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**Improving the Certificate of Need Process Through Community-Based,  
Participatory Health Planning**

Testimony of Gavin Kearney, Director of Access to Health Care Project  
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Members of the Planning Committee:

Thank you for the opportunity to provide testimony on ways to improve the Certificate of Need (CON) process. My name is Gavin Kearney and I am the Director of the Access to Health Care Project at New York Lawyers for the Public Interest (NYLPI). NYLPI is a nonprofit civil rights law firm formed in 1976 to address the unmet legal needs of New Yorkers. Our Access to Health Care Project was created in 1978 and is focused on ensuring access to high-quality health care for New York City's low-income communities of color. Over the recent past, we have worked with several community coalitions in New York City fighting to preserve and enhance critical health care resources in their underserved communities.

We are also a member of the Coalition for Community Health Planning (CCHP). CCHP is a diverse coalition of community-based organizations, providers, advocacy organizations and others whose mission is to institutionalize community-based, health planning processes throughout the state in order to ensure the provision of and access to quality health services for medically underserved populations. Much of the testimony that I offer today comes from our work with CCHP.

Several clear lessons have been underscored by our work with community coalitions to address health care needs in areas such as Central Brooklyn, Southwest Brooklyn, Southeast Queens, and the Northeast Bronx, lessons that are obvious and uncontroversial. One is that health care decisions that are driven solely, or primarily, by financial considerations often fail the health needs of low-income communities. I would also add that many such decisions are not driven by a full consideration of the fiscal impacts. For example, financially driven clinic closures in Central Brooklyn over the recent past have left 6,000 residents without access to local services and have resulted in the loss of primary care, screening, and other services. Residents of this community are disproportionately likely to lack a primary care physician and also disproportionately likely to make expensive emergency room visits when ill, patterns exacerbated by these closures.

Another lesson that our work has underscored is that to be effective planning for health care must be transparent and must involve those stakeholders in a community that are most knowledgeable about its health care needs and resources and those stakeholders in a

community most affected by health care decisions. This lesson is illustrated by the ways in which Berger Commission planning and implementation have affected communities in New York City. Although a stated goal of the Commission was to save hospitals “critical to serving access,” achieving this goal was undermined by recommendations that led to the closure of several New York City hospitals performing this function in medically underserved areas. While some degree of public outreach was performed, the opacity of the Commission’s decision-making process makes it difficult to determine the degree to which locally articulated needs affected Commission recommendations, recommendations that automatically went in to effect.

#### Recommendations for Improving the CON Process

The recommendations that we offer focus on using effective, participatory health planning as means to better alignment of health care resources with community need. First, I will recommend a process for more accurately assessing public need. Next, I will discuss recommendations for ensuring that needs assessments meaningfully drive allocation decisions.

#### More effective assessment of need.

Public participation is essential to effective needs assessment and health planning. Such an assessment should look comprehensively at a community’s health profile and the needs for services that it suggests rather than more narrowly at whether there exists sufficient demand to ensure utilization of a given service. Public participation is key because, among other things, local stakeholders possess a wealth of knowledge about health care needs and the utility of existing health care resources that is not captured by existing quantitative data. Supplementing quantitative data with qualitative knowledge gained through public participation ensures that relevant gaps in knowledge are addressed rather than implicitly ignored.

To be meaningful, public participation must occur early and often. In order to ensure that key stakeholders are involved, notification of pending CON applications should be provided in multiple languages, driven by the language demographics of the affected area. Notification should also occur through channels such as local media, local elected officials, and local providers. In addition, efforts should be made to develop outreach lists that tap in to communities’ social infrastructure. In the communities with which we work, key conduits of information include social service agencies, faith-based organizations, community boards, and various other community-based organizations. Developing distribution lists that that utilize these resources, particularly in medically underserved areas, will be essential to effective planning.

As stated, opportunities for meaningful input should occur regularly. A useful model for considering how to accomplish this is the environmental review process required by the New York State Environmental Quality Review Act (SEQRA). SEQRA is designed to ensure that the potential environmental impacts of a proposed decision are fully assessed and that thorough consideration is given to ways in which potential negative effects can be eliminated or mitigated. We are in favor of more comprehensive planning that isn’t

solely responsive to particular CON applications and believe that the SEQRA process offers useful lessons for both broader planning and for application-specific assessments.

Although flawed in some ways, SEQRA includes an explicit process for assessing impacts and developing remedial measures, a process that requires public participation at several key junctures and requires that public input be addressed by the applicable agency. Projects undergo an initial, limited evaluation to determine whether significant adverse environmental impacts are likely to occur. If the answer is no, further analysis isn't required. If the answer is yes, then fuller consideration of impacts is required in the form of an environmental impact assessment. Stakeholders are given the opportunity to challenge the initial determination that significant impacts will or will not result.

During the environmental impact assessment, public participation is required at a scoping phase, during which the breadth of impacts to be evaluated and the methods of evaluation are developed, and during the assessment itself, where stakeholders can comment on conclusions drawn with respect to projected impacts and the viability of measures for avoiding or mitigating them. Both the scope of assessment and the assessment itself are published in draft form, and comments received must be explicitly addressed before either can be finalized.

We believe that this framework could be used to improve the CON process in a number of ways. In order to avoid unnecessary delay or expense resulting from CON review, an initial scan of the potential impacts of a CON application could be used to determine the intensity with which the application is reviewed. In addition, similarly engaging affected stakeholders throughout an application review process would help ensure that the needs of the affected area, and thus the potential impacts of a proposed action, are adequately considered. Requiring that legitimate concerns and questions be addressed would also add to the accuracy and credibility of the process.

We also strongly recommend that needs assessment explicitly consider race and ethnicity. As has been demonstrated in Massachusetts, race and ethnicity data can and should be used to ensure that decision-making in the health arena doesn't exacerbate existing disparities in access to health care. Such data are critical to identifying gaps in health care and to developing effective measures for addressing them.

#### Ensuring that needs inform decision-making

One criticism of the CON process is that it is reactive in nature. It depends on specific applicants coming forward before local health needs can be addressed. One way to make this process more proactive in nature, without fundamentally restructuring it, would be to engage in health care needs assessment outside the context of specific applications. The results of such assessments could be used to broadly communicate priority needs for a given area and to invite and/or incentivize applications that meet those needs. Consistent with current regulations, key areas of need that should be prioritized include low-income populations, populations of color, people with disabilities, and medically underserved areas generally.

Possible ways to incentivize applications that are responsive to community need would include a waiver or expedition of review, where appropriate; assistance in preparing applications that address critical needs; higher thresholds for triggering full review where an application addresses critical needs; and fee reductions for applications that address key areas of need.

Ensuring that key areas of need are met through the CON process could also be aided by a review process that gives public need greater weight vis-à-vis fiscal considerations in low-income and medically underserved areas. Shifting weight in such circumstances would account for the reality that those care providers that are most financially troubled are also those that provide the most needed care, care that is uncompensated or poorly compensated.

Thank you again for the opportunity to offer these recommendations.