



Deciphering Certificate of Public Need

IN VIRGINIA, A CERTIFICATE OF PUBLIC NEED IS REQUIRED BEFORE PROVIDERS MAY PURCHASE CERTAIN EQUIPMENT, INTRODUCE OR EXPAND CERTAIN SERVICE LINES OR BUILD NEW AMBULATORY SURGERY CENTERS OR HOSPITALS. NAVIGATING THIS UNIQUE PROCESS CAN BE DIFFICULT, SO HELP FROM EXPERTS WHO ARE KNOWLEDGEABLE IN THE INTRICATE APPLICATION PROCEDURES CAN BE BENEFICIAL.

CERTIFICATES OF PUBLIC Need were established to eliminate duplicity of health care services. This process was developed not only to allow for enhanced coordination of the planning of new services or facilities, but also to help control unnecessary health care-related spending.

“In theory, the purpose of the Certificate of Public Need system is to control health care costs and to assure the availability — but not oversupply — of hospitals, health care facilities and major equipment,” says Stephen Rosenthal, partner at Troutman Sanders, an international law firm with four offices in Virginia, including Richmond. “To obtain a Certificate of Public Need, you have to provide adequate justification for your request, which can be difficult.”

After filing a required Letter of Intent, the next mandatory step to obtain a Certificate of Public Need is completing a detailed application analyzing several key areas, including the reason you are applying for the particular service or equipment, the economic feasibility of the project, the impact of the project on other providers of similar services, and justification of public need. Several other factors, including the project’s role in helping the state achieve its long-term health care plan and the accessibility of the technology/facility to area residents, are also considered.

“It takes a lot of work on the part of the physician or hospital to determine whether

applying for a Certificate of Public Need makes sense for whatever project they are hoping to accomplish,” says Rosenthal. “Serious thought must go into this decision because it can be difficult to obtain a Certificate of Public Need.”

Partnering for Success

Partnering with a law firm can help make the process easier for providers interested in expanding their technology or service lines. The Certificate of Public Need process is a multistep and complex one, involving: the determination of the appropriate Batch Cycle in which to file; meeting filing deadlines; the filing of a sufficient Letter of Intent; preparing the detailed application arguing the need for the project; responding to Completeness Questions that address the sufficiency of the application; marshaling public support for the project; preparing for and presenting at a public hearing; and, oftentimes, preparing the case for an Informal Fact Finding Conference before an adjudication officer. A law firm with Certificate of Public Need expertise can assess the market and regulatory environment to help determine the probable success of the project and guide the client through the maze of regulations and mandatory requirements that the process entails.

“There are not many firms that work in this area,” says Rosenthal. “To be successful, you need the advice of people who have dealt with the intricate and unique



A CERTIFICATE OF Public Need is required when introducing or adding additional services or technologies in many areas of care including, but not limited to:

- + cardiac catheterization
- + CT scanning, MRI, MSI, PET scanning
- + general acute care and surgical services
- + medical rehabilitation
- + noncardiac nuclear imaging, lithotripsy, radiation therapy, stereotactic radiotherapy and radiosurgery
- + nursing home facilities
- + outpatient surgical hospitals (ambulatory surgical centers)

issues involved and are familiar with the application process. Working with a lawyer can also be beneficial when physicians are first beginning to consider applying for a Certificate of Public Need because we can help them weigh the pros and cons of all considerations that must be examined.”

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