions are reported annually based on the COPN holder’s fiscal year or the calendar year.
  - a. At the COPN holder’s discretion, the reporting period will be either the fiscal year or the calendar year.
    - i. Once either fiscal or calendar year is selected as the reporting period, the COPN holder must maintain that same reporting period year to year.
  - b. The initial report for a newly completed project covers the period from the time the project became operational to the end of the selected reporting period.
  - c. In the case of projects that will become operational in phases over time, the COPN holder will report for the period beginning when each phase becomes operational.
  - d. Unless otherwise stated, reports are required annually for as long as the condition remains in effect.
2. Reports should be received by the DCOPN and the RHPA within ninety days of the end of the reporting period.
3. Reports should be certified by an accountant or by an officer of the entity authorized by the COPN to provide the subject service.
4. Reports are to be submitted on the Division of Certificate of Public Need Report of Compliance with Certificate of Public Need Indigent Care and Primary Care Conditions form.

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**B. Satisfying Conditions**

1. Conditions on COPNs will be considered met on an annual basis when:
  - a. The COPN holder reports the provision of indigent care by the COPN-conditioned service at a rate equal to or greater than that established on the COPN.
  - b. For holders of COPNs where the condition includes language allowing the facilitation and development of primary care for underserved populations:
    - i. Any shortfall in I.B.1.a. above may be made up through the facilitation and development of primary care for underserved populations.
    - ii. This may be accomplished through:
      - (1) documented new efforts or initiatives to provide primary care to indigents,
      - (2) direct payments to any organization established under a memorandum of understanding with the Virginia Department of Health (currently the Virginia Association of Free Clinics, the Virginia Healthcare Foundation, and the Virginia Primary Care Association, Inc.) as authorized to receive and distribute contributions satisfying COPN conditions.
  - c. For holders of COPNs where the condition does not include specific language allowing the facilitation and development of primary care for underserved populations:
    - i. The DCOPN will accept, as part of a plan of correction to satisfy any shortfall in I.B.1.a. above, a written commitment to make up the difference through the facilitation and development of primary care for underserved populations.
    - ii. This may be accomplished through:
      - (1) documented new efforts or initiatives to provide primary care to indigents,
      - (2) direct payments to any organization established under a memorandum of understanding with the Virginia Department of Health as authorized to receive and distribute contributions satisfying COPN conditions, including but not limited to the Virginia Association of Free Clinics, the Virginia Healthcare Foundation, and the Virginia Primary Care Association, Inc.
    - iii. Past plans of correction, whether submitted to the DCOPN or not, that were unsuccessful in bringing the COPN holder to fully satisfying the condition(s) placed on its COPN(s) will be considered ineffective.
    - iv. A plan of correction, whether submitted to the DCOPN or not, that was unsuccessful in bringing the COPN holder to fully satisfying a condition for a 12-month period ending between February 20, 2003 and February 20, 2004 will be accepted by the DCOPN when amended to include plans that:
      - (1) resulted in documented new efforts or initiatives to provide primary care to indigents,
      - (2) made new direct payments to any organization established under a memorandum of understanding with the Virginia Department of Health (currently the Virginia Association of Free Clinics, the Virginia Healthcare Foundation, and the Virginia Primary Care Association, Inc.) as authorized to receive and distribute contributions satisfying COPN conditions.
2. Term of the Condition
  - a. Unless otherwise stated, conditions remain in effect over the life of the service

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authorized by the COPN.

- i. The condition on the service remains in effect through successive generations when equipment is replaced and/or upgraded.

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**Division of Certificate of Public Need**  
**Report of Compliance**  
**Certificate of Public Need Indigent Care and Primary Care Conditions**

Reporting period: \_\_\_\_\_  
- -  
Calendar Year Fiscal Year

Name of conditioned facility: \_\_\_\_\_

Conditioned facility address: \_\_\_\_\_

Conditioned service: \_\_\_\_\_  
**Report only ONE service per form**, e.g. CT, MRI, cardiac catheterization, surgery, etc...

COPN number(s): VA-0 VA-0 VA-0 VA-0

Gross patient revenue from the conditioned service: A \$ \_\_\_\_\_

Total dollar value required by the condition: B \$ \_\_\_\_\_  
(total conditioned service gross patient revenue x conditioned percent)

Total dollar value of charity care provided this period: C \$ \_\_\_\_\_

Total number of patients served by conditioned service: \_\_\_\_\_

Total number of patients who received charity care: \_\_\_\_\_

Conditioned *service* shortfall or (excess): B-C \$ \_\_\_\_\_

Contributions and/or expenditures made to facilitate the development and operation of primary care: D \$ \_\_\_\_\_  
Per paragraph I.B.1.b. or paragraph I.B.1.c. of the Compliance with Conditions on Certificates of Public Need Guidance Document

***Provide, on a separate sheet, a detailed explanation of qualifying contributions and/or expenditures including the dollar value of each, the date each was made, and to what facility or organization it was made.***

Total value of indigent and primary care contribution: C+D \$ \_\_\_\_\_

Total shortfall or (excess) conditioned contribution: B-(C+D) \$ \_\_\_\_\_

Organization/facility to which contributions and/or expenditures were made: \_\_\_\_\_

Have the terms of the condition been met?  YES  NO

Signature: \_\_\_\_\_ Date \_\_\_\_\_  
Company Officer, Managing Partner or Manager, Auditor or Owner