

# CERTIFICATE OF NEED



GEORGIA DEPARTMENT OF  
COMMUNITY HEALTH

**DIVISION OF HEALTH PLANNING**  
*Georgia Department of Community Health*

***CERTIFICATE OF NEED***  
**FREQUENTLY**  
**ASKED QUESTIONS**  
**REVIEW GUIDE**

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2 Peachtree Street  
5<sup>TH</sup> Floor  
Atlanta, Georgia 30303-3159  
(404) 656-0655  
(404) 656-0654fax  
[www.dch.georgia.gov](http://www.dch.georgia.gov)

## Table of Contents

What is a Certificate of Need (CON)? .....	3
What Projects Require a Certificate of Need? .....	3
What Projects are Exempted from CON Review? .....	4
How is a Certificate of Need Acquired? .....	5
How Does the Process Work? .....	5
Submitting an Application and Paying Filing Fees .....	5
Accepting Applications for Certificate of Need Review.....	5
Application Review .....	6
Length of Application Review .....	6
What is a Batching Review Process? .....	6
What Happens at the End of the Review Period?.....	7
Implementing Approved Projects .....	7
Post Approval Reporting Requirements .....	7
Can a CON Project's Approved and/or Denied Status be Appealed? .....	7
What are the Sanctions for Failing to Comply with CON Laws? .....	8
What if I Still Have Questions About Whether a CON is Necessary? .....	8

## Introduction

The Department of Community Health, Division of Health Planning (DHP) is the division of state government responsible for administering the Certificate of Need Program that evaluates proposals for new or expanded healthcare services or facilities under Georgia's Health Planning Statute, O.C.G.A. Title 31, Chapter 6. The regulations themselves provide an explicit interpretation of the laws and thereby serve as a detailed procedure manual. By summarizing the provisions of the regulations, this guide has been prepared to serve as a quick reference source of information. This guide should not be used in place of the regulations, which are available at the Department's website, [www.dch.state.ga.us](http://www.dch.state.ga.us).

## What is a Certificate-of-Need (CON)?

Georgia's Certificate of Need Program was codified by the Georgia legislature in 1979 in Georgia's Health Planning Statute, Title 31, Chapter 6. The purpose of the CON program is to insure the availability of adequate health care services to meet the need of all Georgians, while safeguarding against the unnecessary duplication of services that perpetuate the costs of healthcare services. The Department of Community Health was created in 1999 and the administration of the CON Program was placed within the Department.

## What Projects Require a Certificate-of-Need?

Georgia's Health Planning Statute covers almost all health care facilities and many health care services including:

- All public and private hospitals, including general, acute-care, and specialized hospitals;
- Nursing homes;
- Ambulatory surgical services or obstetrical facilities;
- Home health agencies;
- Personal care homes (**with 25 or more beds**);
- Inpatient rehabilitation facilities treating traumatic brain injury;
- Diagnostic, treatment and rehabilitation centers (whether for-profit or not-for-profit)<sup>1</sup>
- Major medical equipment purchases or leases (e.g. MRI, CT Scanners) that exceed the equipment threshold<sup>2</sup>

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<sup>1</sup> Not all DTRCs require a CON. A reviewable DTRC is a facility which either offers radiation therapy, outpatient surgery, cardiac catheterization, or biliary lithotripsy OR acquires or operates diagnostic or therapeutic equipment exceeding the CON equipment threshold.

<sup>2</sup> The 2004 Equipment threshold is set at \$734,695. The threshold is recalculated each April 1<sup>st</sup> and published at the Department's website.

- Major hospital renovations or other capital activities by any health care facility that exceed the capital expenditure threshold<sup>3</sup>

A CON is also required before a health care facility can:

- Offer a health care service which was not provided on a regular basis during the previous 12-month period; or
- Add additional beds.

Certificate of Need thresholds for medical equipment, construction or capital expenditure projects and limited-purpose physician-owned ambulatory surgery centers are established each year on April 1<sup>st</sup>. If the proposed project costs associated with any threshold falls below the established amount, the project is not subject to CON review and evaluation. Calculation of the thresholds is made using the U. S. Bureau of Economic Analysis' (BEA) Composite Annual Index. For the current thresholds, please visit the Department's website at [www.dch.state.ga.us](http://www.dch.state.ga.us) within the link to Certificate of Need.

## What Projects are Exempted from CON Review?

Some projects that are exempted from CON review include:

- Repairs to a facility that fall below the CON review threshold;
- Acquisition of equipment that falls below the CON review threshold;
- Replacement of existing therapeutic or diagnostic equipment that received prior CON authorization;
- Projects that bring facilities into compliance with licensing requirements, life safety codes or standards of the Joint Commission on Accreditation of Healthcare Organizations;
- Cost overruns that represent less than 10 percent of the previously approved capital expenditure and do not exceed the CON review threshold; all cost overruns under **\$300,000** are exempt from review;
- A hospital that maintains an occupancy rate greater than 85 percent for the preceding 12-month period may increase its capacity by 10 beds or 10 percent of its existing inventory (whichever is less) every two years without a CON unless the cost associated with the increase exceeds the capital threshold. The hospital must submit a written request for determination regarding exemption under this provision, and the request must document the facility's month-by-month occupancy; and

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<sup>3</sup> The 2004 Capital Expenditure threshold is set at \$1,322,451. The threshold is recalculated each April 1<sup>st</sup> and published at the Department's website.

- An Ambulatory Surgery Facility that is physician owned, office-based, and single-specialty, the establishment and development of which does not exceed the limited-purpose physician-owned ambulatory surgery centers threshold.<sup>4</sup>

## How is a Certificate of Need Acquired?

- **How does the Process Work?**

- 1. Submitting an Application and Paying Filing Fees**

An original and **one (1) copy** of an application should be submitted along with a **certified check made payable to the State of Georgia** for the appropriate filing fee. The Department's official application is available at the Department's website and provides an instruction page for applicant's convenience and assistance in preparation. The Department's application must be used. Applications received **after 3 P.M.** are considered as accepted the following business day.

The amount of a filing fee is determined by the cost of a proposed project according to the following schedule:

- a) **\$1,000 is the minimum filing fee** and covers projects costing zero to \$1,000,000;
- b) one-tenth of one percent (0.001) for projects costing more than \$1,000,000 with **no filing fee exceeding \$50,000**;
- c) Filing fees **must** be paid with certified cashier's checks or money orders and are deposited into the State Treasury. These fees **are not refundable**.

- 2. Accepting Applications for Certificate of Need Review**

A project review cannot begin until all relevant information has been provided to the Division of Health Planning and the application has been deemed complete.<sup>5</sup> Following an application's initial submission, the Division of Health Planning has **10 business days** from the day following receipt to declare the application complete or incomplete. ***The Division of Health Planning will not begin the review process unless it has received and deemed complete all relevant surveys and questionnaires, such as the Annual Hospital Questionnaire, the Annual Nursing Home Questionnaire, and the Annual Indigent Care Survey.*** An applicant is notified of the completeness status on or before the 10<sup>th</sup> day, and if an application is deemed incomplete, given an opportunity to provide additional information to complete the application. The application will be considered withdrawn if the requested, additional information, including surveys and questionnaires, etc. is not provided within two calendar months of the date of the

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<sup>4</sup> The 2004 limited-purpose physician-owned ambulatory surgery center threshold is \$1,436,356. The threshold is recalculated each April 1 and published at the Department's website.

<sup>5</sup> A Completeness Checklist is provided at page ii of the Department's CON application to assist an applicant in submitting all required documentation to determine "completeness" for the review.

incompleteness letter. The applicant will receive written notification to confirm the beginning of a review.

Additionally, the CON rules and regulations are available at the Department's website within the CON link and the review rule, in particular, is 111-2-2-.07.

### 3. Application Review

In reviewing an application, the Division of Health Planning will take into account the general considerations specified in Rule 111-2-2-.09 and the appropriate, service-specific standards and criteria, if applicable, set forth at Rule 111-2-2-.11.

### 4. Length of Application Review

The review period is 90 days and may be extended an additional 30 days, if necessary. In no event shall a review exceed 120 days. For certain projects that do not involve the review for clinical health services, such as a medical office building or parking lot, an expedited review may be allowed. These reviews are 45 days and must be requested on the Department's Expedited Certificate of Need Application, which is also available at the Department's website. All review periods commence from the date of completeness.

#### ▪ What is a Batching Review Process?

Projects, which involve home health agencies or the development of new intermediate care or skilled nursing home beds, are subject to the batching review process. Under this review procedure, the acceptance of Certificate of Need applications for these service categories only are limited to designated times throughout the year. The Division of Health Planning makes need determinations every six months, in March and September, for these services. If there is a determined need for these services within any of the 12 State Service Delivery Regions<sup>6</sup>, a Batching Notification is published and made available at the Department's website. The notifications include detailed information about the need projections, deadlines for the submission of letters of intent and Certificate of Need applications, and other review procedures. The length of the batching review cycle is **120 days**. The batching review process **does not** apply to nursing home renovation or replacement projects, which do not involve additional beds.

The Division of Health Planning maintains a mailing list of interested parties who want to receive notifications about unmet need and upcoming batching cycles. ***It is the responsibility of interested parties to notify the division in writing at 2 Peachtree Street – 5<sup>th</sup> Floor, Atlanta, GA 30303, if they want to be included on the mailing list for batching notifications.***

### What Happens at the End of the Review Period?

A project application, if not withdrawn, is either approved or denied by the Division of Health Planning. If the application is approved, an official Certificate of Need and project evaluation

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<sup>6</sup>Healthcare for the State of Georgia is generally divided into 12 SSDRs. Some specific service rules and regulations establish separate and distinct planning areas for the service (e.g. Perinatal, PET, Inpatient Rehab).

analysis is provided to the applicant. If the project is denied a denial letter and project evaluation analysis is provided to the applicant.

- **Implementing Approved Projects**

Following a favorable award of a CON from the Division of Health Planning, the applicant has **12 months** from the date of approval to implement the proposed project.

Certificates awarded for the acquisition of equipment shall be effective for 12 months, by which date the applicant must be in possession of the equipment and the proposed location.

For projects, which require construction or renovations, the applicant has one year from the date of approval to demonstrate substantial performance with construction plans that have been approved by the state architect, a construction contract that has been signed and provides for beginning and completion dates and evidence that construction materials and equipment are on site. Construction projects valued at \$3,000,000 or less have a total of 24 months from the approval date or 12 months from the implementation date to complete the project. For projects valued over \$3,000,000, a total of 30 months from the approval date or 18 months from the implementation date is available to complete the project, unless an applicant requested an received approval for a “phased timetable” for project completion.

If a project was approved with a “phased timetable” for completion, the periods established in the CON approval direct mandatory project completion. More information on the “phased timetable” is available in the CON application and rules (111-2-2-.02(5)).

- **Post Approval Reporting Requirements**

All CON approved projects must comply with post-approval requirements. CON post approval requirements and progress reporting forms are available at the Department's website. An applicant may download the progress report to submit to the Department. Progress reports are required to document timely project implementation and completion, as well as interim progress of 50%, etc. completion and specific “phase timetable” completion.

## **Can a CON Project's Approved and/or Denied Status be Appealed?**

CON decisions may be appealed by:

- The applicant;
- A competing applicant;
- A competing health care facility that notified the DHP about its opposition to a proposed project on or before the 60<sup>th</sup> day of the review cycle; or
- The county or municipal government where the project would be located.

The applicant, a competing applicant, a competing health care facility, which notified the Division of Health Planning in writing about its opposition to a proposed project on or before the 60<sup>th</sup> day of the review cycle, or the county or municipal government within whose boundaries the

project would be located may appeal certificate of need decisions.

Requests for an initial administrative appeal hearing before a hearing officer, or a request for intervention, must be filed with the review board chair no later than **30** days after the Division of Health Planning decision. The hearing officer issues a decision no later than **45** days after the close of the record in the hearing. Any party, which disputes the hearing officer's decision, must file specific objections with the review board no later than **30** days after receiving the hearing officer's decision. The review board issues a written order within **30** days after its meeting, the review board's decision serves at the Department's final decision.

### **What are the Sanctions for Failing to Comply with CON laws?**

The DHP may issue cease and desist mandates and/or seek court injunctions to halt violations as well as impose maximum fines of \$5,000 per day for every day a violation to the CON rules and regulations exists.

### **What if I Still Have Questions About Whether a CON is Necessary?**

If you are not sure whether a project requires a CON before implementation, correspondence should be sent to the Georgia Department of Community Health/Division of Health Planning (DHP) to request an official Letter of Determination. The request should be made on the "Letter of Determination" form, which is provided at the Department's website and should also include as much information about the project as possible. The DHP will respond in writing. A determination about whether CON requirements apply to a specific project must be made in writing.