



UNDERSTANDING CERTIFICATE OF NEED IN TENNESSEE

WHAT IS A CON?

A Certificate of Need (CON) is a permit authorizing the establishment, modification, or construction of a healthcare institution, facility, or service at a designated location. Obtaining a CON is a prerequisite to obtaining licensure from the State of Tennessee for certain enumerated health services and facilities. The Health Services and Development Agency (HSDA) regulates the healthcare industry in Tennessee through the CON program. A CON is granted by the HSDA through the approval or denial of an eleven-member board. Board members are appointed by the Governor and other state officials and represent different healthcare sectors including home health, nursing homes, and hospitals.

WHAT IS THE HISTORY OF THE CON PROGRAM?

CON requirements began appearing nationwide in the 1970s, when the federal government urged states to control rising healthcare costs by managing the growth of healthcare services and facilities through health planning. Tennessee created the HSDA to administer the CON program in 1973. Today, the CON program is an entirely state-driven process, and Tennessee is one of approximately 36 states that continues to regulate the growth of certain healthcare institutions through the CON process. Tennessee's CON program was significantly changed in 2016, but an attempt to further alter the program was unsuccessful in 2019. Although any change to the CON program would come from the Tennessee legislature, there are advocates for eliminating the program entirely and others pushing for continued use of the CON program.

WHAT FACILITIES AND SERVICES REQUIRE A CON?

Tennessee requires CONs for nursing homes; recuperation centers; hospitals; ambulatory surgery centers; mental health hospitals; intellectual disability institutional habilitation facilities; home health agencies; hospice organizations; outpatient diagnostic centers; rehabilitation facilities; residential hospices; and nonresidential substitution-based treatment centers for opiate addiction. Tennessee also requires a CON before an existing provider can begin to provide certain services. These include: burn units; neonatal intensive care units; open heart surgery; positron emission tomography; organ transplantation; home health; inpatient psychiatric; pediatric MRIs; MRIs in counties with populations less than 250,000; cardiac catheterization; linear accelerator; hospice; and opiate addiction treatment. A change in the number of beds at a healthcare institution may also require a CON. A CON is not required for the establishment of ground ambulances, physician's offices, or mental health residential treatment facilities.

waller

wallerlaw.com

HOW DOES A FACILITY OBTAIN A CON?

The CON process starts when the entity seeking a CON files a Letter of Intent with the HSDA between the 1st and 10th day of any month. This needs to be followed by the publication of that letter in a newspaper of public circulation in the community where the project will be located. Within five (5) days of this publication, the CON Application and applicable filing fee must be filed with the HSDA. The application is then reviewed, and the HSDA has the opportunity to ask supplemental questions and seek additional information from the applicant if HSDA staff, or members of the Board, believe that additional information is necessary. This process typically takes 60 days. Upon completion of this process, the HSDA will deem the application complete, and the application will be reviewed and submitted for consideration at the next regularly scheduled HSDA meeting. The applicant will be invited to that meeting and allowed to present information and argument in support of its proposed CON to demonstrate that the criteria for a CON has been met. If other individuals or entities – typically market competitors – object to the proposed CON, they can present information and argument at the meeting in opposition. At the conclusion of the applicant's presentation (and the presentation of any opposition), the HSDA will vote in favor of or against granting the CON. All votes are public.

FINALLY, WHAT INFORMATION SHOULD BE INCLUDED IN AN APPLICATION?

In evaluating a CON application, the HSDA is guided by the State Health Plan, which sets forth the criteria that should be considered and analyzed in evaluating whether the proposed service or facility is necessary. As such, every CON application should explain why the proposed healthcare facility or service is needed in the proposed service area and may be evaluated based upon the following factors: the relationship of the proposal to any existing applicable plans; the population served by the proposal; the existing or certified services or institutions in the area; the reasonableness of the service area; the special needs of the service area population, including the accessibility to the consumers, particularly women, racial and ethnic minorities, and low-income groups; comparison of utilization and occupancy trends and services offered by other area providers; and the extent to which Medicare, Medicaid (TennCare), and medically indigent patients will be served by the project.

Additionally, every application should describe how the proposed facility or service can be economically accomplished and maintained. These criteria will be evaluated upon the following factors: whether adequate funds are available to the applicant to complete the project; the reasonableness of the proposed project costs; anticipated revenue from the proposed project and the impact on existing patient charges; participation in state and federal revenue programs; and the availability of less costly or more effective alternative methods of providing the benefits intended by the proposal.

Finally, the application needs to demonstrate the proposed project will contribute to the orderly development of an adequate and effective healthcare system in the state. The application thus may be evaluated upon the following factors: the relationship of the proposal to the existing healthcare system; the positive or negative effects attributed to duplication or competition; the availability and accessibility of human resources required by the proposal, including consumers and related providers; and the quality of the proposed project in relation to applicable governmental or professional standards.

The goal of Tennessee's CON program is to assure that healthcare projects are accomplished in an orderly, economical manner, consistent with the development of adequate and effective healthcare for the citizens of Tennessee. The HSDA Board meets six times throughout the year, Waller's team attends these meetings and issues a Tennessee CON update following each meeting. The report is designed for our clients, but made publicly available.