

## **Georgia Department of Community Health/Office of General Counsel**

### **CERTIFICATE OF NEED (CON)**

### **FREQUENTLY ASKED QUESTIONS**

#### **What is a Certificate-of-Need (CON)?**

A Certificate-of-Need is a document issued by the Department of Community Health to show that a proposed health care project is necessary to meet community needs. Georgia's Health Planning Statute, Title 31, Chapter 6, requires the issuance of a CON before proceeding with certain kinds of health care projects.

#### **What projects require a Certificate-of-Need?**

Georgia's Health Planning Statute covers almost all health care facilities, including:

- All public and private hospitals, including general, acute-care, and specialized hospitals;
- Nursing homes;
- Ambulatory surgical services or obstetrical facilities;
- Home health agencies;
- Personal care homes (**with 25 or more beds**);
- Inpatient rehabilitation facilities treating traumatic brain injury;
- Diagnostic, treatment and rehabilitation centers (whether for-profit or not-for-profit)

#### **When is a Certificate-of-Need required?**

A CON is required to develop or construct a new health care facility. A new healthcare facility includes hospitals, certain special care units (e.g. podiatry center), skilled nursing facilities, intermediate care facilities, personal care homes with 25 beds or more, ambulatory surgical or obstetrical facilities, health maintenance organizations, home health agencies, and "diagnostic, treatment, and rehabilitation centers" (DTRC).

A DTRC is a facility which either offers 1) radiation therapy, outpatient surgery, cardiac catheterization, or biliary lithotripsy OR 2) acquires or operates diagnostic or therapeutic equipment exceeding the CON equipment expenditure threshold.\*\*

A CON is also required before a health care facility can:

- Proceed with a construction or renovation project or any other capital expenditure that exceeds the construction threshold\*\*;
- Purchase or lease major medical equipment that exceeds the threshold amount for equipment acquisition\*\*;

- Offer a health care service which was not provided on a regular basis during the previous 12-month period; or
- Add new beds.
  - **\*\* Note:** The Certificate of Need thresholds are set annually on April 1<sup>st</sup>. Calculation of the thresholds is made using the U. S. Bureau of Economic Analysis' (BEA) Composite Annual Index. For the current thresholds, please visit the Department's website at [www.communityhealth.state.ga.us](http://www.communityhealth.state.ga.us) Look under Certificate of Need then click on CON Thresholds.

A CON is nontransferable and is valid only for the location and the time period specified in the certificate.

### **What projects are exempted from CON review?**

Some projects that are exempted from CON review include:

- Repairs to a facility that fall below the CON review threshold;
- Acquisition of equipment that falls below the CON review threshold;
- Replacement of existing therapeutic or diagnostic equipment;
- Projects that bring facilities into compliance with licensing requirements, life safety codes or standards of the Joint Commission on Accreditation of Healthcare Organizations;
- Cost overruns that represent less than 10 percent of the previously approved capital expenditure and do not exceed the CON review threshold; all cost overruns under **\$ 300,000** are exempt from review;
- A hospital that maintains an occupancy rate greater than 85 percent for the preceding 12-month period may increase its capacity by 10 beds or 10 percent of its existing inventory (whichever is less) every two years without a CON unless the cost associated with the increase exceeds the capital threshold. The hospital must submit a written request for a review exemption under this provision, and the request must document the facility's month-by-month occupancy; and
- An Ambulatory Surgery Facility that is physician owned, office-based, and single-specialty, the establishment and development of which does not exceed the Limited-Purpose Physician-Owned Ambulatory Surgery Centers Threshold.

### **What if I still have questions about whether a CON is necessary?**

If you are not sure whether a project requires a CON before implementation, correspondence should be sent to the Georgia Department of Community Health/Office of General Counsel (OGC) to request an official Letter of Determination. This communication should include as much information about the project as possible. The OGC will respond in writing. A determination about whether CON requirements apply to a specific project must be made in writing.

### **What is the length of CON review cycle?**

The OGC schedules meetings with CON applicants to ensure that no CON review, except as noted under Joining of Competing Applications, will require longer than **90** days to complete (starting from the date the application is deemed complete until the date the OGC mails its decision to the applicant). Under certain conditions, an applicant or the OGC may extend the review cycle. The sum of all extensions may not exceed **30** additional days.

### **Can CON decisions be appealed?**

CON decisions may be appealed by:

- The applicant;
- A competing applicant;
- A competing health care facility that notified the OGC about its opposition to a proposed project before the review cycle was completed;
- The county or municipal government where the project would be located

### **What are the sanctions for failing to comply with CON requirements?**

The OGC may seek court injunctions to halt violations as well as impose maximum fines of \$5,000 per day for every day a violation exists. Facilities that have not been previously licensed and proceed to offer a new institutional health service without obtaining a CON will be denied a license to operate.