

CERTIFICATE OF NEED (CON)

Basic Primer and History of the Program

Certificate of Need (CON) is a regulatory review process that requires application to the Department of Public Health for, and receipt of, a certificate of need prior to the offering or development of a new or changed institutional health service.

Projects proposed by providers are reviewed by department staff and the State Health Facilities Council, a five-member, governor-appointed body.

It is the Council's mandate to assure that growth and changes in the health care system occur in an orderly, cost-effective manner and that the system is adequate and efficient.



In the early 1970's, the federal government enacted two separate hospital capital expenditure review programs; one of these was the National Health Planning and Resources Development Act, a federal act containing the enabling provisions of CON programs.

This established a mandatory nationwide system of state and local health planning agencies to conduct CON review of capital expenditures, major medical equipment, and new institutional services; develop state health plans; gather health care data; and perform other functions related to the provision, availability, and cost of health care.

Although the federal mandate was repealed in 1987, there are still about 36 states that operate some form of a CON program.

Iowa enacted its version of certificate of need in 1977 with the passage of House File 354, now codified at Code of Iowa sections 135.61 through 135.83.

As stated in the preamble of HF 354:

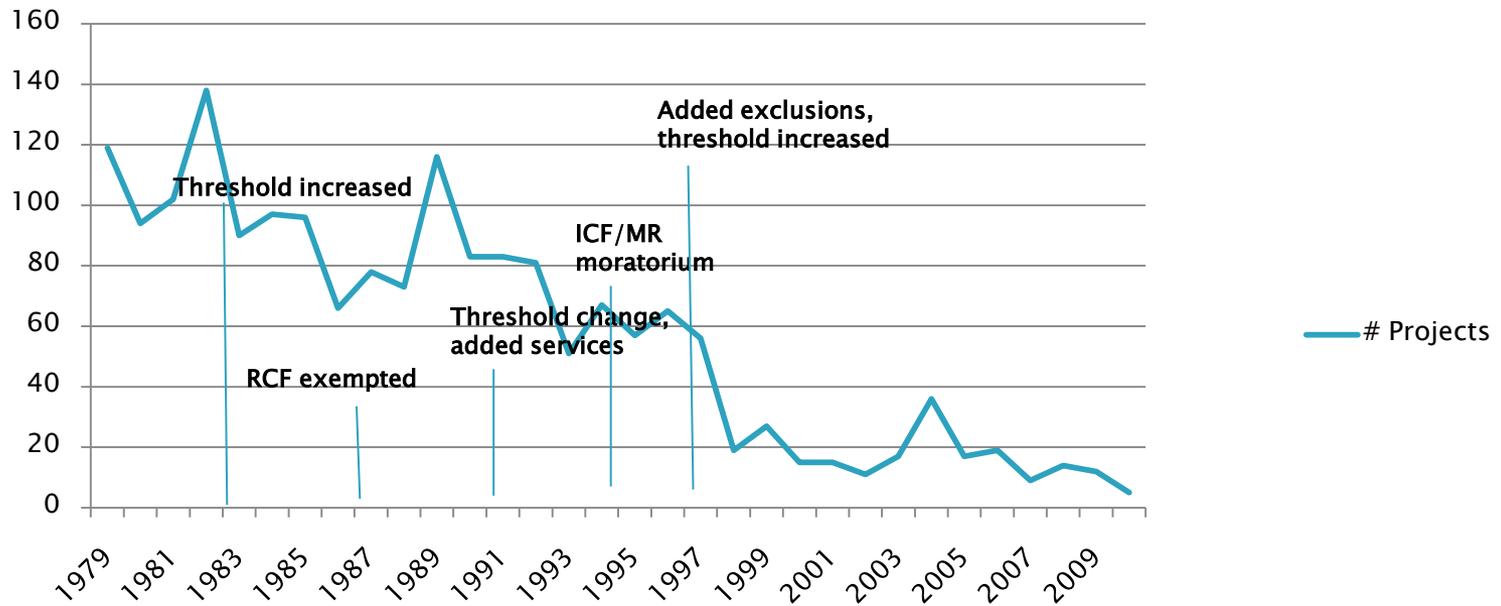
“ It is the public policy of this state that the offering or development or new institutional health services be accomplished in a manner which is orderly, economical and consistent with the goal of providing the necessary and adequate institutional health services to all of the people of this state while avoiding unnecessary duplication of services and preventing or controlling increases in the costs of delivery in these services.”

CON in Iowa has been studied and changed a number of times since its inception.

The two most recent reviews include a review by the Governor's Health Regulation Task Force in 1996 which resulted in several modifications to the program that were adopted by the Iowa General Assembly in 1997.

These modifications resulted in a significant reduction (more than 50%) in the number of projects reviewed by the Council.

Iowa Certificate of Need Program Activity 1979 – 2010



The 1997 legislation also directed the Department to complete a comprehensive review of the CON program and to submit a written report of the findings and recommendations.

Findings of the 1999 CON Task Force:

- ❑ The delivery of health care has evolved and continues to change.
- ❑ The reimbursement systems for health care have changed since the late 1970s.
- ❑ The Iowa CON program has been reviewed and studied several times, resulting in various Code changes through the years.
- ❑ Multi-million dollar renovations of institutional health facilities occur without review as a result of the 1997 legislation.

- ❑ The CON process provides the opportunity for public notice and comment for projects that require review by the Health Facilities Council.
 - ❑ The number of assisted living facilities in the state is growing rapidly. Assisted living facilities do not require a CON.
 - ❑ Nursing facilities in Iowa are experiencing lower occupancies and several are failing to maintain an occupancy of 80% (now 85%), which impacts their Medicaid reimbursement.
 - ❑ Approximately 37 states still have some form of Certificate of Need. This includes some states that repealed Con only to reinstate it later.
 - ❑ The effect of CON program repeal varies among states. CON programs in several other states are being reviewed and studied.
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The 1999 Task Force recommended that Iowa's CON program be maintained with no changes to existing law or regulation.

Upon making this recommendation, the Task Force members concluded that the CON program in Iowa continues to be relevant.

Minority Report: The Iowa Medical Society (IMS) voted for repeal. IMS also offered some amendments as an alternative to repeal. The Iowa Association of Homes and Services for the Aging supported keeping the CON law, but did offer options for amending the law.

A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need. Iowa Code 135.63

"New institutional health service" or "changed institutional health service"
means: (See Iowa Code section 135.61(18) for complete list)

- The construction, development or other establishment of a new institutional health facility regardless of ownership.
- Any capital expenditure, lease, or donation by or on behalf of an institutional health facility in excess of \$1.5M within a twelve-month period.
- A permanent change in the bed capacity of an institutional health facility.
- Any expenditure in excess of five hundred thousand dollars by or on behalf of an institutional health facility for new health services.

- Any acquisition by or on behalf of an institutional health facility or a health care provider or a group of health care providers of any piece of replacement equipment with a value in excess of \$1.5M.
- Any mobile health service with a value in excess of \$1.5.
- The initiation or expansion of :
 - Cardiac catheterization service
 - Open heart surgical service
 - Organ transplantation service
 - Radiation therapy service

“Institutional health facility” means:

- A hospital
- A health care facility
- An organized outpatient health facility
- An organized outpatient surgical facility
- A community mental health facility
- A birth center

In determining whether a CON shall be issued, the council shall consider the following: (See Iowa Code 135.64 for complete list)

- The need of the population served or to be served by the proposed institutional health services for those services.
 - The distance, convenience, cost of transportation, and accessibility to health services for persons who live outside metropolitan areas.
 - The availability of alternative, less costly, or more effective methods of providing the proposed institutional health services.
 - The immediate and long-term financial feasibility of the proposal presented in the application, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.
 - The relationship of the proposed institutional health services to the existing health care system of the area in which those services are proposed to be provided.
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- The appropriate and efficient use or prospective use of the proposed institutional health service, and of any existing similar services, including but not limited to a consideration of the capacity of the sponsor's facility to provide the proposed service, and possible sharing or cooperative arrangements among existing facilities and providers.
 - The availability of resources, including, but not limited to, health care providers, management personnel, and funds for capital and operating needs, to provide the proposed institutional health services and the possible alternative uses of those resources to provide other health services.
 - In the case of a construction project, the costs and methods of the proposed construction and the probable impact of the proposed construction project on total health care costs.
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In addition to the findings required with respect to any of the above criteria, the council shall grant a certificate of need for a new institutional health service or changed institutional health service **only** if it finds in writing, on the basis of data submitted to it by the department, that:

- a. Less costly, more efficient, or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;
- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

CON – A Public Process

A major advantage of the CON process is to allow opportunity for public comment and notice regarding health care expenditures and programs that will impact all Iowa citizens.

Letter of Intent is required to be filed at least 30 days prior to the application. This provides advance notice of proposals under consideration by providers.

Affected parties are notified in writing by the department when an application is filed; notification includes information about how to provide comment or data.

Public Hearing is held for each application giving applicants and affected parties an opportunity to present oral testimony to the Council. The public also hears the discussion of the Council members and their vote.

Follow-up on Approved Projects:

Progress report - Six months following approval a written progress report is required.

Extension request - Projects not completed one year after approval must request an extension. Extensions may be granted by the Council for up to one year. Some proposals require more than one extension. Insufficient progress in developing a project may result in revocation of a CON.