



Proposed Bill to Exempt Inpatient Rehab, Psychiatric, Alcohol Withdrawal, Chemical Dependency and Skilled Nursing Facilities from Certificate of Need

To: Representative Elmer

From: Jillian Studer, Legislative Assistant

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RE: Overview of Oregon Certificate of Need Process

What is a certificate of need?

A certificate of need—or CON—is a government-mandated permission slip required to build or expand a healthcare facility or to add a new service. In Oregon, CONs are required to add beds to hospitals, build a nursing home, acquire radiation therapy equipment, or offer inpatient psychiatric services, among other things.

Why do states have CON laws?

In 1971, Oregon adopted its CON law. The original theory behind CON laws was that controlling the supply of healthcare facilities and services would prevent duplicative services, which would ensure efficiency and cost-savings. In 1974, Congress passed a law requiring states to adopt CON laws to be eligible for certain federal funding. But Congress quickly realized that CON laws failed to achieve their goals and repealed this requirement in 1986.

CON laws around the country

Today, nearly 40% of the nation live in a state without CON laws. This includes many kinds of states like California, Idaho, Pennsylvania, and Texas. The federal government also supports repeal. HHS, DOJ, FTC, DOT, and DOL have all condemned CON laws as harmful and costly.

CON laws increase costs, decrease access, and decrease the quality of healthcare

The scientific evidence on CON leads to three simple conclusions:

1. CON laws increase the cost of healthcare.

- Eliminating CON reduces per capita healthcare spending by 5%
- Hospital charges are 3.5% lower in states that repeal CON five years after repeal.
- Medicare reimbursements for total knee arthroplasty are 5% to 10% lower in non-CON states.

2. CON laws decrease access to healthcare.

- Patients in states with CON laws have access to fewer hospitals, psychiatric care facilities, rehab facilities, open-heart surgery programs, and medical imaging devices.
- Patients in states with CON laws must travel longer distances for care and are more likely to leave their state for care.
- CON laws exacerbate racial disparities in healthcare.

3. CON laws decrease the quality of healthcare.

- States with CON laws report higher mortality rates following heart attack, heart failure, pneumonia and higher readmission rates.
- States with CON laws report higher death rates from post-surgery complications.
- States with CON laws have lower hospital ratings and lower nursing home ratings.

Why repeal CON laws?

The healthcare industry needs more flexibility. Patients and their doctors, not bureaucrats, should decide when care is needed. Plus, repealing CON laws can reduce healthcare consolidation by encouraging competition. Repealing CON for rehab facilities specifically makes sense because hospitals rely on rehabilitation facilities to safely discharge their patients. More rehabilitation facilities could lead to shorter hospital stays for patients.

Why now?

- **Oregon's rehab per capita deficiency**
 - o Since July, two national companies officially withdrew their pending CON applications from OHA after undergoing a 5 year appeal process. Post Acute Medical (PAM) withdrew their application in July with Encompass Health following in October. This application process only takes 6 months to 2.5 years on average in other states. As of 2019, Oregon ranked 49th in the nation in rehab beds per capita. PAM and Encompass proposed to create 100 new rehab beds. Through the certificate of need process it was determined that only 60 of those 100 beds were "truly needed." However, the lengthy CON process ultimately discouraged both companies, as well as future companies, from fulfilling any of these needs.
- **Rapidly aging population = increased health care needs**
 - o By 2030, there will be over 1 million Oregonians over the age of 65. This rapidly growing population will only continue to put strain on our health care system, resulting in worse medical outcomes and quality of life. We must cultivate an environment where workforces and businesses hoping to invest are both incentivized to invest in Oregon.
- **Oregon's mental health crisis**
 - o In 2021, Oregon ranked 50th for prevalence of mental health illness in the nation. The state ranked 30th for access to care. Access measures include access to insurance, access to treatment, quality and cost of insurance, access to special education, and mental health workforce availability. Despite Oregon's desperate need for mental health services, OHA denied a proposed 100-bed freestanding psychiatric hospital to be located in Wilsonville in 2021.