

COVID-19

Providing Flexibility in Certificate of Need Program Processes in Response to COVID-19

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What is a Certificate of Need (CON) Program?

Certificate of Need (CON) laws are state regulatory mechanisms for establishing or expanding health care facilities and services in a given area of a state. In states that have CON programs, a state health planning agency must approve major capital expenditures for certain health care facilities. CON programs aim to control health care costs by restricting duplicative services and determining whether new capital expenditures meet a community need. Generally, a health care entity submits a CON application to the state for review and approval when it wishes to:

- Offer a new line of services (e.g., oncology)
- Increase the number and types of beds offered (e.g., ICU beds)
- Build an entirely new service site (e.g., a new ambulatory surgery center)

As of 2019, 35 states and Washington, D.C. operate CON programs. These programs vary widely between states—with some states having more intensive processes, and others utilizing more flexible approaches.¹

How are CON Programs Being Changed in Light of COVID-19?

With the spread of COVID-19 either pushing or threatening to push hospitals to capacity, several states are re-evaluating and adjusting the policies for their CON programs. States with high numbers of the COVID-19 cases and hospitalizations are enacting time-limited, targeted changes to or suspensions of their CON processes – doing so removes state regulatory barriers to effectively address the critical and growing health care need. To date, the majority of states with CON laws in place have suspended their full CON process, or, at a minimum, a portion of their CON process (e.g., suspension of a CON related to creating new or reallocating beds to meet a surge in patients requiring COVID-19 treatment).

¹ CON-Certificate of Need State Laws. National Conference of State Legislatures. December 2019. Available: <https://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

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State Examples

Several states have made changes to their CON processes in response to the COVID-19 crisis. The following examples demonstrate the spectrum of pathways states are taking when making changes to or suspending CON processes in response to the crisis:

- **Massachusetts:** Massachusetts has limited the requirements for providers seeking to make a substantial capital expenditure, change in service or transfer of site to address COVID-19. Instead of a full CON application, providers are able to complete a streamlined application process with the Department of Public Health (DPH). Once DPH receives the application, a staff person will review and determine whether the need for project relates to COVID-19. If it does, DPH will confirm with the applicant that they may begin the expenditure/change in service necessary to address COVID 19.
- **New Jersey:** New Jersey has suspended its CON program for the creation of new hospital beds and for exceeding licensed bed capacity. Hospitals must follow the usual CON process for new structures, equipment and capital expenditures.
- **New York:** New York has made significant changes to increase the flexibility and timeliness of its CON program. Under new guidance, providers in New York are only required to notify the Department of Health about the new project--but do not need to wait for approval prior to moving forward with these requests.