

STATE COMMISSION ON THE EFFICACY OF THE CON PROGRAM

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

April 27, 2006; 9:30 am

Daniel W. Rahn, MD, Chair, Presiding

MEMBERS PRESENT

Jeff Anderson
Senator Don Balfour
Melvin Deese, MD
Donna Johnson, Esq.
Robert Lipson, MD
Dan Maddock
Rhonda Medows, MD
Ronnie Rollins
Joseph "Rusty" Ross, Esq.
Representative Austin Scott

GUESTS PRESENT

Susan Thompson, WellStar Health System
Travis Hovey, Resurgens Ortho
Randy Edmundson, USPI
Lisa R. Norris, The Strategy House
Cynthia George, Phoebe Putney Health System
Temple Sellers, Georgia Hospital Association
Leo Reichert, Parker Hudson Rainer & Dobbs
Marvin Noles, Medical Center of Central Georgia
Victor Moldovan, JD, Phears & Moldovan
Monty Veazey, Georgia Alliance of Community Hospitals
Deb Bailey, Northeast Georgia Health System
Bo Moore, McKenna Long
Brian Looby, Medical Association of Georgia
Donald Palmisano, JD, Medical Association of Georgia
Rick Ivey, Archbold Health System
Tom Bauer, Georgia Assoc. of Homes & Services for Aging
Dodie Putman, HCA
Christi Carmichael, Emory Health System
Tommy Chambless, JD, Georgia Alliance of Community Hospitals
Kathy Browning, Georgia Society of General Surgery
Linda Womack, Emory Health System

MEMBERS ABSENT

STAFF PRESENT

Sidney Barrett, JD
Doris Berry
Rory Gagan
Richard Greene, JD
Bruce Henderson
Matthew Jarrard
Robert Rozier, JD
Virginia Seery, PhD
Landry Smith
Rhathelia Stroud, JD
Stephanie Taylor
Carlos Williams, II

Jeffrey Baxter, JD, Nelson Mullins
Jerry Uory, Phoebe Putney Health System
Mark Mullin, Gwinnett Health System
Jimmy Lewis, HomeTown Health
Bryan Fiveash, Fiveash-Stanley Inc.

I. WELCOME & APPROVAL OF MINUTES OF FEBRUARY 27, 2006 MEETING

The meeting commenced at 9:35 am. A motion to accept the minutes of February 27, 2006 was unanimously accepted by the Commission.

Dr. Medows introduced several staff members who were recently promoted within the Department including the following:

- Charemon Grant, General Counsel
- Rhathelia Stroud, JD, Deputy General Counsel
- Robert Rozier, JD, Executive Director, Division of Health Planning.

Dr. Rahn called upon Jeff Anderson to provide introductory comments. Mr. Anderson extended congratulations to Department staff, on behalf of Commission members and commended Dr. Medows and DCH staff for their support of the Commission's work. He specifically acknowledged the presentation that is planned for today's meeting.

II. SUMMATION OF COMMISSION'S WORK TO DATE

Dr. Rahn said that at the last meeting, it was agreed that the following would be accomplished:

- Department staff would frame the approach to consultative engagement that would be necessary to answer the remaining questions including,
 - The financial impact of continuing/discontinuing the CON program;
 - The impact of continuing/discontinuing or modifying CON on quality, availability and cost of healthcare, specifically to Medicaid and indigent patients;
 - The experience and results of other states (we have a listing of what states have done; but no plan on how to evaluate their experiences based upon what they have done);
 - The impact of continuing/discontinuing or modifying CON on trauma services, critical access hospitals, and public hospitals
- Subcommittee selections

Dr. Rahn said that the Department has developed a draft proposed RFP, to engage consultative support and a work plan to guide the Commission's deliberation. Both of these documents were emailed to members in advance of the meeting. He said that he hoped to accomplish the following at this meeting:

- Approve Request For Proposal (RFP);
- Determine subcommittee structure;
- Determine the need to secure additional experts to make presentations before the Commission

III. OVERVIEW OF COMMISSION'S WORK PLAN & REVIEW OF REQUEST FOR PROPOSAL (RFP) & CONSULTANT ENGAGEMENT

Dr. Rahn called on Robert Rozier to review the work plan and Request For Proposal. (See Appendix A)

IV. CONSENSUS OF COMMISSION'S WORK PLAN

Robert Rozier reviewed the mission, statutory duties, proposed subcommittee structure and work plan process for the Commission's work including the following:

PHASE I – PLAN AND DEFINE – (MARCH 2006 – JULY 2006)

Outcome of this Phase: Engagement of economist/data consultant to provide objective data and analysis and invitation of two organizations/individuals (one in favor of CON; one opposed to CON) who could present to the Commission.

Additional recommendations resulting from Commission Discussion:

- Collect regional data within the State of Georgia
- Subcommittees should determine comparison states as opposed to consultant

PHASE II – DATA COLLECTION & ANALYSIS (JULY 2006 - SEPTEMBER 2006)

Outcome of this Phase – Consultant would have developed detailed data analysis and comparison of data by service for subcommittee examination.

Summation of Discussion:

- Dr. Meadows recommended the addition of quality measures to this phase.

PHASE III- STRATEGY & POLICY DEVELOPMENT (SEPTEMBER 2006 -OCTOBER 2006)

Outcome of this Phase-Subcommittees will develop proposed options by service and will make draft recommendations for legislation taking into account the data collected and analyzed in phase II.

Summation of Discussion:

- Consultants will play no role in this phase but may attend subcommittee meetings and respond to data integrity issues.
- Consultants should provide data to subcommittees by end of September.
- Commission recommendations should be sent to the leadership of both the House of Representatives and the State Senate (including the Chairs of Health Committees of both House & Senate).
- Commission may want to consider producing a majority and a minority report.

PHASE IV- RECOMMENDATION & REPORT (DECEMBER 2006)

Outcome of this Phase – Final recommendations regarding proposed strategies and policy options developed in Phase III. The Commission will adopt these recommendations and a final report will be developed.

Planning concepts during this phase:

- November 1st – Completion of data gathering process
- December 1st – Submission of Commission's Interim Report
- December 15th – Completion of Final Report

Commission members agreed to the following concepts:

- Consultants should be able to subcontract with other experts
- All subcommittee meetings would be open to the public;

Commission members directed DCH staff to abstract key parts of the RFP and to make recommendation of two to four consultants who would be invited to make oral presentations before the Commission at a future meeting. Members agreed that Conflict of Interest disclosure should be included in the RFP process and that consultants should be required to provide a complete list of all Georgia clients for the most recent 24 months.

Following significant discussion, Jeff Anderson made a motion, seconded by Austin Scott to accept the draft proposed work plan. Commission members voted unanimously in support of this motion.

V. SUBCOMMITTEE FORMAT

Commission members agreed to the following structure and process:

- Dr. Rahn, Jeff Anderson and Commissioner Medows would be ex-officio members of all subcommittees.
- Commission members were asked to select the top two choices for subcommittee membership among the following: Acute Care Services, Special & Other Services, Long Term Care Services, Legal & Regulatory Services.
- Two Commission members would be designated as co-chairs of each of the four subcommittees, (one hospital and one non-hospital representative);
- All Commission members are invited to participate in all committee deliberations; conference call capability would be available for all subcommittee meetings.
- DCH staff would provide support for each subcommittee

VI. DISCUSSION REGARDING THE NEED TO INVITE EXPERTS TO PROVIDE TESTIMONY BEFORE COMMISSION

Dr. Rahn called upon Commission members to provide guidance regarding the need for additional expert testimony. While there was discussion about the merits of such a presentation from experts with opposing views on CON, the Commission agreed not to proceed with this invitation at this time.

VII. REQUESTS TO MAKE PRESENTATIONS BEFORE THE COMMISSION

Dr. Rahn indicated that some organizations have made requests to speak before the Commission. He noted that in some instances the issues are very narrow (i.e. cardiac catheterization) while others are larger issues (teaching hospitals, rural hospitals). Committee members said that many of these issues could be addressed during subcommittee deliberations.

Dr. Lipson recommended that some consideration should be given to teaching institutions, given critical nursing and physician shortage that is plaguing the state and the nation. Dr. Rahn agreed to take the lead on this initiative.

VIII. REVIEW OF COMMISSION TIMELINE

Commission members reviewed and reached consensus around the following timeline to formally engage a consultant and to finalize their work plan:

- RFP to be posted on the DCH website on May 1, 2006
- Proposals due June 1, 2006
- DCH staff will review RFP and select top three (3) proposals
- June 12 – Commission will select Consultant
- Subcommittee meetings (May, June, July, August, September)
- Full Commission meetings (July, August, September, October)
 - Subcommittee meeting updates to be provided at each meeting
- October 30 – receive recommendations from subcommittees
- November 1-completion of data gathering process
- November 13 – finalize draft recommendations
- December 1 – Interim Report
- December 15 – Finalize Final Report

IX. SUBCOMMITTEE STRUCTURE

Dr. Rahn called upon Dr. Medows to announce the subcommittee co-chair selection.

- ACUTE CARE SUBCOMMITTEE – Dan Maddock & Representative Austin Scott
DCH Staff Support– Stephanie Taylor and Rhathelia Stroud, JD
- LONG TERM CARE SUBCOMMITTEE – Melvin Deese, MD & Ronnie Rollins
DCH Staff Support – Richard Greene, JD
- SPECIAL & OTHER SERVICES – Rusty Ross, JD & Donna Johnson, JD
DCH Staff Support- Charemon Grant, JD and Robert Rozier, JD
- LEGAL & REGULATORY SERVICES – Robert Lipson, MD & Senator Don Balfour
DCH Staff Support- Robert Rozier, JD, Charemon Grant, JD, and Rhathelia Stroud, JD

X. OTHER BUSINESS & ADJOURNMENT

There being no further business, the meeting adjourned at 11:30 am. Minutes taken on behalf of chair by Stephanie Taylor.

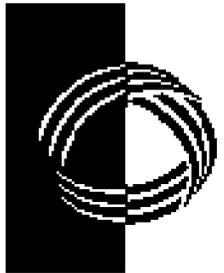
Respectfully Submitted,

Daniel W. Rahn, MD, Chair

STATE COMMISSION ON THE EFFICACY OF THE CON PROGRAM
200 Piedmont Avenue/Floyd Room
20th Floor, West Tower, Atlanta, Georgia

April 27, 2006

APPENDIX A



GEORGIA DEPARTMENT OF
COMMUNITY HEALTH



Commission on the Efficacy
of the CON Program

Commission on the Efficacy of the CON Program: Organization & Process

April 27, 2006



- Mission of Commission
- Statutory Duties of Commission
- Proposed Sub-Committee Structure
- Work Plan and Process
 - Phases
 - Outcomes & Results
 - Consultants
- Next Steps



Mission of CON

A work plan for the Commission cannot be developed without first understanding the statutory mission of the CON program . . .

- Does the CON Program as currently administered meet the statutory mission to:
 - Avoid unnecessary duplication of services
 - Develop services in an orderly and economical manner
 - Ensure that adequate and cost effective health care services are available to meet the needs of all Georgians

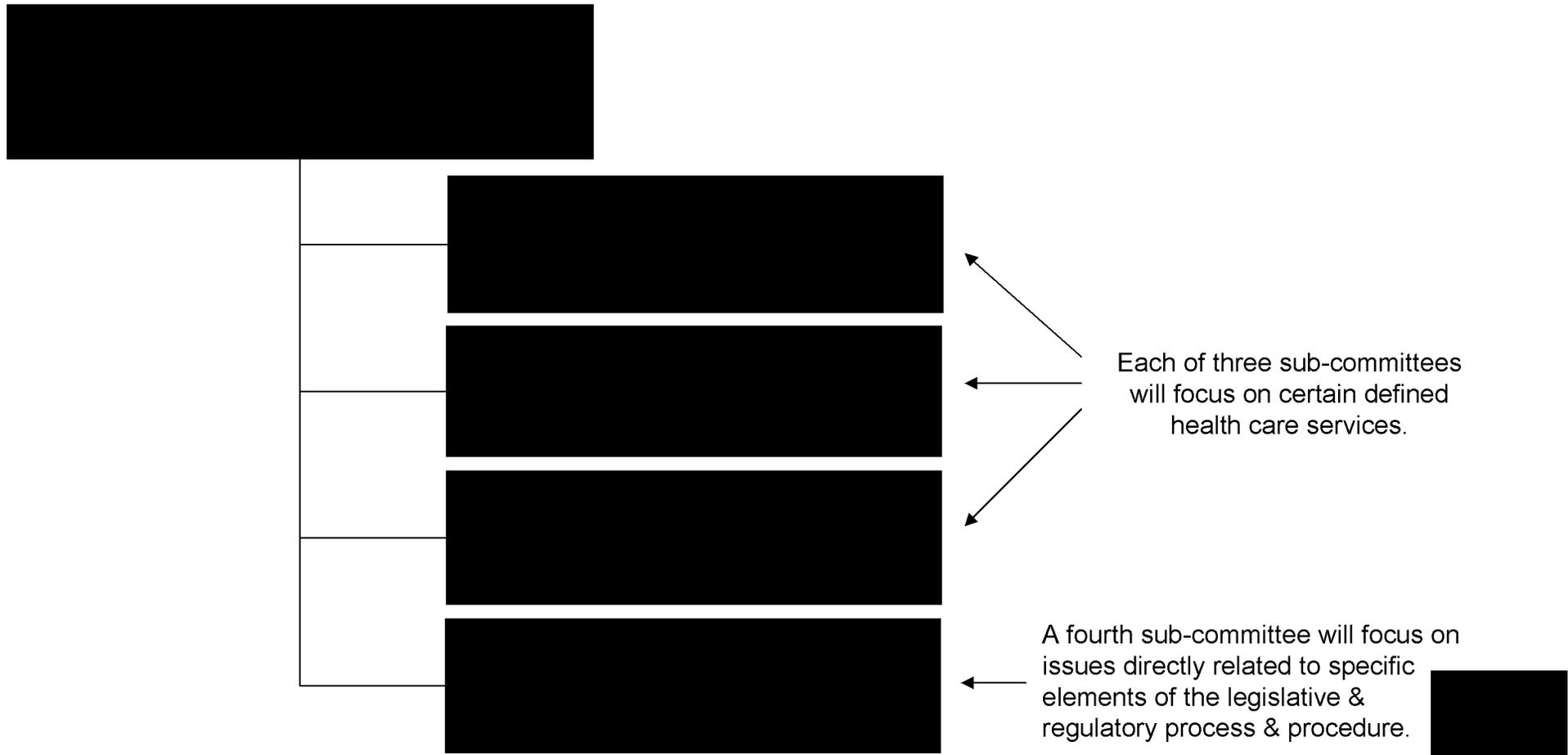


. . . as well as the Commission's statutory duties.

- Study & evaluate the effectiveness & efficiency of the CON Program
- Undertake a comprehensive review of the CON Program to include:
 - Effectiveness in accomplishing original policy objectives
 - Program's costs
 - Benefits of continued/discontinued
 - Financial impact if continued/discontinued
 - Impact on quality, availability, & cost of health care if continued/discontinued
 - Impact on providing patient care in trauma hospitals, critical access hospitals, & public hospitals if continued/discontinued
 - Impact on providing service to Medicaid & indigent patients if continued/discontinued
- Evaluate and consider the experiences of other states which utilize & which have abolished CON
- Identify findings & conclusions
- Make recommendations for proposed legislation

Proposed Sub-Committee Structure

The statutory duties and mission of Commission will be addressed by four sub-committees.





Sub-Committee Structure: Advantages of Proposed Structure

The proposed sub-committee structure has several distinct advantages.

- Each sub-committee has a defined area of focus, i.e. clearly delineated services
 - with a focus on objective data collection and evaluation, which more readily allow for consensus on each point
- Since the Commission has reached a consensus that the CON Program should not be abolished entirely, the delineation by service allows each sub-committee to focus on how CON should be modified by service
 - provides for a review of every component of the CON Program as measured against program objectives
 - provides multiple opportunities for update, change, correction, and overall modification



Sub-Committee Structure: Advantages of Proposed Structure

The proposed sub-committee structure has several distinct advantages.

- The structure is a natural progression of the fashion in which the Commission has conducted its proceedings to date
- The proposed structure facilitates a review of some of the perceived shortcomings of the statute and regulations and program internal inconsistencies:
 - Statutory confusion
 - Content limitations (e.g. services that are not covered)
 - Program redundancy (e.g. appeals process)
 - Thwarts competition
 - Inconsistent treatment
 - No real quality review standards
 - Overly bureaucratic and burdensome

Sub-Committee Structure

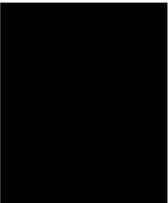
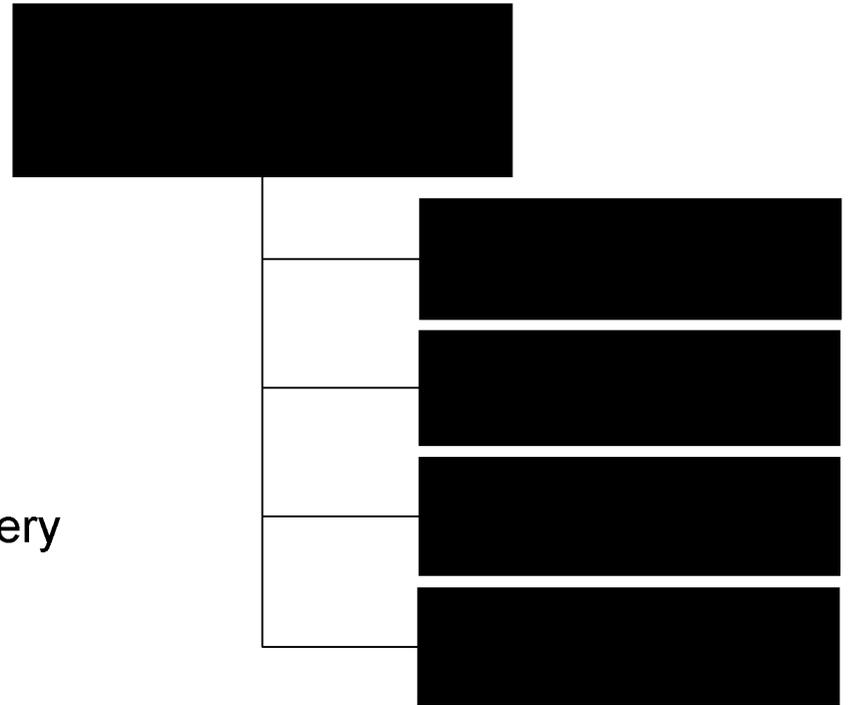
One sub-committee will focus entirely on issues relating to acute care services.

Currently Regulated Services

- Short Stay Hospital Beds
- Adult Cardiac Catheterization
- Open Heart Surgery
- Pediatric Catheterization & Open Heart Surgery
- Perinatal Services
- Freestanding Birthing Centers
- Psychiatric & Substance Abuse

Currently Non-Regulated Services

- Organ Transplant
- Burn Units



Sub-Committee Structure

One sub-committee will focus entirely on issues relating to long term care services.



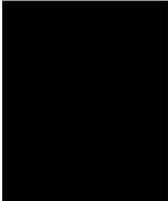
Currently Regulated Services

- Skilled Nursing
- Home Health
- Personal Care Home
- CCRCs
- Traumatic Brain Injury Facilities
- Comprehensive Inpatient Physical Rehabilitation
- Long Term Care Hospitals



Currently Non-Regulated Services

- Hospice



Sub-Committee Structure

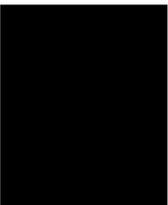
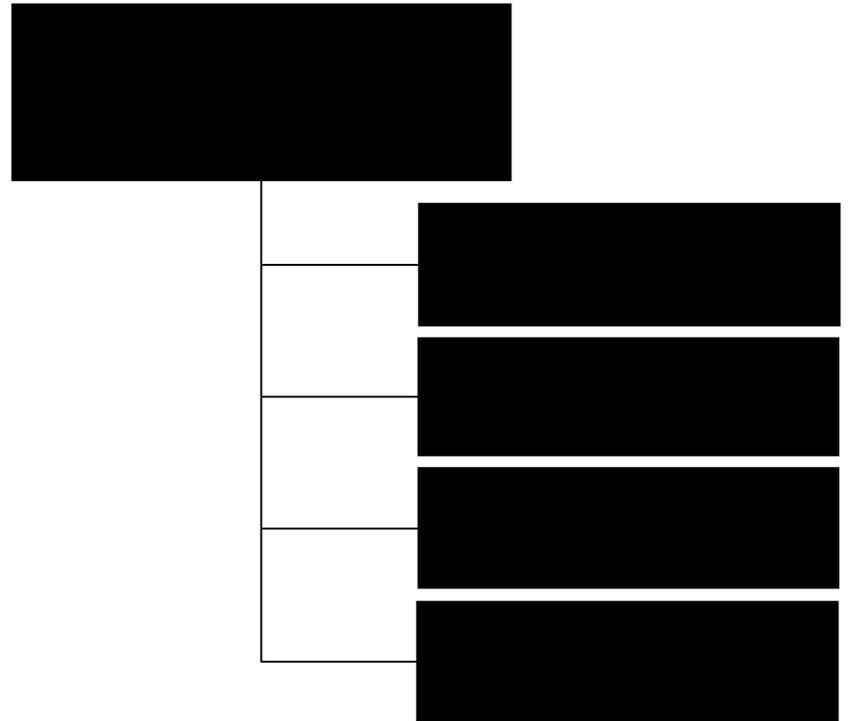
One sub-committee will focus entirely on issues relating to special and other services.

Currently Regulated Services

- Ambulatory Surgery Centers (CON & LNR)
- Positron Emission Tomography
- Radiation Therapy Services
- Magnetic Resonance Imaging
- Computed Tomography

Currently Non-Regulated Services

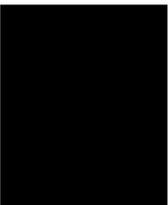
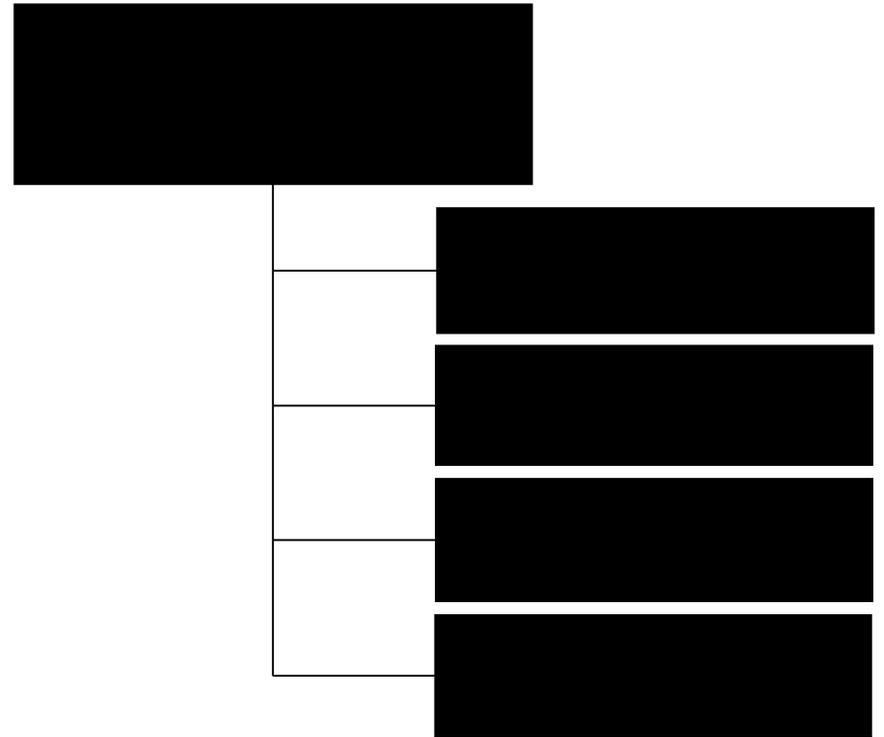
- Renal Dialysis
- Refractive Eye Centers



Sub-Committee Structure

One sub-committee will focus entirely on issues relating to legal and regulatory issues.

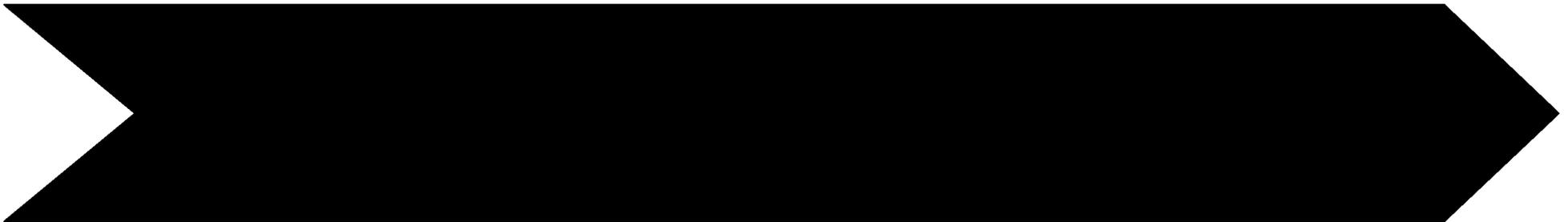
- Appeals Process
- Advice and Rule Making Process
- Definitions
- Sanctions & Enforcement
- Statutory Exemptions (other than ASC)
- Statutory Review Considerations
- Process and Procedure
- Thresholds
- Indigent & Charity Care Provisions





Work Plan & Process

The work of the Commission and its sub-committees will be directed by a clearly defined work process in four phases.



- Assess Data Needs & Requirements
- Identify Comparison Points
- Define Scope of Consultant Engagement
- Develop RFP
- Select Consultant(s)
- Develop Work Plan with Consultant(s)

Mar 2006 – July 2006

- Collect external data
- Review internal data
- Analyze in detail all internal and external data by service where applicable

July 2006 – Sept 2006

- Development of options and strategies for modification of legislation, regulation, and policy by service where applicable

Sept 2006 – Oct 2006

- Adopt interim recommendations
- Draft proposed legislation
- Recommend detailed modifications to regulations
- Issue Final Report

Nov 2006 - Dec 2006

Phase I: Plan & Define

(Mar 2006 – July 2006)

In the first phase of the work plan, the project will be planned and defined.

- ① Assess internal Department data capabilities by service
- ② Identify appropriate comparison states
- ③ Identify external data requirements
- ④ Define the scope of consulting engagement
- ⑤ Present scope and needs to each sub-committee  Provide input and approve the scope and consultant needs
- ⑥ Develop RFP incorporating sub-committee suggestions
- ⑦ Present RFP to Commission  Provide input and approve RFP
- ⑧ Publish RFP
- ⑨ Present RFP responses to Commission  Select Consultant(s)
- ⑩ Review and Plan with Consultant(s)



Phase I: Plan & Define

(Mar 2006 – July 2006)

At the conclusion of Phase I, the Sub-Committees and the Commission will have developed and finalized the following work products.

- List of data capabilities, requirements, and needs, by service where appropriate
- List of Department-identified legislative and regulatory issues
- Consultant engagement RFP
- Detailed work plan for each sub-committee, by service where appropriate



Phase I: Plan & Define

(Mar 2006 – July 2006)

The ultimate outcome of Phase I is the engagement of economist/data consultant(s).

- Economist/data consultant(s) would be obtained to provide objective data and analysis of data as opposed to providing conclusions and recommendations
 - Defining the scope of the consultant engagement as objective, rather than subjective should enable greater consensus among the Commission in the selection of a consultant
 - Based on information obtained from other states that conducted similar commissions, it is estimated that economist/data consultant(s) would range from \$80,000 to \$160,000
- In addition to the economist/data consultant(s), two organizations/individuals (one in favor of CON and one opposed) would be selected to make a presentation to the Commission as a whole regarding their conclusions
 - It is estimated that such presentations could be obtained at approximately \$3000 each, and therefore, as an exception to the State procurement process



Phase I: Plan & Define

(Mar 2006 – July 2006)

The Commission has developed a list of potential consulting firms and organizations. Some may be more appropriate for assisting in the data collection and objective analysis and others more appropriate for general presentation of their existing knowledge and experience with CON.

Presentation

1. Alan Baughcum, PhD
Economic Analysis, USDOJ, Washington, DC
2. Pamela Barclay
Director, Maryland Health Care Commission, Baltimore, MD
3. William Cleverly, PhD
Ohio State University, OH
4. Jeffery Gregg
Chief, Bureau of Health Care Administration, Tallahassee, FL
5. Frank A. Sloan, PhD
Sanford Institute of Public Policy, Duke University, NC
6. Bruce D. Spector, JD
Vermont
7. Kenneth E. Thorpe, PhD
Emory University, Atlanta, GA

Data Collection & Analysis

1. Christopher J. Conover, PhD & Frank A. Sloan, PhD
Duke University
2. Vivian Ho, PhD
Department of Economics, Rice University
3. Karen Minyard, PhD
Health Policy Center, Georgia State University
4. Michael A. Morrissey, PhD
UAB Center for Health Policy, Birmingham, AL
5. Gregory Vistnes
Charles River Associates, Washington, DC
6. Lawrence Wu
NERA, Economic Consulting, San Francisco, CA
7. Robert J. Cimasi
Health Capital Consultants, St. Louis, MO



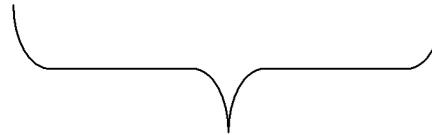
Phase II: Data Collection & Analysis (July 2006-Sept 2006)

In the second phase of the work plan, the engaged consultant(s) will collect and analyze the data identified in Phase I.

① Collect and assimilate internal Georgia data



Collect and assimilate external data ensuring that the data is comparable to the internal data obtained by Department staff, so that appropriate comparisons can be made between Georgia and the other comparison states



② Analyze data by service, as applicable, creating comparisons between the experiences of Georgia and other comparison states



Phase II: Data Collection & Analysis

(July 2006-Sept 2006)

At the conclusion of Phase II, the sub-committees and the consultant(s) will have developed and finalized the following work products.

- Overview and detailed data analysis and comparison by service, as appropriate, including, for example:
 - Utilization trends
 - Economic trends
 - Payment & reimbursement data
 - Supply and distribution data
 - Quality Indicators
 - Provider workforce trends
 - Provider financial status & trends



Phase III: Strategy & Policy Development (Sept 2006-Nov 2006)

In the third phase of the work plan, sub-committees will develop strategies and policy options taking into account the data collected and analyzed in Phase II. Each sub-committee will make final recommendations on the policy options.

❶ Develop policy options and strategic recommendations

❷ Present relevant data analysis and policy options/strategic recommendations to each sub-committee

❸ Compose draft report by service and by sub-committee and include all proposed options and policies, identifying the proposed recommendation of the appropriate sub-committee



Recommend additional options not considered and make final recommendations of options which should be supported by the full commission



At the conclusion of Phase III, each sub-committee will have developed and finalized the following work products.

- Proposed options, including regulatory and legislative modifications as appropriate, by service
- Recommendations for legislative and regulatory action
- Draft Report by service



Phase IV: Recommend & Report

(Interim-Dec 2006; Final June 2007)

In the final phase of the work plan, each sub-committee will recommend final recommendations regarding the proposed strategies and policy options developed in Phase III, the Commission will adopt these recommendation, and with the assistance of Department staff, a final report will be developed.

- ① Present sub-committee recommendations of strategies and policy options, as well as draft proposed legislation to the Commission  Adopt or modify sub-committee recommendations and/or propose additional recommendations
- ② Develop interim/final report, incorporating all recommendations as well as draft legislation
- ③ Present interim/final report to Commission  Review and approve interim/final report
- ④ Create work plan for modifying regulations pursuant to final recommendations



At the conclusion of Phase III, the ultimate outcome of the project will be a final report including draft legislative changes and detailed recommendations regarding changes to Departmental regulations.

Contents of Final Report

- By Service
 - Overview and Definition
 - Supply & Distribution
 - Utilization Trends
 - Reimbursement and Costs
 - Quality Indicators
 - Government Oversight
 - Current Regulations
 - Comparison to Other States
 - Strategies and Policy Options
 - Recommendations
- Legal & Regulatory Issues (by Issue)
 - Overview of Issue
 - Current Statutory Requirements
 - Comparison to Other States
 - Strategies and Policy Options
 - Recommendations
 - Recommendations for Legislative and Regulatory Modification



Next Steps

- Assign members to sub-committees
- Release RFP for response by June 1
- Selection of Consultant by June 19
- Consultant begins work by July 1
- Select 2 CON Experience Presenters (1 Pro; 1 Con) for the next Commission meeting

Questions

