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Improve healthcare access in Hawaii by reforming medical certificates of need

Restrictive certificate-of-need regulations have a negative effect on healthcare access and affordability, especially in rural areas

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Executive summary

Certificate-of-need regulations have been shown to negatively affect healthcare access and affordability, especially in rural areas. Hawaii, in particular, has one of the most restrictive CON programs in the country. In order to improve healthcare access and outcomes, state lawmakers should consider the following reforms:

>> Create more exemptions from CON requirements, such as for substance abuse facilities, dialysis centers and psychiatric facilities, as well as services and facilities that address maternal and pediatric health.

>> Exempt rural areas, such as the neighbor islands, from CON requirements.

>> Remove "duplication of services" and "financial feasibility" as considerations for CON approval.

>> Increase the threshold for CON applications eligible for administrative review.

>> Gradually phase out the state's CON laws.

Introduction

Improving healthcare in Hawaii requires addressing the state's overall lack of access to facilities, especially on the neighbor islands.

However, any effort to address these shortages is hampered by the state's requirement that providers of healthcare services apply for and receive what's referred to as a certificate of need before they can make any procedural changes, add or upgrade facilities or offer certain services that fall under Hawaii's CON regulations, which are among the strictest in the nation.

During this approval process, state officials evaluate the request and determine whether there is a "need" for the change. If they decide there is no need, they deny the request, and the proposed changes, new facilities or new services are not allowed to proceed.

As in so many other areas, healthcare regulation has the effect of slowing or discouraging growth. The existence of a significant regulatory barrier to the creation of new services and facilities stymies progress in addressing Hawaii's healthcare shortages.

This situation goes back to the 1970s when America's first CON laws were enacted on the theory that limiting competition and medical resources is the only way to ensure the continued availability and affordability of healthcare.

However, decades of data from across the country demonstrate that CON laws have had the opposite effect, and instead are associated with higher costs, fewer facilities and reduced access to care, especially for remote or other vulnerable populations.

The studies document the fact that CON regulations have a chilling effect on healthcare expansion, thereby restricting healthcare access and contributing to an overall inability to cope with health emergencies.

It is time that we reexamine Hawaii's CON requirements and consider how they could be repealed or reformed to better serve the needs of Hawaii residents.

How CON laws are applied

Hawaii has one of the most restrictive certificate of need regimes in the country. A study from the Cicero Institute identified 109 medical services and facilities covered by CON regulations nationwide, 87 of which require a CON in Hawaii.[1]

The table on the next page examines a selection of healthcare services related to maternal health, cardiac care, diagnostics and behavioral health, comparing states that require CONs related to those services — including Hawaii — to those that do not. These are areas in which Hawaii could improve healthcare access and outcomes though CON reform — as demonstrated by the significant number of states that have safely removed CON requirements for the same service, equipment or facility.

[1] McKenzie Richards and Lindsey Zea, "2025 Playbook For Certificate of Need Repeal: Ranking Certificate of Need Laws in All 50 States." Cicero Institute, Forthcoming Report. Data accessed Nov. 2025.

Table 1: A partial selection of services, equipment, procedures and facilities in Hawaii that require certificates of need versus other states

Certificates of need required in Hawaii	Total number of states with CON req'd	Number of states that do not require a CON
Neonatal intensive care unit beds	24	26
Children's hospital beds	25	25
Birthing centers	11	39
Acute care hospitals	26	24
Psychiatric hospitals	26	24
Alcohol and drug abuse centers	19	31
Residential alcohol and drug abuse beds outside of hospital	20	30
Community mental health centers	16	34
Magnetic resonance imaging	20	30
Independent diagnostic testing facilities	14	36
Acute care beds	24	26
Cardiac catheterization	23	27
Organ transplants	19	31
Open heart surgery	18	32

Source: McKenzie Richards and Lindsey Zea, "2025 Playbook For Certificate of Need Repeal: Ranking Certificate of Need Laws in All 50 States." Cicero Institute, Forthcoming Report. Data accessed Nov. 2025.

Hawaii's certificate of need law[2] requires review for any construction, expansion, modification, conversion or alteration of a health care facility or service with a capital expenditure over the expenditure threshold. That minimum threshold is defined in Department of Health regulations as $4 million for capital expenditures, $1 million for new or replacement equipment and $400,000 for used medical equipment.[3]

As broad as that might seem, that's not the full extent of health care changes that require a CON under Hawaii law. The statute also requires a CON for anything that would "substantially modify or increase the scope of health service rendered."[4] Even changing the number of beds or reclassifying their usage within a facility requires a certificate of need.

Functionally, this means that nearly every major change of service, new service or new facility in Hawaii requires a certificate of need. CONs are not only required for large facilities, such as hospitals, but also for ground ambulances, home health services, dialysis centers, substance abuse centers, ambulatory surgical centers, hospices and MRI and PET scanners.

In order to obtain a certificate of need, applicants must first fill out a lengthy application and pay an application fee, which according to state law shall be "the sum of "$200 plus .001 of the total capital cost of the project up to $1,000,000 plus .0005 of the total cost of the project in excess of $1,000,000."[5]

2 Hawaii Revised Statutes, Ch. 323-D, Part V.
3 Hawaii Administrative Rules, Sec. 11-186-3.
4 Hawaii Revised Statutes, Sec. 323D-43(a)(2).
5 Hawaii Administrative Rules, Sec. 11-186-25, accessed Feb. 12, 2025.

The State Health Planning and Development Agency, which is part of the state DOH, is responsible for issuing CONs. It reviews CON applications according to the following six criteria:[6]

>> The relationship of the proposal to the state's Health Services and Facilities Plan.[7]

>> The alleged need for and accessibility of the proposal.

>> The quality of the service or care that is proposed.

>> The cost and financial impact of the proposal.

>> The relationship of the proposal to the existing healthcare system.

>> The availability of financial resources for the proposed service.

Additionally, CON applications must go through a 90-day review that features a public review period and analysis by three official advisory groups: the Subarea Health Planning Councils, the Certificate of Need Review Panel and the Statewide Health Coordinating Council.

Some less complicated CON applications — such as those related to changes of ownership, new locations, lower operating costs or proposals that "will not have a significant impact on the healthcare system" — are eligible for administrative review, which can result in a more speedy approval.[8]

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6 "Certificate of Need Program," Hawaii State Health Planning and Development Agency, accessed Jan. 18, 2025. These are a summary of the criteria listed in Hawaii Administrative Rules Sec. 11-186-15. For more details about each criterion, see "Criteria by which certificate of need applications must be judged," Hawaii Department of Health, accessed March 4, 2025.

7 "State of Hawaii Health Services and Facilities Plan," Hawaii State Health Planning and Development Agency, accessed Oct. 31, 2025.

8 "Certificate of Need Program."

The full CON approval process, however, is lengthy and burdensome. It also introduces a counterintuitive element to the evaluation of "need" because it allows third parties — including potential competitors — to submit testimonies in response to the application. It is not unusual to see opposition to an application from one or more providers that already offer the proposed healthcare facility or service.

Imagine how this might play out in the fast-food industry: If Burger King had to get permission to build a restaurant and McDonald's were permitted to testify, that permission could be denied because it could be argued that the burger needs of the community were already being met.

This, of course, would be an absurd way to determine the number of restaurants in a community.

Likewise, it seems counterintuitive to let a potential competitor have any voice in determining whether to approve a new healthcare facility or service. Yet, medical certificates of need could be denied if the governing officials are swayed by the argument from potential competitors that the community doesn't "need" what the applicants are proposing.

CON laws have backfired in their aims

Certificate-of-need laws swept the nation after Congress passed the National Health Planning and Resources Development Act of 1974,[9] which required states to pass CON laws in order to receive certain federal funding.

[9] "National Health Planning and Resources Development Act of 1974," Public Law 93-647, Jan. 4, 1975.

By the 1980s, it became clear that CON laws had backfired in their aims, and in 1986, Congress repealed the requirement. Since then, states have been repealing or reforming their CON laws, providing an excellent opportunity for data-driven policymakers to see how CON reform will affect patient care and healthcare access and costs. Here, the data so far has been very clear:

>> States with CON laws have fewer hospitals, substance treatment facilities, psychiatric hospitals, ambulatory surgical centers, dialysis clinics, nursing home beds, open-heart surgery programs and hospice facilities.[10]

>> CON regulations tend to lead to fewer hospital beds, decreased access to medical imaging technology and longer wait times.[11]

>> Rural areas fare especially badly under CON laws. They tend to have fewer hospitals and alternatives, while residents of CON states have to travel farther for care and are more likely to leave their state for care.[12]

>> There is no difference in the provision of charitable care between CON states and states without CON laws.[13]

[10] Matthew D. Mitchell, "West Virginia's Certificate of Need Program: Lessons from Research," Mercatus Center at George Mason University, Sept. 22, 2021, p.5 of PDF.
[11] Ibid.
[12] Ibid.
[13] Ibid. In addition, research of West Virginia certificate-of-need regulations suggested they increased annual per-person healthcare costs by about $232. See p.6 of PDF.

>> CON regulations are associated with greater disparities of care for vulnerable and underserved populations, especially the elderly and racial minorities.[14] For example, a study from Rutgers found that reform of New Jersey's CON laws reduced racial disparities in access to cardiac angiography as new entrants into the market forced existing hospitals to serve more Black patients.[15]

>> Contrary to the claims of CON supporters, CON laws do not reduce the cost of healthcare services. Rather, because they restrict supply, per-procedure and per-service costs are higher.[16]

>> Evidence suggests that certificate-of-need laws do not improve healthcare quality. For example, nursing home patients in CON states are more likely to be restrained, Medicare mortality rates are 5% to 6% higher and patients had higher death rates from treatable complications following surgery, as well as higher death rates from heart attacks, heart failure and pneumonia.[17]

[14] Ibid.
[15] Derek Delia, Joel C. Cantor, Amy Tiedemann, et al., "Effects of regulation and competition on health care disparities: The case of Cardiac Angiography in New Jersey", Journal of Health Politics, Policy and Law, Vol. 34, No. 1, Feb. 1, 2009, pp. 63-91.
[16] Ibid, p. 6 of PDF.
[17] Ibid, p.5 of PDF.

>> During the COVID-19 crisis, states that required a CON for hospital beds were more than twice as likely to experience intensive care unit bed shortages. For CON states, the average COVID-era ICU bed shortage was approximately nine beds per 10,000 residents. In states that did not have a CON requirement for hospital beds, the ICU bed shortage during the pandemic was significantly smaller at only one bed per 10,000 residents. Moreover, these shortages could not be addressed through the temporary lifting of CON requirements, suggesting that long-term reform is necessary to make an impact in this area.[18]

The wealth of data on the impact of CON requirements suggests that their reform would help improve healthcare access and lower costs in Hawaii, and the experience of states that have relaxed or eliminated CON regulations makes it possible to estimate the effects that their reform could have on Hawaii's healthcare system.

How CON reform could affect Hawaii

Given that Hawaii suffers from healthcare shortages, it makes little sense to have laws in place that have been proven to restrict the supply of healthcare facilities, equipment or services.

[18] Matthew Mitchell, Thomas Stratmann and James Bailey, "Raising the Bar: ICU Beds and Certificates of Need," Mercatus Center at George Mason University, April 29, 2020, p. 3.

A study from the Mercatus Institute at George Washington University has calculated that if Hawaii had no CON laws[19]:

>> Annual per capita spending for healthcare would go down by $219.

>> Annual per capita physician spending would decrease by $95.

>> The state would have 11.7 more hospitals and 2.2 more ambulatory surgical centers.

>> Four of those additional hospitals would be rural hospitals, as would 0.6 of the ambulatory surgical centers.

>> Deaths from post-surgery complications would decrease by 4.8%.

>> The number of people who would have to travel out of their counties for medical imaging scans would decline by 3.6% for CTs and 5.5% for MRIs.

Were Hawaii to reform its CON regime, many of these improvements would not occur immediately, but over time. The nature of CON laws makes it difficult to quickly reverse their effects, as witnessed during the COVID-19 emergency.

For example, states with CON requirements for hospital beds were 27% more likely to use all of their beds. However, relaxing those CON requirements during the pandemic did little to help with the capacity issue.[20] CON laws increased the likelihood of running out of beds during the COVID-19 emergency, but it was not a problem that could be fixed quickly via executive order.

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[19] "Hawaii and Certificate of Need Programs 2020: How CON Laws Affect Health Care Access, Quality, and Cost in Hawaii," Mercatus Center at George Mason University, March 22, 2021.

[20] Matthew Mitchell and Thomas Stratmann, "The Economics of a Bed Shortage: Certificate-of-Need Regulation and Hospital Bed Utilization during the COVID-19 Pandemic," Journal of Risk and Financial Management, Vol. 15, Iss. 1, Dec. 31, 2021.

In other words, it is too late to address the problems caused by CON laws when the emergency is already upon you. To prepare for the next emergency — including Hawaii's shortage of hospital beds — we must repeal or liberalize the state's CON regime now.

Actionable reform measures for Hawaii

Most estimates of the impact of CON laws rely on studies that consider the effects of full repeal. However, it is possible to make a significant impact on healthcare costs, access and quality with more gradual or limited reforms. These could include:

>> **Remove CON requirements that frustrate the ability of existing facilities to respond to changing needs and emergencies,** especially those regarding the number and placement of hospital beds, swing beds and long-term care and nursing home beds.

>> **Exempt services aimed at helping Hawaii's most vulnerable populations,** such as substance abuse facilities, psychiatric facilities and intermediate-care facilities for those with intellectual disabilities.

>> **Exempt services and facilities that address maternal and pediatric health,** such as birth centers, neonatal intensive care unit beds and pediatric hospital beds.

>> **Exempt services that lower patient costs,** such as ambulatory surgical centers and home healthcare facilities.

>> **Exempt services or facilities that are highly unlikely to be prescribed or used unnecessarily,** such as dialysis centers, hospice facilities, NICUs, and burn-care units.

>> **Exempt rural areas, especially Hawaii's neighbor islands, as lawmakers have done in several other states,** including Indiana, Kentucky, Ohio, Oregon, Tennessee and Washington.

>> **Reduce the number of projects subject to lengthy CON review** by increasing the threshold of CON applications eligible for administrative review.

Hawaii's CON statute gives the state Department of Health flexibility to set the standard for administrative review so long as the application does not involve a significant impact or expenses.[21] Currently, that standard is capped at $1,000,000 in capital expenses with operating expenses capped at $500,000.

Administrative review is also available for changes of ownership or location, acquisitions that will result in lower costs and proposals that are determined not to have a "significant impact on the health care system."[22]

The Department of Health, with guidance from the Legislature, could raise the cost threshold for administrative review, and for CONs overall. This would help reduce review time and decrease the number of CONs that SHPDA must process, allowing certain projects to proceed more quickly.

In addition, the Legislature could clarify and direct that "significant impact" should be interpreted narrowly, with the stated intention of allowing more services and facilities to qualify for administrative review or bypass CON requirements.

[21] Hawaii Revised Statutes, Sec. 323D-44.5.
[22] Hawaii Administrative Rules, Sec. 11-186-99.1.

In addition, SHPDA could reduce the impact of the "competitor's veto" by taking note of opposition from incumbent competitors, and the Department of Health should track whether their opposition affects how many certificates of need are issued.

>> **Remove "duplication of services" and "financial feasibility" as considerations for CON approval.** These criteria are at the heart of Hawaii's medical CON laws,[23] even though they are typically subjective valuations not necessarily supported by data and vulnerable to the prevailing political winds.

The first criteria is used to avoid the supposed duplication of services in an area or to evaluate how heavily similar services are being utilized in the region. Neither of these considerations are a proper measure of "need," as they tend to oversimplify comparisons between differing services and facilities.

Considering utilization of existing facilities in granting a CON also gives incumbents a perverse incentive to overinvest in equipment, frustrating the intent of the CON regime.

Both considerations perpetuate the anti-competitive nature of CON laws, which has led to higher costs and lower quality of care.

There is no need to avoid duplication or consider utilization in determining whether to award a CON. Where two providers offer similar services, they could be forced to compete in cost and quality. In either case, patients would benefit.

[23] "Criteria by which Certificate of Need Applications Must Be Judged," Hawaii State Health Planning and Development Agency, accessed Feb. 7, 2025.

As for financial feasibility, evaluating a project's immediate and long-term financial feasibility is more properly the domain of an applicant's investors than of SHPDA or the CON panels, which are effectively being called upon to act as business analysts rather than organizations dedicated to improving healthcare access in the state.

It might be reasonable to require an applicant to demonstrate its financial capability to take on a project, but SHPDA should not deny a certificate of need based on speculation about the project's long-term financial success.

>> **Phase out CON regulations,** whether gradually or in one fell swoop.

If gradually, this could be achieved over a period of years through appropriately timed sunset provisions attached to each of the state's various certificate-of-need regulations.

The advantage of a gradual approach is that it would give policymakers an opportunity to evaluate the effects of CON liberalization as it occurs and act accordingly.

Data from states that have already embraced CON reform suggests that liberalizing Hawaii's regime would help lower costs and increase healthcare access for Hawaii residents, especially for residents in rural areas and other vulnerable populations.

Conclusion

Certificate-of-need laws for medical services and facilities have had a negative effect on healthcare access, costs and quality in Hawaii and should be reformed or even repealed.

During times of crisis especially, such as during the COVID-19 era, the bureaucratic nature of CON laws can hinder flexibility and prevent local health providers from responding quickly and efficiently to actual, verifiable needs.

State lawmakers should act now to create more CON exemptions or phase out CON requirements in general.

Unfortunately, even with immediate action, it could take years to realize the benefits from CON liberalization, which is all the more reason to start now. Such reform would not only better prepare Hawaii for future medical crises, but help address existing healthcare access and scarcity issues that are part of the everyday struggle for many Hawaii residents.