



# Certificate of Need

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# Presentation Overview

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# Strengthening the Legislative Institution

# How NCSL Strengthens Legislatures



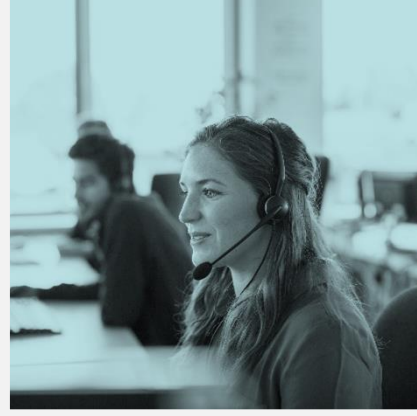
## Policy Research

NCSL provides trusted, nonpartisan policy research and analysis



## Connections

NCSL links legislators and staff with each other and with experts



## Training

NCSL delivers training tailored specifically for legislators and staff



## State Voice in D.C.

NCSL represents and advocates on behalf of states on Capitol Hill



## Meetings

NCSL meetings facilitate information exchange and policy discussions



# Certificate of Need: Background and National Overview

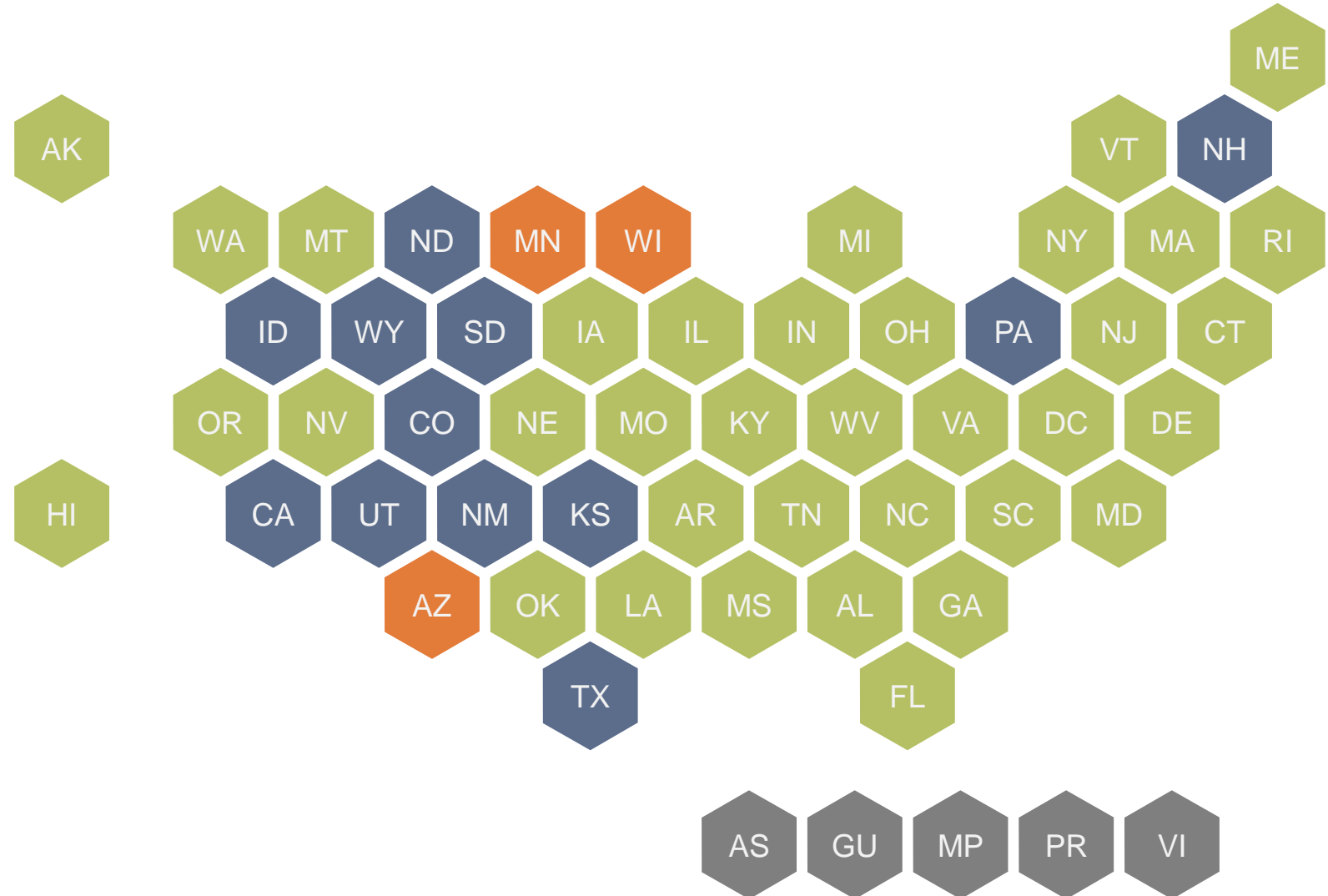
# What is Certificate of Need?

- Certificate of Need (CON) laws require health care facilities to seek state approval prior to major capital expenditures or projects.
- For example:
  - Constructing a new hospital.
  - A nursing home expanding their bed capacity.
  - Health systems opening a new ambulatory care center or initiating new services like a burn unit.



# Certificate of Need State LAWS (as of June 2023)

- CON Law
- Variation of CON Law
- No CON Law
- No Data



# Certificate of Need: Key Terms



**Oversight Entity:** a state body, such as a department of health, office of health facility licensing, division of health planning, or other entity that operates the certificate of need program.



**Regulated Facilities:** any real property or equipment owned, leased or used by the health care institution which CON review is applied to (often includes reference to specific facility types, e.g., hospitals).



**Regulated Health Services:** clinically related (i.e., diagnostic, curative or rehabilitative) services provided in or through health-care facilities.



**Capital Expenditure:** an expenditure made by or on behalf of the health facility that is not chargeable as an expense of operation or maintenance and includes acquisition by purchase, transfer, lease or comparable arrangement.



**Licensed Beds/ Bed Capacity:** the total number of inpatient beds in a facility licensed by the respective state agency.



**Review Cycle:** the timeframe set for the review and initial decision on applications for CON applications that have been deemed complete.



**Service Area:** means the current and project service areas to which the facility is, or will be, providing services.





# CON Deep Dive - State Examples

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# State Example: Tennessee

## Oversight Entity

- Tennessee Department of Health:
  - Health Services Development Agency – reviews CON applications.
  - Division of Health Planning – sets standards and requirements for demonstrating CON.

## Regulated Facilities

- Nursing homes
- Hospitals and mental health hospitals
- Outpatient diagnostic centers
- Recuperation centers
- Ambulatory surgical treatment centers

## Regulated Activities

- Constructing, developing, or establishing a health care facility.
- Changing the licensed bed/ bed capacity of a facility.
- Initiating services such as a burn unit, open heart surgery or organ transplantation.

# State Example: Virginia

## Oversight Entity

- Virginia Department of Health:
  - Division of Certificate of Public Need within the Office of Licensure and Certification

## Regulated Facilities

- General hospitals
- Nursing homes
- Intermediate care facilities (with exceptions)
- Extended care facilities
- Psychiatric hospitals and intermediate care facilities for individuals with substance abuse

## Regulated Activities

- Establishing a new medical care facility.
- Increasing the number of licensed beds or operating rooms.
- Relocating beds from an existing facility to another.
- Introducing new nursing home services.

# State Example: Ohio

## Oversight Entity

- Ohio Department of Health:
  - Office of Health Assurance and Licensing/Health Care Services Section

## Regulated Facilities

- Long-term care facilities, including:
  - a nursing home
  - the portion of any facility that is certified as a skilled nursing facility

## Regulated Activities

- Establishing, developing or constructing new long-term care facilities.
- Replacing an existing facility.
- Increasing long-term care bed capacity.
- Relocating long-term care beds from one site to another.

# Certificate of Need Variations

## State Examples

### Arizona

- **Regulated Facilities & Activities:** Requires CON application for ambulance services and ambulances.
- **Oversight Entity:** Arizona Department of Health Services, Bureau of Emergency Medical Services & Trauma System

### Minnesota

- **Regulated Facilities & Activities:** Maintains moratoria for select facilities, including hospitals, with process to obtain exceptions from moratoria.
- **Oversight Entity:** Minnesota Department of Health, and the legislature retains the decision to grant an exception.

### Wisconsin

- **Regulated Facilities & Activities:** Maintains moratoria for hospital and psychiatric or chemical dependency beds, with process to obtain exceptions from moratoria.
- **Oversight Entity:** Wisconsin Department of Health Services



# Recent Certificate of Need Legislation

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# Recent Certificate of Need Legislation



## Substantial Reforms

- Florida, Montana and South Carolina enacted legislation limiting CON oversight to long-term care facilities.



## Targeted Modifications

- Washington enacted legislation exempting rural health clinics in home health shortage areas from CON review.



## Additional Requirements

- Illinois and Nevada enacted legislation requiring health facilities to seek CON approval prior to closing a facility.

# Recent Certificate of Need Legislation: Task Forces and Study Committees

## Georgia

### Senate Study Committee on Certificate of Need Reform

- **Goal:** look at the effect of CON on access to health care, costs, and how CON affects rural areas.
- **Recommendations (forthcoming):** recommend any action or legislation which the committee deems necessary or appropriate.

## Connecticut

### Certificate of Need Task Force

- **Goal:** studying and recommending the effect of CON on 10 matters.
- **Recommendation:** recently published report includes multiple recommendations responding to each of the 10 matters.

## South Carolina

### Certificate of Need Study Committee

- **Goal:** examining the effect of CON repeal on health care quality and access in rural areas.
- **Recommendations (forthcoming):** recommend action on any of the rural health care access measures studied, may include legislative, regulatory, or policy changes.





# Research and Studies

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# Certificate of Need: Research and Studies

## Certificate of Need Laws: A Systematic Review and Cost-effectiveness Analysis

- Reviewed 90 articles to summarize the evidence on how CON laws affect regulatory costs, health expenditures, health outcomes, and access to care.

## The Association of Hospital Cost-Inefficiency with Certificate-of-Need Regulation

- Compared the cost-inefficiency of urban, acute care hospitals in states with CON laws against those in states without CON requirements using data from 1,552 hospitals in 37 states over four years.

## Does Certificate of Need Really Contain Hospital Costs in the United States?

- Examined the impact of CON laws on hospital costs by looking at data for 1,957 acute care hospitals in 301 standard metropolitan statistical areas (SMSAs).

## Association of State Certificate of Need Regulation With Volumes, Market Share and Outcomes

- Examined if there an association between CON laws and markers of hospital procedural activity and quality of care by analyzing Medicare beneficiaries who underwent 1 of 10 specified procedures.

# Additional Resources

- [Certificate of Need Webpage, \(NCSL\)](#)
- [Health Costs, Coverages and Delivery Database, \(NCSL\)](#)
- [Repeal or Retool? States Assess Certificate of Need Laws \(NCSL\)](#)





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