

# SC senators seek to end Certificate of Need regulation for hospitals, medical facilities



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Lawmakers and independent doctors speak Jan. 12 at the Statehouse in favor of repealing the Certificate of Need state regulatory process that controls where new hospitals can be built, who can own certain specialized medical equipment and who can expand their treatment area.

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**COLUMBIA — Republican lawmakers are closer than ever in their effort to do away with a state regulatory process that controls where**

**new hospitals can be built, who can own certain specialized medical equipment and who can expand their treatment area.**

**South Carolina law requires medical providers to apply to the state Department of Health and Environmental Control for a Certificate of Need when constructing certain new facilities, expanding capacity and adding certain services. The purpose, according to statute, is to "promote cost containment" and "prevent unnecessary duplication of health care facilities and services," as well as ensure quality.**

**But as hospital systems have merged and consolidated in the state, several lawmakers and doctors in independent practice say the Certificate of Need process has been weaponized by those large systems to eliminate competition.**

**"In the current CON system, even appropriate and needed medical investments can be blocked from development by healthcare systems which can and do object as affected parties, therefore effectively vetoing any project which could create competition," said Dr. Robert Brown, a former ear, nose and throat doctor who now operates an independent practice in the Upstate. "The systems know this game; they play it well. They often will block each other only to horse trade."**

**Brown added, "The small businesses like mine who pay taxes are actually unable to play in that sandbox. I don't have an in-house legal team that can fight these battles for years. And if we're tied up in court, we cannot risk the investment."**

**Data provided by DHEC shows that 534 CON applications have been filed with the agency since 2017. In that time frame, only 12**

applications were denied.

Still, applications that gain approval often draw lawsuits from competitors that can drag on for years.

State Sen. Wes Climer, R-York, who is a sponsor on the repeal legislation, pointed to Carolina Blood and Cancer Associates, an independent oncology practice in his district with offices in Rock Hill and Lancaster. He said the company wants to purchase an MRI scanner so it can open a radiation treatment center.

"They were told by an area hospital CEO, 'Don't even try. We have the financial resources to nuke you,'" Climer said.

In the Lowcountry, a long legal battle between Trident Health and Roper St. Francis Healthcare held up the construction of a hospital in Berkeley County for many years. In that case, DHEC had granted CON certificates for both systems to build a Berkeley hospital. Trident argued in the lawsuit that the county could support only one facility.

State Sen. Dick Harpootlian of Columbia, the only Democrat so far to state his support for the legislation, said he doesn't agree with every piece of the bill but believes it will lower the cost of providing health care by increasing competition.

"I think we are going to agree, and we do agree, that this process has to change and has to change dramatically," he said. "And repeal, if that's all we can do, then that's what I'll vote for."

In debate, concerns were raised about maintaining parity without the regulatory oversight Certificate of Need provides.

For example, hospitals with emergency rooms have to take every patient that comes through the door, regardless of their ability to pay for the cost of care. With Certificate of Need, the worry is outpatient surgery centers would draw money-making procedures away from hospital systems, leaving them with the expense of low-income care and causing financial difficulty.

Others asked questions about how it could affect South Carolina to be surrounded by states that do require Certificate of Need. Out-of-state providers could potentially expand their coverage area across the border, but providers in the Palmetto State would not enjoy the opportunity to do the same in neighboring states.

This isn't the first time South Carolina Republicans have attempted to do away with the CON regulations. In 2013, former Gov. Nikki Haley eliminated funding for the Certificate of Need program. The state Supreme Court later ruled that DHEC was obligated to enforce the CON rules regardless.

Not every lawmaker wants to see the Certificate of Need process done away with completely. Some, like Sen. Scott Talley, R-Spartanburg, would rather reform the measure.

Talley introduced an amendment setting dollar thresholds for when a care provider must go before DHEC for a Certificate of Need, limiting the amount of time an application can be held up in court and eliminating the process for rural counties without a hospital. That amendment remains under debate.

A vote on the full bill is not expected until next week.

The S.C. Hospital Association is hopeful the reform measures prevail

over full appeal, spokesman Schipp Ames said.

“This is essential to protecting access to care for low-income families and rural communities. Certificate of Need also ensures a level playing field, by keeping out-of-state providers from only offering the most profitable services without having to do their part to support South Carolina’s uninsured or underinsured patients,” he wrote in a statement.

South Carolina enacted its first Certificate of Need program in 1971, according to research by George Mason University. Federal legislation passed three years later made certain federal funds contingent on states having Certificate of Need programs, spreading the practice to all 50 states.

That federal law was repealed in 1987, with Congress stating Certificate of Need was ineffective at controlling cost. Today, 35 states still have Certificate of Need laws on the books, according to the National Conference of State Legislatures.

***Lauren Sausser** contributed to this story from Charleston.*

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