



# **S.277 An act relating to certificates of need and to replacing the Health Resource Allocation Plan**

Green Mountain Care Board  
January 2018

# Background: CON laws

## What is CON?

- Certificate of need laws requires health care facilities to obtain state approval prior to making large capital investments or offering new health services that exceed set financial thresholds

## Intent of CON?

- CON laws aim to avoid unnecessary duplication of services and limit excessive growth in health care costs by approving only those expenditures deemed necessary to meet community health needs

# CON laws: State-by-state comparison

## Jurisdiction

Acute Hospital Beds	AL AK CT DE FL GA HI IL IA KY ME MD MI MS MO NV NH NJ NY NC RI SC TN VT VA WA WV DC	28
Air Ambulance	AL ME MA MI VT DC	6
Ambulance Services	AZ	1
ASCs	AL AK CT DE GA HI IL IA KY ME MD MA MI MS MT NV NH NY NC RI SC TN VT VA WA WV DC	27
Burn Care	AL HI ME MD NJ NY NC TN VT WA DC	11
Cardiac Catheterization	AL AK CT DE GA HI IL IA KY ME MD MI MS MO NH NJ NY NC RI SC TN VT VA WA WV DC	26
CT Scanners	AK CT HI ME MI MO NY NC RI VT VA WV DC	13
Gamma Knives	AL AK GA HI ME MA MI MS MO NC RI SC VT VA DC	15
Home Health	AL AR GA HI KY MD MS MT NJ NY NC SC TN VT WA WV DC	17
Hospice	AL AR CT FL HI KY MD MS MT NJ NY NC OR RI SC TN VT WA WV DC	20
Intermediate Care Facilities	AR FL GA HI IL IA KY LA MD MS MO MT NV NJ NC OK SC TN VT VA WV WI	22
Long Term Acute Care	AL AK CT DE FL GA HI IL IA KY ME MD MI MS MO NH NJ NC OR RI SC TN VT VA WA WV DC	27
Nursing Home Beds	AL AK AR CT DE FL GA HI IL IA KY LA ME MD MA MI MS MT NE NH NV NJ NY NC OH OK OR RI SC TN VT VA WA WV WI DC	37
Medical Office Buildings	VT DC	2
MRI Scanners	AK CT HI KY ME MA MI MS MO NH NY NC RI SC TN VA VT WV DC	18
NICU	AL AK CT FL GA HI IL IA KY ME MD MA MI NJ NY NC RI SC TN VT VA WA WV DC	23
Obstetrics Services	AL AK CT GA HI IL ME MD NY RI VT VA WA WV DC	15
Open Heart Surgery	AL AK CT GA HI IL IA KY ME MD MA MI MS NH NJ NY NC RI SC TN VT VA WA WV DC	25
Organ Transplants	AL AK CT FL HI IL IA KY ME MD MA MI NJ NY NC RI VT VA WA WV DC	21
PET Scanners	AK CT DE GA HI KY ME MA MI MS MO NH NC RI SC TN VT VA WV DC	20
Psychiatric Services	AL AK AR CT FL GA HI IL IA KY ME MD MA MI MS NH NJ NC OK RI SC TN VT VA WA WV DC	26
Radiation Therapy	AL AK CT DE GA HI IA KY ME MA MI MS MO NH NY NC RI SC TN VT VA WV DC	23
Rehabilitation	AL FL GA HI IL KY ME MD MA MS MO MT NE NH NJ NY NC RI SC TN VT VA WA WV DC	25
Dialysis	AL AK HI IL ME MS NY NC VT WA WV DC	12
Assisted Living Facilities	AR LA MO NC VT	5
Subacute Services	AK FL HI IL NC OK RI SC TN VA WI VT DC	13
Substance/Drug Abuse	AL CT FL GA HI KY ME MD MA MS MT NH NC RI SC TN VT WV DC	19
Ultra Sound	HI ME VT DC	4

Source: "Certificate of Need: State Health Laws and Programs." *National Conference of State Legislators*. Updated January 2013; material added April 2015. <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>.

# Background: HRAP

## What is HRAP?

- The Health Resource Allocation Plan is a statutorily-required four-year plan that provides an inventory of supply and the distribution of health facilities and services in the state.

## Intent of HRAP?

- Create a policy tool to improve the allocation of scarce health care resources in the state.

# Why update CON and HRAP?

- Certificate of need (CON) adjustments seek to
  - Preserve spirit of original intent of CON—focus on projects that directly relate to health care delivery
  - Streamline the application process—allow for more expedited reviews
  - Adjust monetary thresholds for inflation (hospitals only)
  - Align CON criteria with statewide health care reform goals and principles
  - Revisit Enforcement penalties
- Eliminate the static, supply-focused Health Resource Allocation Plan (HRAP) and replace it with a more nimble, dynamic, updated assessment of unmet need

# Stakeholder Process

- Conducted seven stakeholder meetings April through November 2017. Representatives from the following groups were invited to partipate:
  - **Office of the Health Care Advocate, VT Association of Hospitals and Health Systems, VT Medical Society, UVM Medical Center, VT Health Care Association, VT Dept. of Health, Dept of Mental Health, HealthFirst, Bi-State, Dept of Rate Setting, DAIL, BCBS, MVP**
- Gathered feedback on current statute and put forth and received feedback on potential changes to CON and HRAP legislation.
- Proposal presented at the Board's November 16 meeting for Board review and public comment.

# HRAP Proposal

- **Current:** HRAP statute describes a static inventory of a specified set of health care goods and services, with focus on supply; is not a driver of solutions; does not measure gaps or underlying need.
- **Proposed:** More general resource allocation language to improve relevancy:
  - Help policymakers and regulators with analysis and decision-making, such as certificate of need applications, hospital budgets, and ACO oversight in context of larger system.
  - Utilize existing data sources more meaningfully.
  - More dynamic and up-to-date.

# HRAP Proposal

In a nutshell

- 1) Requires the Board to consult the **State's Health Improvement Plan** and the **reimagined HRAP** to identify health investment priorities.
- 2) Requires the Board to publish a **report** at least every 4 years that uses existing data sources to assess Vermont's critical health needs, goods, services, and resources. (**In other words requires a more comprehensive assessment of both supply and demand and thus: unmet need**). *Language requires board to use that report in its decision-making processes.*
- 3) Changes the HRAP review process from one that required 5 public hearings in different regions of the state with 30 days notice published in the newspaper to one where discussion takes place at GMCB meetings which are open to the public and during which we take public comment.



# Some of the many health-related data sources that could be leveraged to better inform resource allocation decisions

[Vermont State Health Improvement Plan](#)

[State Health Assessment Plan - Healthy Vermonters 2020](#)

[Hospital Community Health Needs Assessment Reports](#)

[Hospital Report Card](#)

[Vermont Hospitals Report](#)

[Vermont Health Care Expenditure Analysis](#)

[Inventory of Quality Activities in Vermont](#)

[Inventory of Vermont Communities Health-related Resources](#)

[Inventory and Analysis of Existing Vermont Health Data Final Report](#)

[Vermont Health Data Inventory](#)

[Health Care Workforce Microsimulation Demand Model](#)

[SIM Population Health Plan](#)

# CON Proposal

- Five substantive areas for change:
  - Greater focus on projects related to health care delivery
  - Streamline the application process
  - Adjust monetary thresholds for inflation (hospital only)
  - Align criteria with statewide health care reform goals and principles
  - Enforcement

# CON Proposal: Greater focus on health care delivery

- **Current:** Routine replacement of non-medical equipment (ex kitchens, boilers) reviewed if it meets the monetary threshold
- **Proposed:** Exclude routine replacement of non-medical equipment in CON process and instead review in hospital budget process.

# CON Proposal: Streamline the process

- **Current:** Project may only be expedited if uncontested and no interested parties.
- **Proposed:** Clarifies projects presumed to be expedited: **Repair, renovation, or replacement of building infrastructure and Routine replacement of medical equipment.**

# CON Proposal: Streamline the process

- **Current:** The Board shall hold a public hearing except in the case of emergency CON or no interested parties (at Board discretion).
- **Proposed:** Health Care Advocate, competing applicant, or interested party may waive the requirement for a public hearing, but continue to participate.

# CON Proposal: Adjust monetary thresholds for inflation (hospital only)

- **Current:** Diagnostic and therapeutic equipment at \$1M. New health care service or technology annual operating expenses at \$500,000.
- **Proposed:** Diagnostic and therapeutic equipment increases to **\$1.5M** from \$1M. **New health care service or technology annual operating expenses** increases to **\$1M** from \$500,000. **Periodically adjust thresholds for inflation** (Adjustment shall not exceed an amount calculated using the rate of medical inflation.)

# CON Thresholds

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## Health Facility Planning – triggering thresholds

[18 V.S.A. § 9434](#)

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	Health care facility other than a hospital	By or on behalf of a hospital
Capital expenditure	\$1,500,000	\$3,000,000
Diagnostic and therapeutic equipment	\$1,000,000	\$1,000,000
New health care service or technology annual operating expense exceeds	\$500,000	\$500,000
Conceptual CON if project exceeds	\$30,000,000	\$30,000,000

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# CON Proposal: Adjust monetary thresholds for inflation (hospital only)

- A comparison to other states...

<b>By or on behalf of a hospital</b>			
	<b>Capital</b>	<b>Equipment</b>	<b>New Service</b>
<b>Vermont</b>	\$3,000,000	\$1,000,000	\$500,000
<b>MEAN</b>	\$5,991,772	\$1,942,137	\$1,188,811
<b>MEDIAN</b>	\$3,000,000	\$1,500,000	\$1,000,000
<b>RANGE (low)</b>	\$300,000	\$250,000	\$150,000
<b>RANGE (high)</b>	\$50,000,000	\$6,000,000	\$3,242,028

Source: 2016 National Directory State Certificate of Need Programs Health Planning Agencies, American Health Planning Association



# Medical Inflation vs. CPI

- Prices for medical care increase faster than general inflation
- Medical inflation is more appropriate as an upper limit for threshold adjustment; language says “shall not exceed”

<b>By or on behalf of a hospital</b>			
	<b>Capital</b>	<b>Equipment</b>	<b>New Service</b>
<b>2003</b>	\$3,000,000	\$1,000,000	\$500,000
<b>General inflation 2017</b>	\$3,997,647	\$1,332,549	\$666,275
<b>Medical inflation 2017</b>	\$4,859,363	\$1,619,788	\$809,894

Source: Bureau of Labor Statistics Calculator Inflation Rates calculated from 01/2003 through 12/2016

# CON Proposal: Align criteria with statewide health care reform goals and principles

- **Current:** First criterion requires application “is consistent with the Health Resource Allocation Plan.”
- **Proposed:** In its decisions, the Board must consider health care payment and delivery reform initiatives, address current and future community needs, and is consistent with appropriate allocation of health care resources, including appropriate utilization of services. See HRAP proposal which replaces the HRAP with consideration of the State Health Improvement Plan and a report published by the Board using existing data sources.

# CON Proposal: Enforcement

- **Current:** One time violation: not more than \$40,000.  
Continuing Violation: Greater of not more than \$100,000 or 1/10th of 1% of gross annual revenues.
- **Proposed:**
  - Cap for one-time violation increased to **\$75,000** from \$40,000. Cap for continuing violation increased to **\$200,000** from \$100,000. (Retains 1/10th of 1% of gross annual revenues).
  - Removes “knowingly” violates.

## Additional issue – not in draft

- Purchase or transfer of ownership of nursing homes