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## Certificate of Need: State Health Laws and Programs

Updated: January 2011; material added March 2012

Certificate of Need (C.O.N.) programs are aimed at restraining health care facility costs and allowing coordinated planning of new services and construction. Laws authorizing such programs are one mechanism by which state governments seek to reduce overall health and medical costs. Many "CON" laws initially were put into effect across the nation as part of the federal "Health Planning Resources Development Act" of 1974. Despite numerous changes in the past 30 years, about 36 states retain some type of CON program, law or agency as of December 2011.



### HISTORY

In 1964, New York became the first state to enact a statute granting the state government power to determine whether there was a need for any new hospital or nursing home before it was approved for construction. Four years later the American Hospital Association expressed an interest in Certificate of Need laws. The AHA started a national campaign for states to generate their own CON laws. By 1975, 20 states had enacted CON laws; by 1978, 36 states had enacted them.

The 1974 federal Act required all 50 states to have a structures involving the submission of proposals and obtaining approval from a state health planning agency before beginning any major capital projects such as building expansions or ordering new high-tech devices. Many states implemented CON programs in part because of the incentive of receiving CON federal funds.

The federal mandate was repealed in 1987, along with its federal funding. In the decade that followed, 14 states discontinued their CON programs. However, 36 states currently maintain some form of CON program, and even the 14 that repealed their state CON laws still retain some mechanisms intended to regulate costs and duplication of services. Puerto Rico and the District of Columbia also have CON programs.

States that have retained CON programs currently tend to concentrate activities on outpatient facilities and long-term care. This is largely due to the trend toward free-standing, physician owned facilities that constitute an increasing segment of the health-care market.

In some states, the debate regarding the future of CON remains intense. For example Georgia spent 18 months examining the role of CON, with a final Commission report issued in December 2006. See [GA Final CON Report](#) by the State Commission on the Efficacy of the Certificate of Need Program online. They state, "The Commission has been able to reach consensus on a number of ways to improve upon Georgia's Certificate of Need Program. However, sharp disagreement remains with regard to a number of areas of regulation, most notably, regulation of ambulatory surgery centers and free-standing imaging centers." [ PDF, 267 pages]

### INTENT AND STRUCTURE OF CON

The basic assumption underlying CON regulation is that excess capacity (in the form of facility overbuilding) directly results in health care price inflation. When a hospital cannot fill its beds, fixed costs must be met through higher charges for the beds that are used. Bigger institutions have bigger costs, so CON supporters say it makes sense to limit facilities to building only enough capacity to meet actual needs.

CON programs originated to regulate the number of beds in hospitals and nursing homes, and to prevent overbuying of expensive equipment. Mandatory regulation through health planning agencies determined the most urgent health care needs, contributed to solutions for these needs, and attempted to manage the fluctuations in prices often caused by a competitive market. The idea was that new or improved facilities or equipment would be approved based only on a genuine need in a community. Statutory criteria often were created to help planning agencies decide what was necessary for a given location. By reviewing the activities and resources of hospitals, the agencies made judgments about what needed to be improved. Once need was established, the applicant organization (corporation, not-for-profit, partnership or public entity) was granted permission to begin a project. These approvals generally are known as "Certificates of Need."

C.O.N. SUPPORTERS' VIEWS	C.O.N. OPPONENTS' VIEWS
<p>Advocates of CON programs say that health care cannot be considered as a "typical" economic product. They argue that many "market forces" do not obey the same rules for health care services as they do for other products. In support of this argument, it is often pointed out that, since most health services (like an x-ray) are "ordered" for patients by physicians, patients do not "shop" for these services the way they do for other commodities. This makes hospital, lab and other services insensitive to market effects on price, and suggests a regulatory approach based on public interest.</p> <p>The American Health Planning Association (AHPA) is the professional group of state agencies responsible for regulation and planning. They identify three factors that suggest the need for CON programs. The primary argument is that CON programs limit health-care spending. CONs can promote appropriate competition while maintaining lower costs for treatment services. The AHPA argues that by controlling construction and purchasing, state governments can oversee what expenditures are necessary and where funds will be used most effectively. This helps eliminate projects that detract attention from more urgent and useful investments and reduces excessive costs. A study conducted by the "big-three" automakers claims lower health care costs in CON states than in non-CON states. AHPA also asserts that CONs have a valuable impact on the quality of care. When facilities and equipment are monitored, hospitals and other treatment centers can acknowledge what sort of services are in demand and how effectively patients are being taken care of.</p>	<p>CON programs also have been subject to wide criticism. To start, opponents argue that "it is not clear that these state-sponsored programs actually controlled health care costs." For example, by restricting new construction, CON programs may reduce price competition between facilities, and may actually keep prices high. Barriers to new building are seen as unfair restrictions, sometimes by both existing facilities and their potential new competitors. There is little direct broad proof that overcapacity or duplication leads to higher charges. In 2004 the Federal Trade Commission (FTC) and the Department of Justice both claimed that CON programs actually <i>contribute</i> to rising prices because they inhibit competitive markets that should be able to control the costs of care and guarantee quality and access to treatment and services. (1)</p> <p>Some opponents felt that changes in the Medicare payment system (such as paying hospitals according to Diagnostic Related Groups - "DRGs") would make external regulatory controls unnecessary, because health care organizations would be more subject to market pressures. Some pointed out that the CON programs are not consistently administered. A 'flexible' program could allow development, to the dismay of competitors. A 'restrictive' program could limit competition, with the same effect. Many argued that health facility development should be left to the economics of each institution, in light of its own market analysis, rather than being subject to political influence.</p> <p>Some evidence suggests that lack of competition paradoxically <i>encouraged</i> construction and additional spending. Some opponents of CON programs believe an open health care market, based on quality rather than price, might be the best</p>

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Additionally, according to supporters, the programs distribute care to areas that could be ignored by new medical centers. CON programs are a resource for policymakers. CON regulations are described as a reliable way to implement basic planning policies and practices, and aid in distributing health care to all demographic areas. The CON process can call attention to areas in need because planners can track and evaluate the requests of hospitals, doctors and citizens and see which areas are underserved or need to be improved and developed.

principle for containing rising costs. Proponents of CON programs disagree. This debate rests on the same arguments as many other "Regulated market" vs. "Open market" discussions.

In theory, Certificates of Need are granted based on objective analysis of community need, rather than the economic self-interest of any single facility. However, opponents of CON programs claim that the programs have not worked this way. They cite examples in which CONs were apparently granted on the basis of political influence, institutional prestige or other factors apart from the interests of the community. Furthermore, it is sometimes a matter of debate what sort of development is actually in the community's interest, with people of good will sharply divided on how to determine this.

### Other Approaches

Many approaches have been tried to controlling health care costs, including government and industry regulation, provider incentives, "free market" incentives and educational efforts. Some of these include:

1. Limitations on physician referrals to facilities in which they or a family member have a financial interest (so-called "Stark regulations").
2. Supervision by insurers to make sure a treatment request is necessary (precertification, concurrent or retrospective medical necessity review).
3. Prepayment for insured or covered services ("managed care")
4. Fixed payments for defined services ("Information Individual Programs DRGs"- uniform Diagnostic-Related Groups)
5. Providing information to patients about the costs and necessity of certain tests and treatment (includes "transparency" and disclosure programs)
6. Providing information to patients about the quality of and outcomes at certain medical facilities.

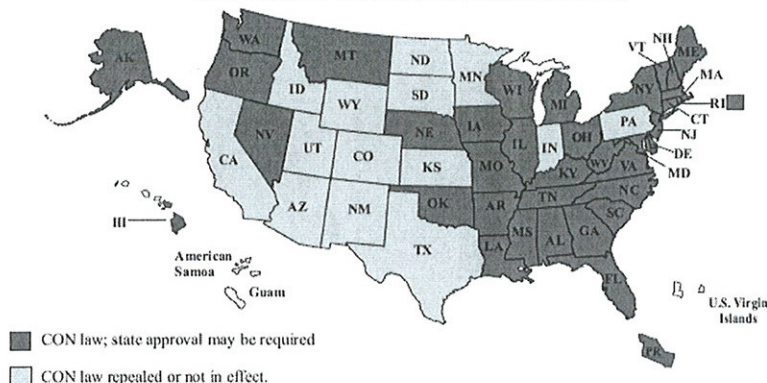
### CON In the News

- Tenn.: "Opinions differ on whether CON process raises or lowers health care costs" - Times-News 4/26/08.
- Michigan: "States limit Costly Sites For Cancer Radiation" - NY Times, April 30, 2008.
- Iowa lawmakers quietly passed a bill in the final hours of the 2008 legislative session that would allow most of the state's hospitals to bypass public approval for the construction of new facilities. The bill eliminates a requirement for Iowa's 82 small, rural hospitals to submit to public hearings and obtain state approval before relocating to newly constructed replacement hospitals. "One of the biggest contributors to the growth in health care costs is the rapid expansion of these facilities," Hatch said. "This legislation allows 80 or so Iowa hospitals to replace their hospital without any citizen input and without any justification of the cost. It's just another reason why our health care costs are going up." Des Moines Register, 5/4/08.

### Footnotes:

1. The Federal Trade Commission, Department of Justice, Improving Health Care: A Dose of Competition (Washington D.C.: FTC, DOJ, 2004) 361 pages PDF.

State Certificate of Need (CON) Health Laws, 2010



Compiled by NCSL June 2010; based on data from AHPA

## STATES WITH CON PROGRAMS (2011)

State/District with CON Programs	Dates of Programs	Certificate of Need Contact Information	Individual CON Websites
Alabama	1979-present	James E. Sanders, Deputy Director Phone: 334-242-4103; Fax: 334-242-4113 <a href="mailto:james.sanders@shpda.alabama.gov">james.sanders@shpda.alabama.gov</a>	<a href="http://www.shpda.state.al.us">http://www.shpda.state.al.us</a> News Article: <a href="#">AL: Bill introduced in Alabama House that would abolish the Certificate of Need process for health services 2/12/09.</a>
Alaska	1976-present	Karen Lawfer, CON Coordinator Phone: 907-465-8616; Fax: 907-465-6861 <a href="mailto:Karen.Lawfer@alaska.gov">Karen.Lawfer@alaska.gov</a>	<a href="#">Alaska's Certificate of Need Program</a>
Arizona	1971-1985		No CON Program; see planning agency below
Arkansas	1975-present	Deborah Frazier, Director	<a href="http://www.arhspa.org">http://www.arhspa.org</a>

		Phone: 501-661-2509; Fax: 501-661-2399 <a href="mailto:Deborah.Frazier@Arkansas.gov">Deborah.Frazier@Arkansas.gov</a>	
California	1969-1987		No CON Program; see planning agency below
Colorado	1973-1987		No CON Program; see planning agency below
Connecticut	1973-present	Melanie Dillman, Director, CON & Compliance Phone: 860-418-7060; Fax: 860-418-7053 <a href="mailto:melanie.dillman@ct.gov">melanie.dillman@ct.gov</a>	<a href="#">Connecticut's Certificate of Need Program</a>
Delaware	1976-present	Francis Osel-Afriyie, Management Analyst Phone: 302-744-4555; Fax: 302-739-3313 <a href="mailto:francis.osel-afriyie@state.de.us">francis.osel-afriyie@state.de.us</a>	<a href="#">Delaware's Certificate of Public Review Program</a>
District of Columbia	1977-present	Vacant, Chief, Project Review Phone: 202-442-5875; Fax: 202-442-4822	<a href="#">DC Certificate of Need Website</a>
Florida	1973-present	Jeff Gregg, Bureau Chief Phone: 850-412-4402; Fax: 850-413-7955 <a href="mailto:jeffrey.gregg@ahca.myflorida.com">jeffrey.gregg@ahca.myflorida.com</a>	<a href="#">Florida Licensing and Certification</a>
Georgia	1979-present	Marsha Hopkins, Executive Director Phone: 404-656-0468; Fax: 404-656-0654 <a href="mailto:mhopkins@dch.ga.gov">mhopkins@dch.ga.gov</a>	<a href="#">Georgia's Certificate of Need Program</a>
Hawaii	1974-present	Darryl Shutter, Regulatory Branch Chief Phone: 808-587-0788; Fax: 808-587-0783 <a href="mailto:darryl.shutter@shpda.org">darryl.shutter@shpda.org</a>	<a href="#">Hawaii's website for Certificate of Need</a>
Idaho	1980-1983	They are attempting to pass CON legislation; Contact Steve Millard or Toni Lawson 208-338-5100 or <a href="mailto:sammillard@teamiha.org">sammillard@teamiha.org</a> , <a href="mailto:tlawson@teamiha.org">tlawson@teamiha.org</a>	No CON Program; see planning agency below
Illinois	1974-present	Courtney Avery, Administrator Phone: 312 814-4825; Fax 312 814-1503 <a href="mailto:courtney.avery@illinois.gov">courtney.avery@illinois.gov</a>	<a href="http://www.hfsrb.illinois.gov">http://www.hfsrb.illinois.gov</a>
Indiana	1980-1996, 1997-1999		No CON Program; see planning agency below
Iowa	1977-present	Barb Nervig, Program Manager Phone: 515-281-4344; Fax: 515-281-4958 <a href="mailto:bnervig@idph.state.ia.us">bnervig@idph.state.ia.us</a>	<a href="http://www.idph.state.ia.us/do/cert_of_need.asp">http://www.idph.state.ia.us/do/cert_of_need.asp</a>
Kansas	1972-1985		No CON Program; see planning agency below
Kentucky	1972-present	Shane O'Donley, Policy Advisor Phone: 502-564-9589; Fax: 502-564-0302	<a href="http://chfs.ky.gov/ohp/con">http://chfs.ky.gov/ohp/con</a>
Louisiana	1991-present	James Taylor, Facility Need Review Manager Phone: 225-342-5457; Fax: 225-342-3893 <a href="mailto:jhtaylor@dhh.la.gov">jhtaylor@dhh.la.gov</a>	<a href="http://www.dhh.state.la.us/">http://www.dhh.state.la.us/</a>
Maine	1978-present	Phyllis Powell, Manager Division of Licensure & Regulatory Services Phone: 207-287-9338; fax: 207-287-5807 <a href="mailto:Phyllis.Powell@maine.gov">Phyllis.Powell@maine.gov</a>	<a href="#">Maine Certificate of Need Program</a>
Maryland	1968-present	Paul Parker, Chief Phone: 410-764-3261; Fax: 410-358-1311 <a href="mailto:pparker@mhcc.state.md.us">pparker@mhcc.state.md.us</a>	<a href="#">Maryland Certificate of Need Program</a>
Massachusetts	1972-present	Joan Gorga, Director Phone: 617-753-7340; Fax: 617-753-7349 <a href="mailto:Joan.Gorga@state.ma.us">Joan.Gorga@state.ma.us</a>	<a href="http://www.state.ma.us/dph/dhco/don.htm">http://www.state.ma.us/dph/dhco/don.htm</a>
Michigan	1972-present	Scott Blakeney, Manager Phone: 517-241-3344; Fax: 517-241-2962 <a href="mailto:blakeney@michigan.gov">blakeney@michigan.gov</a>	<a href="http://www.michigan.gov/con">http://www.michigan.gov/con</a> <a href="#">The Michigan Certificate of Need Program</a> (68 pp)- an in-depth analysis by CRC-Michigan

Minnesota	1971-1985	Public Utilities Commission (PUC) of Minnesota Bret Eknes, Senior Facility Planner Phone: 651-201-2236; Fax: 651-297-7073	<a href="#">Minnesota Certificate of Need Program</a>
Mississippi	1979-present	Rachel Pittman, Chief Phone: 601-576-7874; Fax: 601-576-7530 <a href="mailto:rachel.pittman@msdh.state.ms.us">rachel.pittman@msdh.state.ms.us</a>	<a href="#">Mississippi Certificate of Need Program</a>
Missouri	1979-present	Karla Houchins, Program Coordinator Phone: 573-751-6403; Fax: 573-751-7894 <a href="mailto:Karla.Houchins@health.mo.gov">Karla.Houchins@health.mo.gov</a>	<a href="http://health.mo.gov/information/boards/certificateofneed/index.php">http://health.mo.gov/information/boards/certificateofneed/index.php</a>
Montana	1975-present	Kathy Lubke, Project Manager Phone: 406-444-9519; Fax: 406-444-1742 <a href="mailto:klubke@mt.gov">klubke@mt.gov</a>	<a href="#">Administrative Rules of Montana CON</a>
Nebraska	1979-present	Claire Titus, Program Manager Phone: 402-471-4963; Fax: 402-471-3577 <a href="mailto:claire.titus@nebraska.gov">claire.titus@nebraska.gov</a>	<a href="http://www.hhs.state.ne.us/csi/need.htm">http://www.hhs.state.ne.us/csi/need.htm</a>
Nevada	1971-present	Luana J. Rich, Bureau Chief Phone: 775-684-4155; Fax: 775-684-4156 <a href="mailto:lritch@health.nv.gov">lritch@health.nv.gov</a>	<a href="http://www.health2k.state.nv.us/vs/letter.htm">http://www.health2k.state.nv.us/vs/letter.htm</a>
New Hampshire	1979-present	Cynthia Carrier, Managing Analyst Phone: 603-271-4606; Fax: 603-271-4141 <a href="mailto:ccarrier@dhhs.state.nh.us">ccarrier@dhhs.state.nh.us</a>	<a href="http://www.nhha.org/nhha/state_law/con.php">http://www.nhha.org/nhha/state_law/con.php</a>
New Jersey	1971-present	John Calabria, Director Phone: 609-292-8773; Fax: 609-292-3780 <a href="mailto:john.calabria@doh.state.nj.us">john.calabria@doh.state.nj.us</a>	<a href="http://www.state.nj.us/health/forms/cn-7.pdf">http://www.state.nj.us/health/forms/cn-7.pdf</a>
New Mexico	1978-1983		No CON Program; see planning agency below
New York	1966-present	Christopher Delker, Program Research Specialist Phone: 518-402-0966; Fax: 518-402-0971 <a href="mailto:cpd02@health.state.ny.us">cpd02@health.state.ny.us</a>	<a href="http://www.health.state.ny.us/nysdoh/cons/index.htm">http://www.health.state.ny.us/nysdoh/cons/index.htm</a>
North Carolina	1978-present	Craig Smith, Chief Phone: 919-855-3873; Fax: 919-733-8139 <a href="mailto:craig.smith@dhhs.nc.gov">craig.smith@dhhs.nc.gov</a>	<a href="http://facility-services.state.nc.us/">http://facility-services.state.nc.us/</a>
North Dakota	1971-1995		No CON Program
Ohio	1975-present	Joel Kaiser, CON Director Phone: 614-466-3325; Fax: 614-752-4157 <a href="mailto:joel.kaiser@odh.ohio.gov">joel.kaiser@odh.ohio.gov</a>	<a href="#">Ohio CON webpage</a>
Oklahoma	1971-present	Darlene Simmons, Director Phone: 405-271-6868; Fax: 405-271-7360 <a href="mailto:darlen@health.state.ok.gov">darlen@health.state.ok.gov</a>	<a href="#">Oklahoma CON Abstract</a>
Oregon	1971-present	Jana Fussell, CON Coordinator Phone: 971-673-1108; Fax: 971-673-1299 <a href="mailto:jana.fussell@state.or.us">jana.fussell@state.or.us</a>	<a href="#">Oregon CON Webpage</a>
Pennsylvania	1979-1996		No CON Program; see planning agency below
Puerto Rico	1975-present		
Rhode Island	1968-present	Michael K. Dexter, Chief, Office of Health Systems Development Phone: 410-222-2788; Fax: 410-222-1797 <a href="mailto:michael.dexter@health.ri.gov">michael.dexter@health.ri.gov</a>	<a href="http://www.health.ri.gov/hsr/healthsystems/index.php">http://www.health.ri.gov/hsr/healthsystems/index.php</a>
South Carolina	1971-present	Beverly A. Brandt, Chief	<a href="http://www.scdhec.gov/hr/cofn/">http://www.scdhec.gov/hr/cofn/</a>

		Phone: 803-545-4200; Fax: 803-545-4579 <a href="mailto:brandtba@dhec.sc.gov">brandtba@dhec.sc.gov</a>	
South Dakota	1972-1988		No CON Program; see planning agency below
Tennessee	1973-present	Melanie M. Hill, Executive Director Phone: 615-741-2364; Fax: 615-741-9884 <a href="mailto:melanie.hill@tn.gov">melanie.hill@tn.gov</a>	<a href="http://tennessee.gov/hsda/cert_need_sum.html">http://tennessee.gov/hsda/cert_need_sum.html</a>
Texas	1975-1985		No CON Program; see planning agency below
Utah	1979-1984		No CON Program; see planning agency below
Vermont	1979-present	Donna Jerry, Health Policy Analyst Phone: 802-828-2900; Fax: 802-828-2949 <a href="mailto:donna.jerry@bshca.state.vt.us">donna.jerry@bshca.state.vt.us</a>	<a href="#">Vermont CON program</a>
Virginia	1973-present	Erik Bodin, Director Phone: 804-367-2126; Fax: 804-527-4501 <a href="mailto:erik.bodin@vcdh.virginia.gov">erik.bodin@vcdh.virginia.gov</a>	<a href="http://www.cvhpa.org/COPN.htm">http://www.cvhpa.org/COPN.htm</a>
Washington	1971-present	Janis Sigman, Manager Phone: 360-236-2956; Fax: 360-236-2901 <a href="mailto:janis.sigman@doh.wa.gov">janis.sigman@doh.wa.gov</a>	<a href="#">Washington CON program</a>
West Virginia	1977-present	Timothy E. Adkins, CON Director Phone: 304-558-7000; Fax: 304-559-7001 <a href="mailto:tadkins@hcawv.org">tadkins@hcawv.org</a>	<a href="http://www.hcawv.org/CertOfNeed/conHome.htm">http://www.hcawv.org/CertOfNeed/conHome.htm</a>
Wisconsin	1977-1987, 1993-2011		No CON Program
Wyoming	1977-1989		No CON Program; see planning agency below

### HEALTH PLANNING AGENCIES IN STATES WITHOUT CURRENT C.O.N. PROGRAMS

State	Dates of CON law	Planning Agency & Contacts	
Arizona	1971-1985	Patricia Tarango, Chief Phone: 602-542-1436; Fax: 602-542-2011 <a href="mailto:tarangop@azdhs.gov">tarangop@azdhs.gov</a>	No CON Program
California	1969-1987	David M. Carlisle, Director Phone: 916-326-3600; Fax: 916-322-2531 <a href="mailto:QSHPD_DO@oshpd.ca.gov">QSHPD_DO@oshpd.ca.gov</a>	No CON Program
Colorado	1973-1987	Christopher E. Urbina, Executive Director and Chief Medical Officer Phone: 303-692-2011; Fax: 303-691-7704; In-state: 800-886-7689 <a href="mailto:christopher.urbina@state.co.us">christopher.urbina@state.co.us</a>	No CON Program
Idaho	1980-1983	Richard Armstrong, Director Phone: 208-334-5500; Fax: 208-334-6581 <a href="mailto:armstrongr@idhw.state.id.us">armstrongr@idhw.state.id.us</a>	No CON Program
Indiana	1980-1996, 1997-1999	Terry Whitson, Assistant Commissioner Phone: 317-233-7022; Fax: 317-233-7053 <a href="mailto:twhitson@isdh.in.gov">twhitson@isdh.in.gov</a>	No CON Program
Kansas	1972-1985	Robert Moser, Director Phone: 785-296-1086; Fax: 785-368-6368 <a href="mailto:rmoser@kdheks.gov">rmoser@kdheks.gov</a>	No CON Program
Minnesota	1971-1985	James G. Koppel, Deputy Commissioner Phone: 651-201-5810; Fax: 651-215-5801	No CON Program

		<a href="mailto:jame.koppel@health.state.mn.us">jame.koppel@health.state.mn.us</a>	
New Mexico	1978-1983	Sam Howarth, Director Phone: 505-476-1732; Fax: 505-827-2942 <a href="mailto:sam.howarth@state.nm.us">sam.howarth@state.nm.us</a>	No CON Program
North Dakota	1971-1995	Terry Dwelle, M.D., State Health Officer Phone: 701-328-4727; Fax: 701-328-4727 <a href="mailto:tdwelle@nd.gov">tdwelle@nd.gov</a>	No CON Program
Pennsylvania	1979-1996	Dr. Eli N. Avila, M.D., J.D., M.P.H., F.C.L.M., Secretary of Health Phone: 717-787-6436; Fax: 717-705-6525 <a href="mailto:eavila@state.pa.us">eavila@state.pa.us</a>	No CON Program
South Dakota	1972-1988	Doneen Hollingsworth, Secretary Phone: 605-773-3361; Fax: 605-773-5683 <a href="mailto:doneen.hollingsworth@state.sd.us">doneen.hollingsworth@state.sd.us</a>	No CON Program
Texas	1975-1985	Ramdas Menon, Director Phone: 512-459-7261; Fax: 512-458-7344 <a href="mailto:ramdas.menon@dshs.state.tx.us">ramdas.menon@dshs.state.tx.us</a>	No CON Program
Utah	1979-1984	David N. Sundwall, Executive Director Phone: 801-538-6111 Fax: 801-538-6301 <a href="mailto:dnsundwall@utah.gov">dnsundwall@utah.gov</a>	No CON Program
Wisconsin	2011-present	Neal Brandt, District Auditor Phone: 608-267-0243; Fax: 608-264-7720 <a href="mailto:neal.brandt@wisconsin.gov">neal.brandt@wisconsin.gov</a>	No CON Program
Wyoming	1977-1989	Thomas O. Forslund, Director Phone: 307-777-7656; Fax: 307-777-7439 <a href="mailto:tforslund@state.wy.us">tforslund@state.wy.us</a>	No CON Program

Contact information obtained from American Health Planning Association National Directory, 2011 edition.

## FACILITIES AND SERVICES REGULATED BY C.O.N.,

Regulated Services	Number of States	States, Districts & Commonwealth
Acute Hospital Beds	28	AL, AK, CT, DE, FL, GA, HI, IL, IA, KY, ME, MD, MI, MS, MO, NV, NH, NJ, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Air Ambulance	6	AL, ME, MA, MI, VT, DC
Ambulance Services, Ground		AZ
Ambulatory Surgical Centers (ASC)	27	AL, AK, CT, DE, GA, HI, IL, IA, KY, ME, MD, MA, MI, MS, MT, NV, NH, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Burn Care	11	AL, HI, ME, MD, NJ, NY, NC, TN, VT, WA, DC
Cardiac Catheterization	26	AL, AK, CT, DE, GA, HI, IL, IA, KY, ME, MD, MI, MS, MO, NH, NJ, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Computed Tomography (CT) Scanners	13	AK, CT, HI, ME, MI, MO, NY, NC, RI, VT, VA, WV, DC
Gamma Knives	15	AL, AK, GA, HI, ME, MA, MI, MS, MO, NC, RI, SC, VT, VA, DC
Home Health	18	AL, AR, GA, HI, KY, MD, MS, MT, NJ, NY, NC, SC, TN, VT, WA, WV, DC
Hospice	18	AL, AR, CT, FL, HI, KY, MD, MS, NY, NC, OR, RI, SC, TN, VT, WA, WV, DC
Intermediate Care Facilities/Mental Retardation (ICF/MR)	22	AR, FL, GA, HI, IL, IA, KY, LA, MD, MS, MO, MT, NV, NJ, NC, OK, SC, TN, VT, VA, WV, WI
Long Term Acute Care (LTAC)	28	AL, AK, CT, DE, FL, GA, HI, IL, IA, KY, ME, MD, MI, MS, MO, NH, NJ, NC, OR, RI, SC, TN, VT, VA, WA, WV, DC
Lithotripsy	15	AK, DE, GA, HI, ME, MA, MI, MO, NY, NC, SC, TN, VT, VA, DC
Nursing Home Beds/Long Term Care Beds	37	AL, AK, AR, CT, DE, FL, GA, HI, IL, IA, KY, LA, ME, MD, MA, MI, MS, MO, MT, NE, NH, NV, NJ, NY, NC, OH, OK, OR, RI, SC, TN, VT, VA, WA, WV, WI, DC
Medical Office Buildings	2	VT, DC
Mobile Hi Technology (CT / MRI / PET, etc)	16	AK, CT, HI, KY, ME, MI, MO, NH, NY, NC, RI, SC, VT, VA, WV, DC
	19	AK, CT, HI, KY, ME, MA, MI, MS, MO, NH, NY, NC, RI, SC, TN, VT, VA, WV, DC

Magnetic Resonance Imaging (MRI) Scanners		
Neo-Natal Intensive Care	23	AL, AK, CT, FL, GA, HI, IL, KY, ME, MD, MA, MI, NJ, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Obstetrics Services	15	AL, AK, CT, GA, HI, IL, ME, MD, NY, RI, VT, VA, WA, WV, DC
Open Heart Surgery	25	AL, AK, CT, GA, HI, IL, IA, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Organ Transplants	21	AL, AK, CT, FL, HI, IL, IA, KY, ME, MD, MA, MI, NJ, NY, NC, RI, VT, VA, WA, WV, DC
Positron Emission Tomography (PET) Scanners	20	AK, CT, DE, GA, HI, KY, ME, MA, MI, MS, MO, NH, NC, RI, SC, TN, VT, VA, WV, DC
Psychiatric Services	26	AL, AK, AR, CT, FL, GA, HI, IL, KY, ME, MD, MA, MI, MS, NH, NJ, NC, OK, RI, SC, TN, VT, VA, WA, WV, DC
Radiation Therapy	23	AL, AK, CT, DE, GA, HI, IA, KY, ME, MA, MI, MS, MO, NH, NY, NC, RI, SC, TN, VT, VA, WV, DC
Rehabilitation	25	AL, FL, GA, HI, IL, KY, ME, MD, MA, MS, MO, MT, NE, NH, NJ, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC
Renal Failure/Dialysis	12	AL, AK, HI, IL, ME, MS, NY, NC, VT, WA, WV, DC
Assisted Living & Residential Care Facilities	5	AR, LA, MO, NC, VT
Subacute Services	13	AK, FL, HI, IL, NC, OK, RI, SC, TN, WA, WI, VT, DC
Substance/Drug Abuse	19	AL, CT, FL, GA, HI, KY, ME, MD, MA, MS, MT, NH, NC, RI, SC, TN, VT, WV, DC
Swing Beds	12	AL, HI, IL, ME, MI, MS, MT, OR, TN, VT, WA, DC
Ultra-Sound	4	HI, ME, VT, DC
<b>Exemptions from CON</b>		
"Certificate of public advantage"		11 states with statutes: Idaho, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, North Carolina, North Dakota, South Carolina, Texas, and Wisconsin.
Source: WestLaw, 9/2011		

Source: AHPA, 2011; NOTE: The categories listed above are for general information. See state-specific limitations, exceptions and requirements.

### Certificate of Need (CON) Moratoria and Duration of Statutes (2011 data)

Table compiled by NCSL - March 22, 2012

State	Hospital Bed Moratorium	Long Term Care Moratorium	Other Moratorium	CON in place (dates)	Comments on Moratoria
Alabama	No	Yes	Yes	1979 - present	Moratorium is on nursing homes and in-patient hospice beds.
Alaska	No	No	No	1976 - present	No moratoria. Hospitals include two military, six PHS/ANH, three rural primary care, two psychiatric facilities.
Arkansas	No	No	Yes	1975 - present	Moratoria by date of implementation: ICF-MR since 1994; Residential Care Facilities since 2005; Psychiatric Residential Facilities for Children/Adolescents since 2008.
Connecticut	No	Yes	No	1973 - present	Statewide moratorium on long term care (nursing home facilities).
Delaware	No	No	No	1978 - present	No additional hospitals offering medical/surgical or obstetrical beds shall be established for five years (2014).
D.C.	No	No	No	1977 - present	
Florida	No	Yes	Yes	1973 - present	Moratorium through June 2011 on the issuance of CON for additional community nursing home beds. Expected to be extended to 2016.
Georgia	No	No	No	1979 - present	
Hawaii	No	No	No	1974 - present	
Illinois	No	No	No	1974 - present	
Iowa	No	No	No	1977 - present	
Kentucky	No	No	No	1972 - present	
Louisiana	No	Yes	No	1991 - present	Moratorium on long term care nursing facilities and ICF/DD.
Maine	Yes	Yes	No	1978 - present	
Maryland	No	No	No	1968 - present	
Massachusetts	No	Yes	No	1972 - present	
Michigan	No	No	No	1972 - present	



Mississippi	No	Yes	Yes	1979 - present	Home health agencies; long term care facilities.
Missouri	No	No	No	1979 - present	Long term care moratorium in effect from 1983 through 2002, expired January 1, 2003.
Montana	No	No	No	1975 - present	
Nebraska	No	Yes	Yes	1979 - present	Moratoria on nursing home and rehabilitation beds.
Nevada	No	No	No	1971 - present	
New Hampshire	No	Yes	Yes	1979 - present	Physical rehabilitation beds.
New Jersey	No	Yes	No	1971 - present	LTC applications subject to the issuance of a call for applications.
New York	No	No	No	1966 - present	
North Carolina	No	No	No	1978 - present	
Ohio	No	Yes/No	No	1975 - present	Prohibition on adding new nursing home beds through June 31, 2009.
Oklahoma	No	Yes	No	1971 - present	
Oregon	No	No	No	1971 - present	
Rhode Island	No	Yes	No	1968 - present	Moratorium on nursing home beds in place since 1996.
South Carolina	No	No	No	1971 - present	
Tennessee	No	No	No	1973 - present	
Vermont	No	No	No	1979 - present	
Virginia	No	No	No	1973 - present	
Washington	No	No	No	1971 - present	Nursing home beds include 1,580 banked (alternate use) and 2,158 beds banked - full facility.
West Virginia	No	Yes	Yes	1977 - present	Moratorium on skilled/intermediate nursing homes since 1987.
Wisconsin	No	Yes	Yes	1977-87; 1993 - present	

Source: American Health Planning Association, National Directory State Certificate of Need Programs Health Planning Agencies 2011

## CON Online Sources & Resources:

1. <http://www.ahpanet.org/artidescopn.html> Articles and essays collected from American Health Planning Association
2. <http://www.washingtonpolicy.org/sites/default/files/FullCONBrief.pdf> Opponent view of CON Program using Washington State as example.
- \* Ambulatory Surgery Center Association (ASC) - trade association representing interests of Ambulatory surgical centers nationwide. <http://ascassociation.org/>
3. [www.ftc.gov](http://www.ftc.gov) The Federal Trade Commission website
4. [http://www.ahpanet.org/websites\\_copn.html](http://www.ahpanet.org/websites_copn.html) American Health and Planning Association with other planning related websites and a list of websites for the CON programs of each state. <http://www.ahpanet.org/index.html>
5. <http://content.healthaffairs.org/cgi/reprint/hlthaff.25.w337v1>
6. 'Monopoly is not the Answer' an abstract of how regulations have affected the markets. Health Affairs, August 9, 2005.
7. 'Effects of Physician-Owned Limited Service Hospitals: Evidence from Arizona' an abstract. Health Affairs, October 25, 2005.
8. 'Political Evolution of Federal Health Care Regulation' Health Affairs, Copyright 1992.
9. 'Specialty Versus Community Hospitals: What Role for the Law?' Health Affairs, August 9, 2005.
10. 'Rules of the Game: How Public Policy affects local Health Care Markets' Health Affairs, Copyright 1998.
11. <http://www.law.fsu.edu/journals/lawreview/issues/231/mcginley.html>

**Diagnostic Imaging on Rise in Managed Care** -Use of radiology imaging tests has soared in the past decade with a significant increase in newer technologies, according to a new study that is the first to track imaging patterns in a managed care setting over a substantial time period. Study results are reported in the November/December 2008, Health Affairs.



**2009 - 2010 Passed Bills/Signed Laws: CON State Legislation**

State/Bill/Web link/Sponsor	Descriptions of Bills/Excerpts of bill text
MD <a href="#">SB 1039, HB 1486</a> Sen. Currie Rep. Hubbard	Allows the Maryland Health Care Commission to issue an exemption from Certificate of Need and waive the requirements of the State Health Plan in order to facilitate a recommendation by the authority to relocate beds or services of all or part of a facility. Any health care entity that acquires all or part of the Prince George's County health care system shall be recognized as a merged asset system for certificate of need purposes. (filed 3/2/09; signed into law by governor as Chapters 116 & 117, 4/14/09)
NJ <a href="#">AB 3389</a> Assm. Barnes	The termination of provision of hospital acute care services shall not preclude the commissioner from issuing a new Certificate of Need with respect to the provision of hospital acute care services at the location to a party unrelated to the party to whom the Certificate of Need with respect to the termination of the provision of hospital acute care services was issued. (filed 10/23/08; signed into law by governor as Chapter 2009-2, 1/15/2009)
VA <a href="#">HB 1768</a> Rep. Dance	Exempts medical care facilities of the Department of Corrections from the definition of medical care facility for purposes of the Certificate of Need process. (filed 1/14/09; signed into law by governor as Chapter No.67, 2/25/09)
VA <a href="#">SB 1162</a> Sen. Watkins	Provides that when a certificate of need holder fails to satisfy the conditions of the certificate, the certificate holder shall file a plan of correction with the Department of Health; relates to methods to satisfy the certificate, which may include direct payments to a private nonprofit foundation that funds basic insurance coverage for indigents or other documented efforts to provide primary or specialized care to underserved populations. (filed 1/14/09; signed into law by governor as Chapter 711, 3/30/09)
VA <a href="#">HB 1598</a> Rep. Hamilton	Sets guidelines for the issuance of certificate of need by the Commissioner of Health. (filed 1/14/09; signed into law by governor as Chapter No. 175, 3/25/09)
VA <a href="#">HB 1605</a> Rep. Purkey	Authorizes the Commissioner of Health to accept and approve a request to amend the conditions of a certificate of need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds when created in connection with a real estate cooperative or offers residents a level of continuing care. (filed 1/14/09; signed into law by governor as Chapter No. 394, 3/27/09)
WA <a href="#">SB 5423</a> Sen. Pflug	Exempts from the certificate of need process up to a specified number of swing beds in a critical access hospital that is located in a city or town without a nursing home in the city or town limits. (filed 1/21/09; signed into law by governor as Chapter 54, 4/10/09)
WA <a href="#">HB 1926</a> Rep. Cody	Exempts hospice agencies from the certificate of need process if the agencies provide services designed to meet the religious or cultural needs of religious groups or ethnic minorities. (filed 2/3/09; signed into law by governor as Chapter 89, 4/15/09)
WV <a href="#">SB 321</a> Sen. Prezioso	Modifies certificate of need process and review; sets standards for ambulatory health care facilities not subject to certificate of review; provides that electronic health records are not subject to certificate of review; provides that nonhealth-related projects are subject to certificate of review; modifies the fee structure for certificate of review. (filed 2/20/09; signed into law by governor, 4/13/09)

## Additional Professional Reports and Opinions:

[State Legislation Relating to Transparency and Disclosure of Health and Hospital Charges](#) - NCSL report, updated 2009.

[Medical/Surgical Bed Occupancy Rate Targets](#) - AHPA Newsletter, 2007 (page 7)

[Certificate of Need Programs](#) - A consumer guide & Overview by Community Catalyst & FUSA, 2009.

DaimlerChrysler Corporation. [Certificate of Need: Endorsement by DaimlerChrysler Corporation](#), February 2002:

Illinois: Hospital Approval Laws Criticized by U.S. Antitrust Agencies - SHN, 9/15/08.

"Certificate of Need: Protecting the Public Interest" Slides by Thomas Piper, Director MO CON Program. 8/06.

[Ambulatory Surgery Center Payment Information Now Available](#) - report by CMS, 11/06.

[Hospital Inpatient Payment Information Now Available](#) - report by CMS, 8/06.

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