

Florida Legislature Votes to Repeal Hospital CON Program

On April 29, 2019, the Florida Legislature passed House Bill 21 (largely along party lines), which repeals the state's *certificate of need* (CON) laws with respect to general hospitals, specialty hospitals, and tertiary services.¹ Pursuant to the bill, general hospitals and providers of tertiary services will be free of this requirement beginning in July 2019, while specialty hospitals will no longer be subject to the CON law starting in 2021.² As of now, hospices, nursing homes, and intermediate care facilities for persons with developmental disabilities (ICF/DD) would still be subject to the CON regulations.³ While Governor Ron DeSantis has not yet signed the bill, he is expected to do so, and the law would subsequently become effective July 1, 2019.⁴

State CON laws generally require healthcare providers to obtain authorization from a state to construct new healthcare facilities, expand/renovate existing ones, or offer certain healthcare services.⁵ Most states adopted CON programs in response to the *National Health Planning and Resources Development Act of 1974*, which offered states financial incentives to adopt CON programs;⁶ this law was repealed in 1986.⁷ These programs were supposed to “control...costs by restricting provider capital expenditures,” but these outcomes never ensued, leading to the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) suggesting, approximately 15 years ago, that states repeal or retrench their CON laws.⁸ To date, 15 states have eliminated their CON programs, although three of them still have some variation of a CON program.⁹ As of July 2019, it appears that Florida will join that group.

Notably, the passage of this Florida legislation comes after the publication of a federal government report that aggressively pushed states to repeal their CON laws. In December 2018, the Department of Health & Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury, issued a report entitled “*Reforming America’s Healthcare System through Choice and Competition*,” which argued in part that the existence of CON laws has been a significant cause of escalating healthcare costs.¹⁰

Florida’s CON deregulation may spur other states that have also been considering CON repeals (or some variation thereof), including Georgia, Alaska, South Carolina, and North Carolina. In April 2019, the Georgia House passed a bill that (among other provisions), effective July 1, 2019, limits the healthcare providers that could object to a CON application from any hospital, to only those within a 35-mile radius of the proposed project; allows for the establishment of freestanding emergency departments (FSEDs); and, increases the capital expenditure thresholds for new healthcare services from \$2.5 million to \$10 million.¹¹ This bill was the culmination of a number of influencing events, including the failure of a previous (more restrictive) bill, strong lobbying efforts against the measure by Georgia hospitals, and public support for the measure from Governor Brian Kemp.¹²

On the other side of the country, Alaska legislators are seeking to repeal the state’s CON law for the third straight year. Identical bills in the state house and senate (House Bill 17 and Senate Bill 1, respectively), seek a wholesale repeal of the law, and are currently in their respective committees for consideration.¹³ Similarly, South Carolina legislators introduced a bill to wholesale repeal its CON laws in January 2019. House Bill 3823 has since been referred to committee for consideration.¹⁴ In April 2019, North Carolina legislators introduced multiple bills to: (1) repeal the entirety of the CON law (Senate Bill 539); and, (2) absolve ASCs from CON requirements (Senate Bill 646 and House Bill 857).¹⁵ All three bills have passed their first reading and have also been referred to the respective committees.¹⁶

In addition, a number of states (including Missouri, Montana, Oregon, and West Virginia) have recently repealed CON requirements related to transportation, and Kansas is currently considering such a repeal.¹⁷ Of note, most of these states are considered to be conservatively leaning, from a political standpoint, which may indicate that the Trump Administration report advocating for the repeal of these laws has resonated with states, and motivated this newest wave of CON law repeals.

- 1 “CS/HB 21 - Hospital Licensure” Florida House of Representatives, <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=65613&SessionId=87> (Accessed 6/18/19); “FL lawmakers pass broad healthcare changes easing hospital rules, adding drug imports” By Elizabeth Koh, Miami Herald, April 29, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article229719314.html> (Accessed 6/18/19).
- 2 *Ibid.*
- 3 *Ibid.*
- 4 “Florida Legislature sends major health bills to Gov. DeSantis” By Christine Sexton, The Daytona Beach News-Journal, April 29, 2019, <https://www.news-journalonline.com/news/20190429/florida-legislature-sends-major-health-bills-to-gov-desantis> (Accessed 6/18/19).
- 5 “Reforming America’s Healthcare System through Choice and Competition” Department of Health & Human Services, 2018, <https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf> (Accessed 5/28/19).
- 6 *Ibid.*
- 7 “Joint Statement of the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission Before the Illinois Task Force on Health Planning Reform” U.S. Department of Justice, September 15, 2008, <https://www.justice.gov/atr/competition-health-care-and-certificates-need-joint-statement-antitrust-division-us-department> (Accessed 6/18/19).
- 8 Chapter 8 in “Improving Health Care: A Dose of Competition” A report by the Federal Trade Commission and the Department of Justice, 2004, available at: <https://www.ftc.gov/sites/default/files/documents/reports/improving-health-care-dose-competition-report-federal-trade-commission-and-department-justice/040723healthcarerept.pdf> (Accessed 6/18/19).
- 9 “Certificate of Need State Laws” National Conference of State Legislatures, February 2019, <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx> (Accessed 6/18/19).
- 10 Department of Health & Human Services, 2018. For more information on the content of this report, see “Federal Agencies Recommend Policies to Increase Healthcare Competition” Health Capital Topics, Vol. 11, Issue 12 (December 2018), https://www.healthcapital.com/hcc/newsletter/12_18/PDF/POLICY.pdf (Accessed 6/18/19).
- 11 House Bill 186, Georgia House of Representatives (March 29, 2019), available at: <http://www.legis.ga.gov/legislation/en-US/Display/20192020/HB/186> (Accessed 6/18/19).
- 12 “Ga. Legislature Approves CON Changes, Medicaid Funding Plan, Hospital Transparency” By Andy Miller, WABE, April 1, 2019, <https://www.wabe.org/breakthrough-legislature-approves-con-changes-medicaid-funding-plan-hospital-transparency/> (Accessed 6/18/19); “Kemp backs bid for CON changes, gets House panel OK on waiver plan” By Andy Miller, Georgia Health News, March 20, 2019, <https://www.georgiahealthnews.com/2019/03/kemp-backs-bid-con-changes-house-panel-waiver-plan/> (Accessed 6/18/19).
- 13 “Repeal Certificate of Need Program” Senate Bill 1 (April 10, 2019), available at: <http://www.akleg.gov/basis/Bill/Detail/31?Root=SB%20%20%201> (Accessed 6/18/19); “Repeal Certificate of Need Program” House Bill 17 (February 20, 2019), available at: <https://www.akleg.gov/basis/Bill/Detail/31?Root=HB%20%2017> (Accessed 6/18/19); “Legislators revive bills to abolish certificate of need program” By Elizabeth Earl, Alaska Journal of Commerce, February 2, 2019, <http://www.alaskajournal.com/2019-02-06/legislators-revive-bills-abolish-certificate-need-program> (Accessed 6/18/19).
- 14 “To Amend Sections 44-7-110, 44-7-120, 44-7-130, 44-7-140, 44-7-150, and 44-7-320, Code of Laws of South Carolina, 1976, all Relating to the Regulation of Health Care Facilities in the State, so as to Eliminate References to Certificate of Need Requirements; to Repeal Sections 44-7-160, 44-7-170, 44-7-180, 44-7-190, 44-7-200, 44-7-210, 44-7-220, 44-7-225, 44-7-230, and 44-7-240 all Relating to the Certificate of Need Program; to Rename Article 3, Chapter 7, Title 44 as “State Health Facility Licensure Act”; and for Other Purposes” House Bill 3823 (January 23, 2019), available at: <https://legiscan.com/SC/bill/H3823/2019> (Accessed 6/18/19).
- 15 “House members take another stab at certificate-of-need reform” By Dan Way, Carolina Journal News Service, April 23, 2019, <http://www.reflector.com/News/2019/04/23/House-members-take-another-stab-at-certificate-of-need-reform.html> (Accessed 6/18/19).
- 16 “An Act Repealing North Carolina’s Certificate of Need Laws” Senate Bill 539 (April 2, 2019), available at: <https://www.ncleg.gov/BillLookUp/2019/S539> (Accessed 6/18/19); “Amend Certificate of Need Laws” Senate Bill 646 (April 3, 2019), available at: <https://www.ncleg.gov/BillLookUp/2019/S646> (Accessed 6/18/19); “An Act Exempting Ambulatory Surgical Facilities From Certificate of Need Review” House Bill 857 (April 16, 2019), available at: <https://www.ncleg.gov/BillLookUp/2019/H857> (Accessed 6/18/19).
- 17 “The ‘competitor’s veto’ is killing entrepreneurship — but that may end this year” By Anastasia Boden, The Hill, April 8, 2019, <https://thehill.com/opinion/judiciary/437082-the-competitors-veto-is-killing-entrepreneurship-but-that-may-end-this-year> (Accessed 6/18/19).



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