

Certificate of Need

WHAT ARE CERTIFICATE-OF-NEED LAWS?

35 states and the District of Columbia impose laws that require health care providers to obtain a government permission slip called a Certificate of Need (CON) in order to build new facilities and add new services. In order to receive permission, the provider must prove to a government board that the new facility will meet their community's health care needs.

Policymakers established these laws based on the theory that health care providers will oversupply unnecessary services and shift these costs to patients through higher prices. In reality, CON programs often prevent providers from building essential health care facilities and raise prices by reducing competition.

CON LAWS IN THE PANDEMIC

Starting in March 2020, [24 states](#) suspended their CON program to allow hospitals to invest in more beds and ventilators to care for patients infected with COVID-19. Once states waived these laws, providers quickly added new beds and equipment to respond to the pandemic. These care expansions saved lives. A [study](#) by the University of Illinois and Cincinnati University found these reforms prevented 100 deaths for every 100,000 residents in the states that waived CON regulations.

STATE SOLUTIONS

Ending CON for High-Value Facilities:

By ending CON requirements for hospitals, this allows providers to build new hospitals and add new departments, services, and equipment without CON review would dramatically improve health care access. Florida's CS/HB 21 streamlined the licensure process for hospitals in Florida by reducing regulatory burdens and eliminating duplicative requirements. It allowed hospitals more flexibility in providing services by removing certain state-level mandates and aligning state regulations more closely with federal standards.

Ending CON for Low-Cost Health Care:

CON laws impose significant obstacles on facilities that charge lower prices than traditional facilities, such as ambulatory surgery centers and home health agencies. Allowing these facilities to freely open can offer patients a more affordable alternative to expensive hospitals and nursing homes. West Virginia Senate Bill 613 (SB 613),

significantly reformed the state's CON laws by exempting hospitals from CON requirements for services provided on their campuses. The bill also removed birthing centers from CON review and increased the expenditure threshold for requiring a CON from \$5 million to \$100 million. Supporters of the bill argued that these changes will reduce regulatory barriers, encourage competition, and improve access to healthcare, particularly in rural areas.

Ending CON for Health Care for Vulnerable Patients:

CON laws also apply to health care services that vulnerable patients rely on, including psychiatric care facilities, substance abuse treatment centers, and intermediate-care facilities for individuals with intellectual disabilities. Oklahoma House Bill 2330 (2024) repealed the Psychiatric and Chemical Dependency Facility Certificate of Need Act, thereby eliminating the requirement for state approval before establishing or expanding psychiatric and substance use treatment facilities. This change aimed to reduce regulatory barriers by promoting increased competition and facilitating the development of mental health and addiction treatment services across the state.

Ending CON for Small Investments:

New facilities, services, and equipment are subject to CON review when their expected costs meet or exceed a certain level. Montana House Bill 231 (2021) reformed CON requirements for long-term care facilities. It eliminated the \$1.5 million cap on capital improvements, giving these facilities greater flexibility to expand or upgrade without triggering additional regulatory review.