TENNESSEE HOSPITAL ASSOCIATION

STRONG HOSPITALS. STRONG COMMUNITIES.

OPPOSE REPEAL OF TENNESSEE'S CERTIFICATE OF NEED (CON) LAWS

SB2246 by Sen. Johnson (R-Franklin) / HB2558 by Rep. Lamberth (R-Portland)
SB1369 by Sen. Watson (R-Hixson) / HB819 by Rep. Garrett (R-Goodlettsville)

- Despite proponents' good intentions, repeal of Tennessee's CON laws would not improve access to the most important care communities and families seek.
- Hospitals are the only healthcare providers where the doors are always open, and care is available 24/7/365 regardless of ability to pay. Maintaining this level of patient access requires significant resources to ensure a care infrastructure is ready to support any traumatic event, in any community, at any time.
- The limited services remaining under CON – particularly acute care hospitals, outpatient diagnostic centers, and some free-standing emergency departments hold the greatest risk of potential harm to existing hospitals (especially rural hospitals) if CON is removed, due to the likely siphoning off of only the most profitable services and patients.
- Immediate and full repeal of CON, coupled with the continued expectation that hospitals fund a major portion of the TennCare program (and exacerbated by payers that continue to delay and deny services), will put many hospitals in an unsustainable position.
- Hospitals support continued, responsible modernization of CON, but moving too far and too fast risks permanent harm.
- RHTP funding should not drive irreversible policy decisions. CON repeal is tied to a small portion of short-term RHTP funding, while full and immediate repeal would have permanent negative consequences.
- Predictability matters. Any path forward must support rural and safety-net providers and allow time for licensure, workforce, and capital planning.

WHY HOSPITALS ARE CONCERNED

Acute care hospitals are not retail businesses. They are a 24/7 community infrastructure responsible for emergency care, trauma readiness, obstetrics, behavioral health, and other essential services. These services are often not financially sustainable in isolation – rather, less financially viable services are supported by other service lines, with the result that the community served by the hospital has access to a full range of acute care close to home.

The small number of services remaining under CON – specifically acute care hospitals, outpatient diagnostic centers (ODCs), and a subset of free-standing emergency departments – hold the greatest potential for harm to existing hospitals, particularly those in rural communities, by siphoning off only the most profitable services and patients.

TENNESSEE HAS ALREADY BEEN MODERNIZING

For more than a decade, hospitals have worked closely and collaboratively with the General Assembly to implement major changes to CON – removing many services from CON requirements but doing so in a way that protects public safety through licensure requirements while reducing the likelihood that care will become less accessible in rural areas and underserved communities. This has allowed for innovation without destabilizing communities.

There has long been recognition that rapid, poorly planned and executed changes to CON could have a devastating impact on healthcare access in the state. With that in mind, CON reform has been implemented in phases with enough advance notice for existing providers to plan and prepare accordingly and in a staggered fashion, with the opportunity to learn from and adapt to each change before the next change is implemented.

REPEAL RISKS:

- New facilities selecting profitable locations and service lines, while existing hospitals struggle to maintain the safety net
- Loss of services that currently make providing essential care financially sustainable
- Workforce dilution in areas already facing staffing shortages
- Destabilization of hospitals that anchor local economies
- When a hospital closes or reduces services, access disappears for everyone

KEEP THE RHTP PROPOSAL IN PERSPECTIVE

There is a belief that CON repeal could improve competitiveness for Rural Health Transformation Program funding. However:

- CON policy represents only a very small percentage of total scoring
- RHTP funding is short-term and available for only five years
- The consequences of repeal are permanent
- Short-term funding, particularly the small fraction of the overall program that is in play on this issue, should not drive long-term structural risk to access

ANY FUTURE CON CHANGES SHOULD:

- Contemplate the unique role acute care hospitals play in their communities as well as the financial and workforce pressures that already make that critical function challenging.
- Take place after (not before or simultaneously with) the statutory changes already slated for 2027 and 2029.
- Take place on a staggered schedule – with changes to the three remaining services representing the greatest risk to hospitals spread over a multi-year period, providing enough time for:
  - The Health Facilities Commission to establish licensure standards that protect the public by ensuring access to essential healthcare services
  - Hospitals to plan for workforce challenges and make capital decisions

Hospitals stand ready to be partners in modernization, but **cannot support policies that weaken the hospitals Tennessee communities rely on every day**.

UNDERSTANDING TENNESSEE'S STEPWISE APPROACH TO CON REFORM

CON Reform Timeline – 2016 to 2029

2016 – INITIAL MODERNIZATION

- CON requirements were removed for the following: birthing centers, capital thresholds, lithotripsy units, swing beds, alcohol & drug rehab/treatment for adolescents, equipment thresholds, discontinuation of OB services, and CAH closure.
- CON requirements for MRIs were removed in counties with a population greater than 250,000, with the exception of pediatric MRIs.

2021 – AGENCY AND CON REFORM

- HSDA (the entity previously responsible for administering the CON process) and the Board for Licensing Health Care Facilities were merged into a single Health Facilities Commission.
- CON requirements were removed for recuperation centers, mental health hospitals, initiation of psychiatric services, MRI/PET in counties with a population less than 175,000, select home health/hospice programs, and non-residential opiate treatment centers co-located with hospitals.
- Removed all CON requirements in counties designated as economically distressed.

2024–2029 – PHASED CONTINUED REFORMS

Effective July 1, 2024: Annual reports required on the impact of CON changes (2026–2030).

Effective July 1, 2025: Removes CON requirements for most services and facilities in counties without a hospital and for satellite EDs within 10 miles of the host and more than 10 miles from another hospital or satellite ED.

Effective Dec 1, 2025: Replaces CON requirements with licensure standards for burn units, NICU, MRI, and PET.

Effective Dec 1, 2027: Replaces CON requirements with licensure standards for ASTCs (with charity care requirements), LTACHs, and linear accelerator services.

Effective Dec 1, 2029: Replaces CON requirements with licensure standards for open heart surgery.

LIMITED SERVICES THAT CONTINUE TO REQUIRE A CON

Home health, hospice, nursing homes, rehab hospitals, substance abuse clinics, acute care hospitals, some free-standing emergency departments, organ transplantation, cardiac catheterization, and ODCs.

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