



## Tennessee Governor Signs Certificate of Need Changes into Law

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Tennessee's governor, Bill Haslam, has signed legislation that will significantly change the state's certificate of need (CON) laws.<sup>1</sup> The changes include revised requirements for multiple services regulated by CON, including adding certain services to CON's regulation,<sup>2</sup> and a new emphasis on the quality of care. For current or prospective providers in Tennessee, it is important to understand these changes because of their immediate, as well as long term, repercussions. However, out-of-state providers should also take note as changes in Tennessee's CON laws reflect larger national trends.

Of the many changes included in the law, one of the most significant is the emphasis on quality. Tennessee's focus on quality of care is found throughout the law and mirrors a recent federal-level focus and emphasis on quality of care.<sup>3</sup> For instance, when making a decision on a CON application, the Tennessee Health Services and Development Agency (HSDA)<sup>4</sup> is now directed by the italicized language in the following statutory quotation:

No certificate of need shall be granted unless the action proposed in the application is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, *will provide health care that meets appropriate quality standards*, and will contribute to the orderly development of adequate and effective health care facilities or services.<sup>5</sup>

Under the legislation, HSDA now has the "duty and responsibility" to "weigh and consider the quality of health care to be provided" when making decisions to grant a CON.<sup>6</sup> The quality criteria added to the state's CON law will also be bolstered by future rulemaking. The law requires that HSDA, in consultation with the Board for Licensing Healthcare Facilities and the State Health Planning Division, create quality criteria through issuance of regulations.

If providers do not abide by the new quality provisions, they could face repercussions, including a loss of license or CON. For instance, HSDA can refer quality issues to the Board for Licensing Health Care Facilities for appropriate action on the provider's license. HSDA itself can take action as well. The new law states that "[i]f the agency determines that an entity has failed to meet any quality measure imposed as a condition for a certificate of need by the agency, the agency may impose penalties pursuant to § 68-11-1617 or revoke a certificate of need pursuant to § 68-11-1619."

1 The text of the bills can be found at <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1842&GA=109> (last accessed May 2, 2016).

2 For instance, a CON will now be required for hospitals starting an organ donation/transplantation service.

3 For examples of the federal focus, see <http://www.agg.com/CMS-Releases-Home-Health-Compare-Patient-Experience-of-Care-Star-Ratings-02-01-2016/> (last accessed May 2, 2016); <http://www.agg.com/Medicare-Makes-a-Move-from-Volume-to-Value-02-02-2015/> (last accessed May 2, 2016).

4 HSDA is the agency that regulates Tennessee CON. For more information related to the Tennessee Health Services and Development Agency, see <https://www.tn.gov/hstda/> (last accessed May 2, 2016).

5 T.C.A. § 68-11-1609.

6 T.C.A. § 68-11-1605.

The law also makes changes unrelated to quality. These changes include:

- An elimination of the requirement of a CON to initiate the following services/establish a facility to provide these services:
  - Extracorporeal lithotripsy;
  - Certain rehabilitation or hospital-based alcohol and drug treatments;
  - Closure of a critical access hospital; and
  - Discontinuation of any obstetrical or maternity service.
- Eliminating the requirement to apply for a CON when there are capital expenditures in excess of \$5 million for a hospital and \$2 million for any other healthcare facility and the expenditure relates to modifications, renovations, and additions.

While the changes are significant, some provider types face little to no change under the new law. For instance, nursing homes and skilled nursing facilities, opiate addiction clinics, home health, and hospices will not experience changes (with the exception of generally applied changes, such as to elimination of cost thresholds and focus on quality).

The legislation, which was signed by Governor Bill Haslam on April 28, 2016, will take effect on July 1, 2016. The new law was derived from Tennessee's HB1730 and SB1842, which were sponsored by Senator Todd Gardenhire (R-Chattanooga) and Representative Cameron Sexton (R-Crossville). Tennessee's CON statutes, known as the Tennessee Health Services and Planning Act and codified at T.C.A. § 68-11-1601, *et. seq.*, became law in 2002.

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