

STATE COMMISSION ON THE EFFICACY OF THE CON PROGRAM

Twin Towers Building/200 Piedmont Avenue
20th Floor, West Tower, Floyd Room
Atlanta, Georgia

July 28, 2006; 1:00pm – 3:00pm

Daniel W. Rahn, MD, Chair, Presiding

MEMBERS PRESENT

Senator Don Balfour
Melvin Deese, MD (via conference call)
Robert Lipson, MD
Rhonda Medows, MD
Daniel Rahn, MD
Ronnie Rollins
Joseph “Rusty” Ross, Esq.
Representative Austin Scott

GUESTS PRESENT

Don Fears, Dekalb Regional Hospital
PM Randall, Department of Human Resources
Bobby Franklin, HD 43
Marty Rotter, Department of Human Resources
Sharon Dougherty, Department of Human Resources
Edna Jackson, Department of Human Resources
Dave Martin, Gwinnett Hospital System
Rick Ivey, Archbold Medical Center
Lori Jenkins, Phoebe Putney Memorial Hospital
Bryan Ginn, Medical College of Georgia
Travis Lindley, Resurgens Ortho
Andrea Pendleton, Resurgens Ortho
Linda Womack, Emory
Fred Watson, GHCA
Jacqueline Buckholder
Carie Summers, Department of Community Health
Jim Connolly, DPH
Stu Brown, Department of the Human Resources
David Henderson, University of Hospital/Augusta
Bonnie Wilson, Wellstar
Deb Bailey, Northeast Georgia
Ellen Williams, SRMC
Bill Lewis, Lewis Consulting
Jimmy Lewis, Hometown Health

MEMBERS ABSENT

Jeff Anderson
Donna Johnson, Esq.
Dan Maddock

STAFF PRESENT

Kim Anderson
Karesha Berkeley
Doris Berry
Fredia Bradford
Robyn Bussey
Rory Gagan
Bruce Henderson
Matt Jarrard
Robert Rozier, JD
Landry Smith
Rhathelia Stroud, JD

GUESTS PRESENT cont'd

Scott Maxwell, St. Joseph's of Atlanta
Leah Fressell Watkins, Powell Goldstein
William Custer, Georgia State University
Leo Reichert, Parker Hudson
Brian Looby, MAG
Monty Veazey, GACH
Kim Menefter, Wellstar
Jim Ledbetter, VGA – Cuiog
Elizabeth LaVach, GSASC
Lisa Norris, The Strategy House
Temple Sellers, GHA
Kathy Browning, GA Society of General Surgeons
Christi Carmichael, Emory
Rich Parson, Center for Rural Health
Holly Snow, Piedmont
Betsy Bates, Bates Associates
Glenn Landers, GHPC
Pat Ketsche, GHPC-GSU
Tom Bauer, GAHSA
C. Haglett, Haglett Group
Danae Gambill, GHA
Tarry Hodges, St. Joseph's Candler
T. Chambless, GACH
Julie Windom, GACH
Jill Fike, Senate Research
Marvin Noles, Medical Center of Georgia
Bo Moore, McKenna, Long, & Aldridge

WELCOME AND APPROVAL OF MINUTES

Dr. Daniel Rahn called the meeting to order at 1:03pm. He welcomed Commission members, staff, and guests. He asked if any changes needed to be made to the open and closed session minutes from the June 12, 2006 meeting. There were none, Dr. Rahn noted that the minutes were approved as submitted.

PRESENTATION ON MEDICAID REIMBURSEMENT

Dr. Rahn called on Carie Summers, Chief Financial Officer of the Department of Community Health and Jim Connolly, Director of Institutional Reimbursement Services to discuss the effect of capital costs on Medicaid Reimbursement. Ms. Summers introduced Mr. Connolly. Mr. Connolly explained that he would discuss cost-based payments for hospital and ambulatory surgery centers. He said that for ambulatory surgery centers, Medicaid payments are paid on a Medicare fee schedule, and that the fees are fixed, there is no cost consideration. For hospitals there are two payment mechanisms, one for inpatient services, and one for outpatient services. For inpatient services, payment rates are hospital specific, based on prior period cost data. For outpatient services, payments are cost-based. He said that State and critical access hospitals are paid at 100% of costs and all other hospitals are paid at 86% of costs.

Representative Austin Scott asked Mr. Connolly and Ms. Summers about the discrepancy in numbers reported by hospitals on state financial surveys; Medicare/Medicaid cost reports, and 990s. Mr. Connolly responded by saying that each cost report could include different services. Dr. Robert Lipson asked Mr. Connolly how comfortable he was with the financial data that hospitals report to the Department. Mr. Connolly said that he was very comfortable, as hospitals are subject to audit by Medicare intermediaries and hospitals have their own financial auditors as well. Ms. Summers and Mr. Connolly continued to field questions from Commission members regarding Medicaid reimbursement. There was general discussion and Ms. Summers and Mr. Connolly agreed to provide the Commission with any other information they may need.

PRESENTATION FROM THE DEPARTMENT OF HUMAN RESOURCES

Martin Rotter, the Director of the Office of Regulatory of the Department of Human Resources came before the Commission to discuss the licensure function of DHR. Mr. Rotter discussed the services that his office regulates and the process by which they go about licensing those services. He also discussed DHR's complaint investigation process and quality initiatives the Department employs to reduce facility violations.

Dr. Melvin Deese asked if DHR defers to JCAHO for quality monitoring of hospitals, unless there is complaint against a hospital. Mr. Rotter responded that that is correct, and that DHR gets involved with hospitals if there are self-reported incidents that require an investigation. He also explained that DHR also gets involved with hospitals if they receive a request from CMS to do a "look-behind" survey of a specific facility. Mr. Rotter fielded additional questions from members of the Commission. Dr. Stuart Brown,

the Director of the Division of Public Health discussed DHR's data collection efforts. There was general discussion regarding the use of the data collected. Senator Don Balfour suggested that the implementation of compounding fines for facilities that are not compliant with DHR and DCH data requests. No actions were taken at that time.

SUBCOMMITTEE REPORTS

Dr. Rahn asked for an update from each subcommittee. The Legal and Regulatory subcommittee reported discussions with the Department regarding its data collection and enforcement authority. The other subcommittees (Acute Care Services, Special and Other Services, and Long Term Care Services) reported discussions with the data consultants, and that each are continuing to work with Staff and with the data consultants.

REVIEW OF DATA CONSULTANTS' WORK PLAN

Dr. William Custer of the Georgia Health Policy Center discussed the framework of the data consultants' work plan. He explained their hypotheses, research methods, and methodologies for each category of services being studied. He also discussed their project work schedule, mentioning that he hoped to deliver a final report to the Commission by September 30, 2006. There was general discussion about the consultants' proposed plan. No actions were taken at that time.

Dr. Rahn mentioned a letter he received from Dr. Lipson regarding the kinds of data he would like to see collected for the Commission. Dr. Rahn said that he would provide copies of this letter to the Commission. *A copy of the letter is attached in the Appendix.*

OTHER BUSINESS AND ADJOURNMENT

Dr. Rahn mentioned the future Commission meeting dates, August 17, 2006 and September 18, 2006. He said that previously, the Commission discussed examining the impact of CON on educational facilities, and that he would like to invite Ben Robinson of the Georgia Board of Physician Workforce to speak to the Commission regarding this issue. Dr. Rahn said he received a request from Emory to speak to the Commission, also. He asked if there were any objections to having Mr. Robinson or representatives from Emory speak, there were none. He said that he will extend the invitation. Finding no new business to discuss, Dr. Rahn adjourned the meeting at 3:13pm.

Minutes taken on behalf of Chair by Robyn Bussey.

Respectfully Submitted,

Daniel W. Rahn, MD
Chairman

To receive a digital recording of this meeting, please submit a data request to the Division of Health Planning.

APPENDIX



805 Sandy Plains Road
Marietta, GA 30066
770-792-7600

July 13, 2006

Dan Rahn, M.D.
President
Medical College of Georgia
1120 15th Street
Augusta, Georgia 30912

Dear Dan,

I noted that Dan Maddock requested that the data consultant obtain information regarding Texas, and an issue was raised that it would be inappropriate for Commission members to make specific data requests for the consultant (I am assuming that a contract was signed with the consultant; however, that may be incorrect).

It was my understanding when the Commission discussed and agreed upon the process of retaining a data consultant, that each of the committees would decide what data was needed and would ask for specific information. As I understood the process, the data consultants would not be asked for or given the opportunity to opine on the data. That would be the job of the Commission. In fact I believe that it was a condition of the RFP. I also reviewed the minutes of our April 27th meeting, which confirmed my recollection. Those minutes state: "subcommittees should determine comparison states as opposed to consultant."

The full Commission has already agreed that members of each subcommittee can and should request specific data and information, including comparison states, and I would fully support their right to obtain that information. I know that the subcommittee that I co-chair with Senator Balfour will be asking the consultant to obtain specific data and information. It may be that the consultant has the information that we need directly from research they already have done, or the consultant may obtain it from literature studies, as they have done in previous publications. As you may recall, during the interview process Senator Balfour questioned Dr. Custer about his impartiality on CON due to Dr. Custer's previously published position. Dr. Custer stated that his previous publications were basically a compilation of then-current literature about CON. In fact, my requests for the consultant will, in all likelihood, require a literature search. I am not aware of any original research done by any one group that could possibly cover in a comprehensive fashion the fundamental issues of cost, access, quality, and self-referral and cross subsidization.

They have typically dealt with competition and short term pricing advantages. I think the questions raised in light of today's fundamental problems concerning the financial crises in healthcare, the manpower shortages, the lack of access to services almost becoming a nightly news report, and the increasing number of uninsured raise basic questions for long debate. These have not been the focus in the past.

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I am perfectly willing to let the consulting firm respond to any queries from any Commission member, and to then let the Commission do its job of deliberating, based upon the facts presented and drawing its own conclusions. I have always understood that the Commission's work would be driven by the Commission members and not by the consultant. Again, that is what we as a Commission agreed to in April, as reflected in the minutes.

With that in mind I would like to ask for information regarding the following issues:

ISSUES/DATA REQUESTS

- The impact of CON on health care costs in Georgia;
 - The Commission should review the data in hospitals in Georgia and hospitals in states without CON regulations. They should also look carefully at the most recent available data on healthcare cost per person in the state of Georgia vs other states in the US. Before significant changes are made to health care regulation that may have significant effects on the cost of health care.*

Potential data sources:

*Dr. Ken Thorpe of Emory University has published data recently, and is a potential source.

* Dr. William Cleverly, a professor emeritus at Ohio State University, has conducted research in this area and has published extensively. Dr. Cleverly has conducted extensive research comparing cost/charge differences between hospitals in Georgia and hospitals in states without CON regulations (Arizona and Texas). In addition, Dr. Cleverly is an acknowledged expert on hospital finance, and can testify regarding the issue of cross-subsidization, the need for hospitals to maintain and grow financial reserves, and other issues regarding the impact of CON on continued hospital financial viability. He has no position on CON.

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*In addition the "Big Three" automobile manufacturers (Ford, General Motors, and DaimlerChrysler) have conducted an extensive analysis of their health care costs at plants located around the country, comparing their costs per employee in states with CON laws in place against their costs in states without CON laws.

- Financial impact of physician self-referral and overutilization on health care costs*;

Potential data sources.

*Dr. Jean Mitchell of Georgetown is an economist and professor at the Georgetown Public Policy Institute, and she has published extensively in the areas of health care economics and policy, including the effects of physician-self referral. Dr. Mitchell's conducted the study, "Effects of Physician-Owned Limited Service Hospitals," and updated that study with additional data in October 2005.

*Dr. Laurence Baker is an assistant professor in the Department of Health Research and Policy at Stanford University School of Medicine, and is a principal author of "The Report on the Relationship Between Technology Availability and Health Care Spending" (Health Affairs, November, 2003), and numerous peer reviewed articles on health care economics. Dr. Baker's research regarding the cost effect of increasing the availability of technology (including diagnostic imaging and cardiac care) was conducted for the Blue Cross and Blue Shield Association and later published. Given the increase in the supply of technology that would occur if CON is eliminated, his work is directly relevant here. Dr. Baker's exhaustive research in this area, and his study of self-referral research, will be of significant value to the Commission, and should be considered by the firm with the contract for the study in any findings reported on to the Commission. Which goes directly to the impact of CON on ensuring financial access to care (indigent care; Medicaid; uninsured);

- The need for cross-subsidization across payer lines and service lines;

- Growing impact of the loss of the few remaining profitable hospital services, such as outpatient surgery and imaging procedures to freestanding surgical and diagnostic imaging facilities
- Impact of a large and growing number of uninsured patients on the amount of uncompensated services provided by hospitals
- Impact of CON on safety net providers;
- Impact of CON on rural hospitals;
- Impact of CON on medical education;
- Impact of CON on trauma and emergency room services;
- Impact of large and growing amounts of indigent and charity care provided by hospitals;
- Impact of large and growing levels of uncompensated Medicaid services provided by hospitals, and also increasing pressures on the state's Medicaid budget, which are likely to exacerbate the problem in the future;
- Impact of cross-subsidization on hospital's ability to provide costly, unprofitable essential health care services such as emergency departments, ICU's, NICU's, and trauma care;
- Need for adequate operating margins and cash reserves, not only to support operations and satisfy outstanding debt obligations, but also to fund substantial annual capital budgets and to replace equipment and the physical plant and to expand hospital facilities and clinical services to meet the needs of growth in the community;
- Impact of expected reductions in federal support for DSH providers;
- Unreimbursed costs of community outreach services provided by hospitals;
- Increasing labor costs due to nurse shortage and to increasing difficulties in getting physician specialists to provide emergency department call coverage;
- Unreimbursed costs of medical training programs in academic medical centers and community teaching hospitals;

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- Need for cross-subsidization due to the above unreimbursed costs;
- Economic efficiencies gained from providing appropriate volumes of specialty services in a limited number of facilities;
- Cost/charge comparisons for relevant services between states with CON regulation and those without;
- Data regarding growth of physician-owned, single-specialty surgery centers, including costs, utilization, self-referral and impact on hospitals;
- Data regarding growth of diagnostic imaging centers, including costs, utilization, financial incentives to physicians, and impact on hospitals;
- Data regarding impact of physician-owned imaging centers/equipment, including costs, utilization, financial incentives to physicians and impact on hospitals;
- Data relative to operating margins for freestanding diagnostic imaging centers, specifically those centers operating under a Letter of Non-reviewability (LNR);
- Data regarding utilization rates and referral rates for physician-owned diagnostic equipment and imaging centers;
- Payer mix for freestanding imaging centers operating under a LNR;
- Operating hours for freestanding imaging centers.
- Data from the Annual Hospital Survey regarding uncompensated care, the number of hospitals in Georgia with negative patient care margins, the number of hospitals with negative total margins (including both operating and non-operating revenues); the number of hospitals that would have negative margins without supplemental payments (ICTF and UPL dollars); and data regarding the statewide average margin for all hospitals;
- Data regarding the current workforce shortage in Georgia's hospitals; and data regarding staffing needs/requirements of ASCs imaging centers, etc.;

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- Comparison of Georgia's LNR process/exemption for single-specialty, physician-owned ASC with regulation of ASC's in other states. (That is, do other states have a similar exemption and/or LNR process?);
- The experience of states that have eliminated or modified their CON programs;

Sincerely,



Robert A. Lipson, M.D.
President and CEO

cc: Senator Don Balfour
Rhonda M. Medows, MD, FAAFP
Jeff Anderson