

A Brief History of Connecticut's Certificate of Need program

Certificate of Need: Definition

"A Certificate of Need (CON) is a formal statement by a State agency (in the Department of Public Health's (DPH) Office of Health Care Access (OHCA) or the Department of Social Services (DSS)) that a health care facility, service or piece of equipment is needed or that a termination of a service will not have an adverse effect on access to health care services in the area of the state served by the health care facility. The CON program attempts to eliminate unnecessary duplication of services, preserve needed services and ensure access to quality care. Ongoing changes to the health care environment have emphasized the evolving role of CON as a planning tool. Overall, the aim of the CON program is to ensure access to quality health care services for the citizens of the State of Connecticut".¹

Certificate of Need: History

The development of CON programs began in 1964 when New York became the first state in the nation to pass legislation that enabled state government to determine the need for new hospitals and nursing facilities before they were approved for construction. The American Hospital Association took interest in the concept of CON programs and urged states to develop similar laws². In 1973 Connecticut (CT) established its CON program and became one of 15 states in the nation to implement this type of health care oversight. In the early 1970's the federal government began to seek ways to control rapidly rising costs of health care, inequitable distribution of health care facilities and manpower and lack of effective methods of delivering health care. Congress viewed the CON process as an effective method of controlling these factors and passed Public Law 93-641, *The National Health Planning and Resources Development Act of 1974*.³ P.L. 93-641 required that all states seeking federal funding for health programs implement a CON program and specified (1) the facilities and services subject to the CON process; and (2) the procedures and criteria for conducting CON reviews. By 1978, thirty-six states had adopted CON laws.⁴ In 1987 Congress repealed the *National Planning and Resource Development Act of 1974* eliminating the requirement for states to administer a CON program and the funding tied to it. Upon repeal, 14 states terminated their CON programs⁵. As of April, 2016, thirty-six states continue to have CON programs with varying oversight requirements⁶. Recent studies conducted on CON programs have yielded results that indicate states with CON programs have lower overall health care costs, reductions in duplicative services and better patient outcomes when compared to states without operational CON programs⁷.

Upon establishment in 1973 (P.A. 73-117), Connecticut's CON program was housed in the Commission on Hospitals and Health Care. In 1993 the state Legislature passed Public Act 93-262, *An Act Concerning*

¹ Quoted from the OHCA Certificate of Need Analyst Toolbox

² National Conference of State Legislatures <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#Resources>

³ P.L. 93-641 – National Institutes of Health http://profiles.nlm.nih.gov/RM/A/A/I/Q/_/rmaaiq.pdf

⁴ Burt, Jessica C.; Williams, Kati V.; *Certificate of Need (CON) Law Series – Part I: A Controversial History*; Health Capitol, Volume 5, Issue 9; September 2012 http://www.healthcapital.com/hcc/newsletter/9_12/CERT.pdf

⁵ National Conference of State Legislatures; Table: Health Planning Agencies in States Without Current CON Programs.

<http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#Regulated>

⁶ National Conference of State Legislatures; Table: Facilities and Services Regulated by CON <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#Regulated>

⁷ OHCA, *Independent Assessment of the Connecticut Department of Public Health Office of HealthCare Access Certificate of Need and Supporting Programs*; February 28, 2014. P. 71-74.

the Establishment of the Department of Social Services (DSS), which carved out the CON program for nursing homes, residential care homes and intermediate care facilities for individuals with intellectual disabilities and moved oversight authority for these facilities to the newly formed DSS. All other CON program responsibilities remained with the Commission on Hospitals and Health Care.

In 1994, Public Act 94-3, *An Act Concerning Health Care Access*, terminated the Commission on Hospitals and Health Care and established the Office of Health Care Access (OHCA), which was governed by a Board of Directors appointed by the Governor and Chaired by the Governor. Public Act 95-257, *An Act Concerning the Consolidation of State Operated Programs at Fairfield Hills, Norwich and Connecticut Valley Hospitals, Transfer of Addiction Services to The Former Department of Mental Health, Medicaid Waiver and The Office of Health Care Access*, officially transferred the responsibilities of overseeing the portion of the state’s CON program not administered by DSS to OHCA. In 2009, OHCA was moved under the Department of Public Health (DPH) and oversight authority was given to the Commissioner of DPH.

In 2010, in an effort to align with a changing health care system as a result of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Connecticut CON underwent significant reform in an effort to: (1) simplify the CON process; (2) focus on oversight of “safety net” services and areas of potential overutilization; (3) develop CON criteria and standards to address the financial stability of the health care delivery system, and (4) improve the quality of patient care⁸. The result was Public Act 10-179, *An Act Making Adjustments to State Expenditures for the Fiscal Year Ending, June 30, 2011*⁹, which formed the CON process as it is implemented today.

Certificate of Need: Present

Currently, the CON process remains in OHCA and DSS. Their responsibilities are as follows:

Office of Health Care Access¹⁰

CGS 19a-638 requires CON authorization for:

1. Establishment of:
 - a. A new health care facility¹¹;
 - b. A freestanding emergency department;
 - c. An outpatient surgical facility; and
 - d. Cardiac services, including inpatient and outpatient interventions and surgery
2. Termination of:
 - a. Hospital inpatient or outpatient services;
 - b. Surgical services unless due to insufficient patient volume or termination of a subspecialty; and

⁸ CT Department of Public Health, *Report to the Joint Standing Committee of the Connecticut General Assembly: Certificate of Need Requirements*. January 1, 2016.

⁹ P.A 10-179 *An Act Making Adjustments to State Expenditures for the Fiscal Year Ending, June 30, 2011*. <https://www.cga.ct.gov/2010/ACT/Pa/pdf/2010PA-00179-R00SB-00494-PA.pdf>

¹⁰ CT Department of Public Health, *Report to the Joint Standing Committee of the Connecticut General Assembly: Certificate of Need Requirements*. January 1, 2016.

¹¹ Defined in CGS 16a-630 as hospitals, specialty hospitals, freestanding EDs, outpatient surgical, state-operated facilities eligible for Medicaid/Medicare, mental health facilities, substance abuse facilities, and central service facilities including parents, affiliates, etc.

- c. Inpatient or outpatient services offered by a state-owned facility that provides services eligible for Medicaid or Medicare;
3. Transfer of ownership of a health care facility or group practice;
4. Acquisition of:
 - a. Certain imaging equipment
 - b. Nonhospital linear accelerators; and
 - c. Equipment using technology not previously used in the state;
5. Increase:
 - a. In the licensed bed capacity of a health care facility; and
 - b. Of two or more operating rooms within any three-year period.

The entire CON process, from the time OHCA receives the application to the final decision can take from 60 days to a year – depending on the complexity and completeness of the proposal and whether a public hearing is held. The following steps are required:

- Applicants publish notice (in newspaper for 3 consecutive days) of intent to file a CON. Must be published at least 20, but no more than 90, days before filing.
- Applicants submit required forms and \$500.
- OHCA has 30 days from receipt to review for completeness. If found incomplete, OHCA informs the applicant who has 60 days to respond. OHCA then has 30 days to inform applicant if application is complete or incomplete.
- Review criteria include consistency with DPH policies and regulations, clear public need including unmet need of the target population, impact on the strength of the health care system (including quality, accessibility, and cost), financial feasibility, past and proposed provision of services, use of existing facilities and services in the area, payer mix, documentation that it won't result in duplication of services in the area, and demonstration of no negative impact on diversity of providers and patient choice, costs or accessibility.
- OHCA has 90 days to render a decision and must wait at least 30 days to allow an opportunity for a public hearing to be requested. Review period is shorter (60 days) for transfer of ownership of group practices.

The Deputy Commissioner renders a decision. Forty eight (48) determinations were rendered in 2015, but only 14 were found to require a CON.

Department of Social Services

CGS 17b-352-355 grants authority to DSS for the CON process for nursing facilities, residential care homes and intermediate care facilities for individuals with intellectual disabilities as described below.

Certificate of Need approval is required prior to undertaking any of the following activities:

- Capital expenditures exceeding \$2 million.
- Capital expenditures exceeding \$1 million, which increases facility square footage by five thousand square feet or five percent of existing square footage.
- Introduction of any new or additional function or service.
- Termination of a health care service, including facility closure or a substantial decrease in total bed capacity by a facility or institution.

- New nursing facilities associated with a continuing care facility provided such beds do not participate in the Medicaid program.
- Medicaid certified beds to be relocated from one licensed nursing facility to another licensed nursing facility to meet a priority need identified in the strategic plan developed pursuant to subsection (c) of section 17b-369 of the Connecticut General Statutes.
- Medicaid beds to be relocated from a licensed facility to a new licensed facility, provided at least one currently licensed facility is closed in the transaction, and the new facility bed total is not less than 10% lower than the total number of beds relocated.
- Requests to license a new residential care facility or intermediate care facility for the intellectually disabled.

Architectural plans are required for CON requests related to capital improvements and new facilities. These plans must comply with current State and Federal laws and regulations.

The CON process begins with an applicant's submission of a letter of intent. DSS issues an application within 10 business days and the Applicant has up to 180 days to submit the CON application. DSS will issue a written decision generally within 120 days after receiving the application. CON decisions may be reviewed by the public during normal business hours