



Tennessee Legislature Passes Certificate of Need Reform

By Jerry W. Taylor and J. Matthew Kroplin

April 2016

This week, both houses of the Tennessee General Assembly unanimously approved legislation that will significantly reform Tennessee's certificate of need (CON) program. Among the changes, the legislation:

- Removes the following categories entirely from the CON law:
 - › Modifying, renovating, or adding to a hospital or healthcare institution,
 - › Acquisition of major medical equipment,
 - › Discontinuation of obstetrics or maternity service,
 - › Closing of any hospital that has been designated as a critical access hospital or elimination of regulated services within these hospitals;
- Also removes from CON coverage:
 - › Birthing centers, extracorporeal lithotripsy, swing beds, and rehabilitation or hospital-based alcohol and drug treatment for adolescents provided under a systematic program of care longer than 28 days,
 - › The initiation of magnetic resonance imaging (MRI) services, except when providing MRIs in counties with a population of 250,000 or less or when providing MRIs to pediatric patients;
- Adds to the CON program:
 - › Increasing the number of MRI machines in any county with a population of 250,000 or less (except when replacing or decommissioning an existing machine),
 - › The initiation of organ transplantation, and
 - › The establishment of a freestanding emergency department not located on the hospital's main campus (codifying existing agency interpretation and practice);
- Adds new reporting requirements for MRI providers, a new notice provision before any person may initiate MRI services in any county with a population of greater than

250,000, and the requirement that outpatient diagnostic centers become accredited within a certain time after receiving a CON;

- With some limitations, permits a hospital, rehabilitation facility, or mental health hospital to increase its bed complement in any category by 10% of its licensed capacity at any one campus over a three-year period;
- Allows an applicant to receive a 25% refund of the original application fee if the application is denied;
- Requires anyone who seeks review of a decision in a contested case, other than the applicant or the agency, to pay an appeal fee equal to 25% of the original application fee; and
- Calls for the establishment of new quality standards and measures by the HSDA, in consultation with the Division of Health Planning, the Board for Licensing Health Care Facilities, and/or the Department of Mental Health and Substance Abuse, the violation of which may result in civil penalties, CON revocation, or licensure discipline.

The legislation will now be transmitted to the governor for his consideration. If signed into law by Governor Haslam, the CON reforms will take effect on July 1, 2016, and apply to all CON applications filed on or after that date.

Tennessee's CON law is codified at T.C.A. § 68-11-1601 et seq. Read the full text of [SA0998](#) and [HA1221](#) to SB1842, which contain the new changes in their entirety.

If you would like more information, please contact:

[Jerry W. Taylor](#) in Nashville at (615) 724-3247 or jtaylor@burr.com

[J. Matthew Kroplin](#) in Nashville at (615) 724-3248 or mkroplin@burr.com

or the Burr & Forman attorney with whom you regularly work.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.