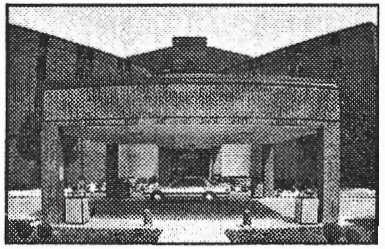
March 1996: Gastonia hospital seeks CON to offer open-heart surgery.
August 1996: CON denied.
September 1996: Hospital appeals, decision pending.
November 1996: Applies for another CON as a result of Rules Review Commission decision. Application is pending.

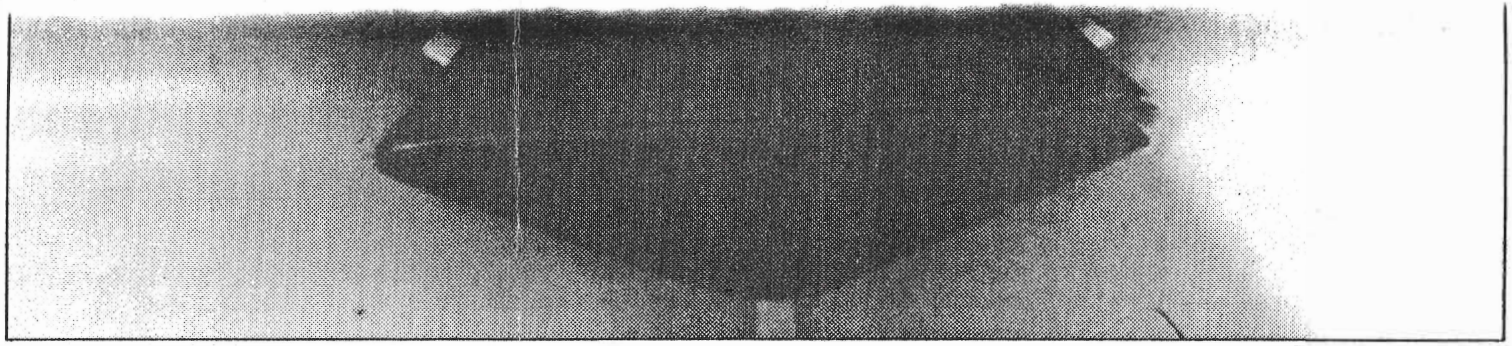
Lake Norman Regional

February 1996: Mooresville hospital seeks CON to replace 121-bed old hospital in downtown Mooresville with new hospital near Interstate 77.
July 1996: Granted CON for 94-bed new hospital.
August 1996: Hospital appeals for 111 beds.
December 1996: Granted CON for 105 beds.

Piedmont Medical Center



November 1991: Rock Hill hospital seeks CON to offer open-heart surgery.
October 1995: Open-heart CON approved.
July 1997: Heart center scheduled to open.



MARK B. SLUDER/Staff

Carolyn Davis undergoes a CT scan at Gaston Diagnostic Center, owned by Gaston Memorial Hospital. The hospital had to get a certificate of need from N.C. regulators for the scanner, but has had less luck getting a certificate for a heart surgery program.

To have or have not

CHARLOTTE OBSERVER, 23 FEB. 97

Hospitals battle over who gets state approval for new programs

By SEAN JAMIESON
Staff Writer

On Feb. 14 last year, Carolinas HealthCare System chief executive Harry Nurkin sent a note to Gaston Memorial Hospital President Wayne Shovelin. It was not a Valentine.

The "Dear Wayne" letter said Nurkin would not support Shovelin's effort to start a cardiac surgery program at the Gastonia hospital. That was bad news for Shovelin, since he already faced an uphill battle to get a state-issued permit, called a certificate of need (CON), that would allow the heart program.

A year later, Shovelin still is fighting for a heart program. State regulators have turned him down once, but Gaston Memorial is appealing and looking for ways to get around CON rules.

Officials with CHS, which has heart surgery programs at Carolinas Medical Center and Mercy Hospital that attract Gaston County patients, have urged regulators to stick by the state health plan, which says that no more heart programs are needed.

Gaston Memorial's fight and a similar effort by Catawba Memorial Hospital in Hickory may lead North Carolina to do what two dozen other states have done — scale back or eliminate CON laws. Forty-nine states had CON laws in the 1970s, but changes in the way government and

See **HOSPITALS** / *page* **7D**

THE TWO SIDES

Here are summaries of the arguments made by proponents and opponents of CON:

Pro

- Prevents unnecessary and costly duplication of services.
- Allows doctors and hospitals to develop greater expertise in procedures and services by keeping volumes high.
- Protects existing hospitals that made investments assuming that CON would continue.
- Keeps hospitals from overspending and putting themselves in financial jeopardy.

Con

- Interferes with the free market, which is best at allocating resources.
- Prevents competition and consumer choice, which improves quality.
- Time and money spent on applications and legal fees impose significant hidden costs on the system.
- Studies show the laws don't reduce health-care costs.

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HOSPITALS

Continued from page 1D

health insurers pay hospitals and an anti-regulatory philosophy in more state legislatures has led to CON reforms.

Last week, Sen. David Hoyle, D-Gaston, and Rep. Connie Wilson, R-Mecklenburg, were drafting separate CON reform bills that would loosen state regulations on hospitals.

CON critics say the laws, which regulate hospital growth and services, are relics of the past that deny consumers the benefits of free-market competition. Supporters counter that the laws protect consumers from the excesses of the market.

"We believe that CON is good for the people of North Carolina," CHS vice president Alan Taylor said. "The CON process was established to avoid the duplication of very expensive high-tech procedures" — like heart surgery.

In Shovelin's view, CON locks in the status quo, making some hospitals "haves" and others "have-nots."

"The way the CON law is written, it serves the bigger and the teaching institutions," Shovelin said. "A general acute-care community hospital ought to be able to provide the services that meet the needs of the community."

The CON law also requires organizations like nursing homes, home-health agencies, chemical dependency centers, hospices and outpatient surgery centers to get permission to open or to expand services. Both Hoyle's and Wilson's bills, however, would apparently affect only hospital CON rules.

South Carolina has a similar CON law, but an official there said he knows of no efforts to revise the law.

While average citizens can participate in CON discussions, they don't.

"CON is a public process and it creates an opportunity for the public to get involved before things happen," said Amy Blackwell, the vice president at Charlotte's Presbyterian Hospital who handles CONs. But "it's rare that you see the public come out and express a lot of interest in these."

Instead, it is competitors who weigh in on certificate of need disputes. Last year, for example, CHS opposed both Lake Norman Regional Medical Center's application to build a replacement hospital and Gaston Memorial's heart center application. In both cases, CHS officials said that the projects were not needed. (Lake Norman eventually was approved for a somewhat smaller hospital than it requested.)

CHS officials also had significant business concerns about Gaston's effort. In an April 16, 1996, memo obtained by The Observer, Carolinas Heart Institute administrator Jim Turner wrote his boss that it was "important to be pro-active" in Gaston's CON application because, among other reasons:

- "Establishing program will increase hospital attractiveness to managed-care payor."
- "Development of program will infuse additional revenues to GMH to fund other programs that will compete with" CHS.
- "Creates a formidable barrier of (sic);patients now coming to CHI from Cleveland, Lincoln and Rutherford Counties."

The institute is the heart surgery unit inside Carolinas Medical Center.

"I don't think there's any great surprise in that (memo)," CHS's Taylor said. "Jim's job is to run the business side of the Carolinas Heart Institute." And Taylor reiterated that CHS simply wants regulators to abide by the state health plan.

Hospitals lacking lucrative services like heart surgery see it differently.

"If you have everything, it certainly behooves you to want a lot of controls because it protects the market for you," said Lisa Hamby, associate vice president for outcome management at Catawba.

As Turner's memo pointed out, hospitals like Catawba and Gaston might also be at a disadvantage when bidding for contracts with health insurers, since without a heart surgery program they can't provide an important service to patients.

CON laws sprang from Washington in the early 1970s, when Medicare dollars flowed fast and furious to hospitals. In those days, Medicare payments were based on hospital charges. Perhaps not surprisingly, costs kept going up. So Congress told the states to regulate hospitals and other health-care providers in the hope of controlling costly medical arms races.

In the 1980s, Congress wised up and started paying fixed fees for Medicare services, regardless of a hospital's costs or prices. With that change, Congress stopped requiring states to regulate health-care services.

Health insurers soon began demanding discounts from hospitals too, and hospital officials found themselves worrying about costs.

"There's a lot of incentive for (providers) to control their costs," said Catawba Memorial's Hamby. "That's a completely different situation than existed in the 1970s. And that, in my opinion, has made the (CON) law antiquated."

CON critics like Michael Tanner, director of health and welfare studies at the libertarian Cato Institute in Washington, say it's vigorous competition that protects consumers, not regulations. Competition leads to more consumer choice, lower prices and better service, he said.

CON also leads to significant, hidden administrative costs. "This being America, of course, everybody who loses sues. It's enormously costly." He can cite studies that show the laws don't save money.

Supporters argue that the health-care market is unlike other markets.

"I happen to like the free market . . . but I fear that there is no free market in health care," said Alan Sager, a professor at Boston University's School of Public Health who has studied CON laws. "Respecting a phony free market is very much like worshiping a golden calf, which I thought we weren't supposed to do."

Sager and others say the health-care market is different because:

- Few consumers are spending their own money.
- Consumers have limited providers to choose from.
- Consumers have limited ability to evaluate the quality of the services they're buying.

Having large numbers of providers isn't desirable, supporters argue, because the more procedures hospital staff members perform, the more expertise they gain. The more expertise, the better the results for patients.

Health-care industry observers who approach CON from a consumer-advocacy point of view give CON mixed reviews.

"I think it does have a useful purpose," said Jane Perkins, a Chapel Hill-based lawyer with the National Health Law Program, a not-for-profit law firm. "When it's done properly . . . you can avoid a situation where you have a helicopter pad at each hospital, or expensive equipment at each hospital or an open-heart unit opening at one hospital before another hospital has become proficient.

"The problem is CON often doesn't work the way it should," said Perkins, a former assistant attorney general in Maryland who worked with the CON agency in that state. Hospitals race to get ahead of proposed new regulations, hire high-powered lawyers to fight adverse decisions, ask politicians to intercede with administrators and try to stymie their competitors, she said.

Without CON or some sort of regulatory controls, Boston University's Sager worries that hospitals have the potential to bankrupt themselves.

"The market is going to close so many hospitals until the survivors enjoy geographic monopolies or oligopolies," he said. "If you want competition, you need competitors."

Hoyle was walking around the capitol last week with a draft of a CON reform law in his pocket. His draft would exempt existing hospitals with more than 150 beds — meaning Gaston, Catawba, CMC, Presbyterian and many others — from CON rules. The idea, the Gaston Democrat said, is to let larger hospitals compete while keeping protections in place for more vulnerable smaller hospitals.

Hoyle said he has spoken with Shovelin about Gaston Memorial's fight with CON regulators, but the hospital executive did not specifically ask for a change in the law. And Hoyle said he still is studying the possible consequences of his bill and has not yet decided whether to introduce it.

"I want some study on this issue, on CON," Hoyle said. "Most everything I can think of is being deregulated. It may be time to deregulate the medical industry."