Survey of State Certificate of Need Programs

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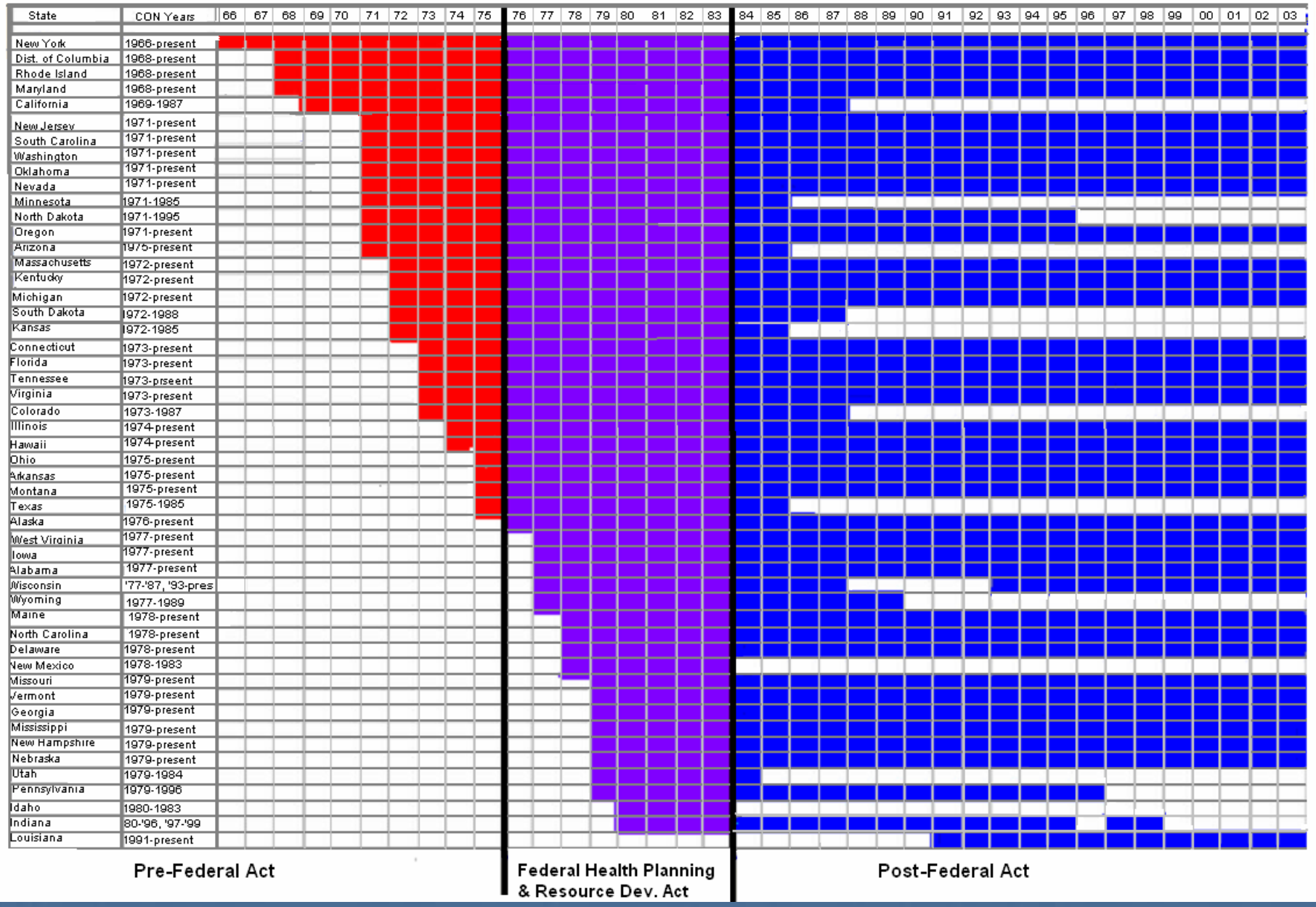
Background and History

- CON programs began in the 1960s
- 1974 Congress enacted the Federal Health Planning and Resources Development Act, offering federal funds conditioned on compliance with state health planning laws
- Federal Act was repealed and federal funds were terminated effective 1987; at the same time states began to deregulate

State CON Experience

- All fifty states and the District of Columbia have experimented with CON-type laws or regulations in the last 50 years
- Currently, 36 states and DC have CON programs in place
- 14 states have repealed previously enacted CON laws

Duration of CON Regulation by State

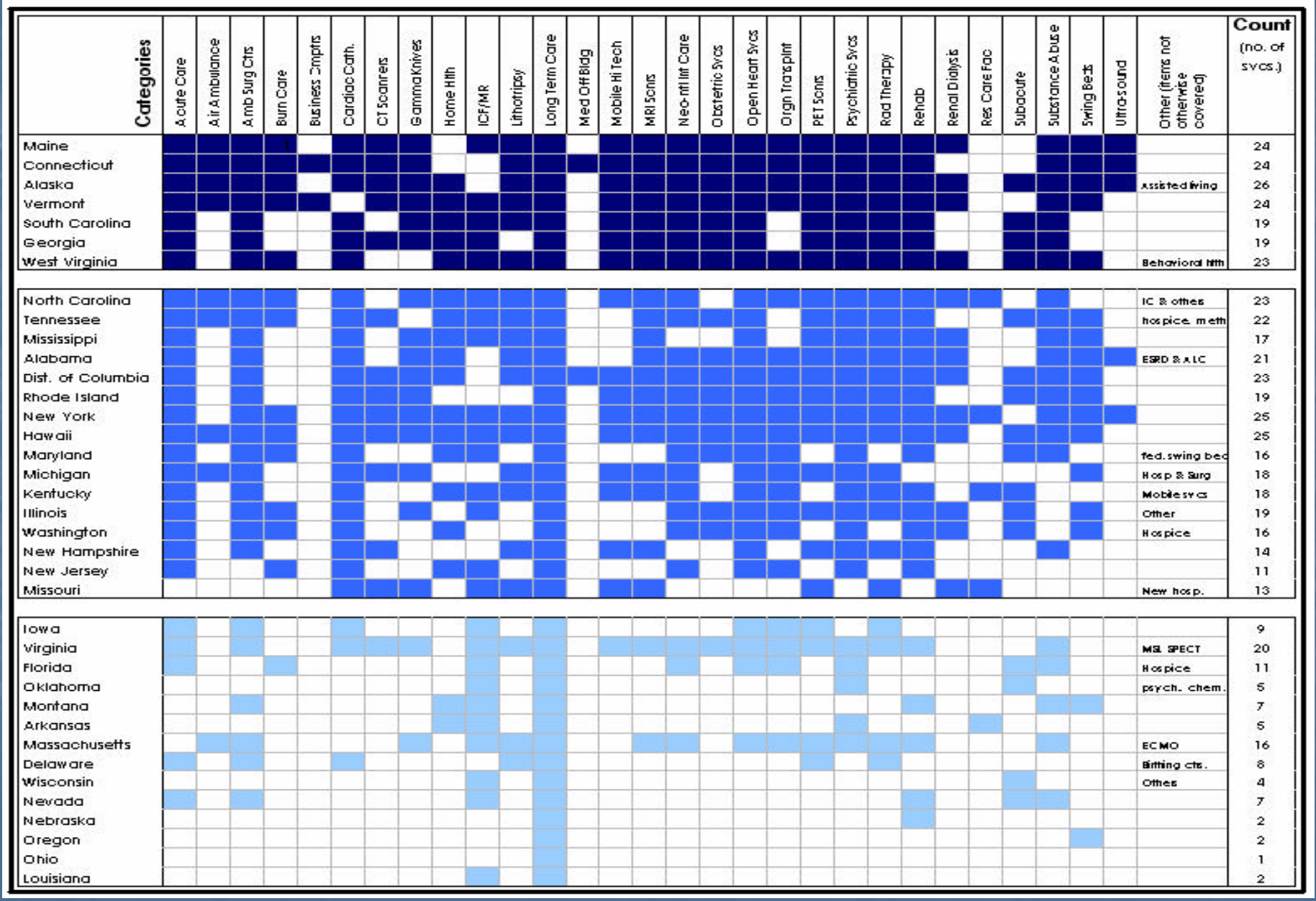


Scope of CON Programs

- Nature and scope of state CON programs vary dramatically
- Alaska regulates the most facilities/activities/types of equipment (26); Ohio regulates the fewest (1)
- Most commonly regulated facilities/activities/types of equipment include:

  - acute care (27)
  - ambulatory surgery centers (27)
  - psychiatric (27)
  - cardiac catheterization (26)
  - neo-natal intensive care (26)
  - rehabilitation (26)
  - intermediate care (25)
  - open heart (25)
  - radiation therapy (24)
  - PET scanners (23)

CON Regulated Programs by State



Categories	Acute Care	Air Ambulance	Amb Surg Ctrs	Burn Care	Business Smptns	Cardiac Cath.	CT Scanners	Gamma Knives	Home Hlth	ICF/MR	Lithotripsy	Long Term Care	Med Off Bldg	Mobile Hi Tech	MRI Scnrs	Neo-natl Int Care	Obstetric Svcs	Open Heart Svcs	Organ Transplnt	PET Scnrs	Psychiatric Svcs	Rad Therapy	Rehab	Renal Dialysis	Res Care Fac	Subacute	Substance Abuse	Swing Beds	Ultra-sound	Other (items not otherwise covered)	Count (no. of svcs.)
Maine	■	■	■	1		■	■	■		■	■	■		■	■	■	■	■	■	■	■	■	■	■			■	■	■		24
Connecticut	■	■	■	■	■	■	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■				■	■	■		24
Alaska	■	■	■	■		■	■	■	■		■	■		■	■	■	■	■	■	■	■	■	■	■		■	■	■	■	Assisted living	26
Vermont	■	■	■	■	■		■	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■			■	■			24
South Carolina	■		■			■		■	■	■	■	■		■	■	■	■	■		■	■	■	■			■	■				19
Georgia	■		■			■	■	■	■	■		■		■	■	■	■	■		■	■	■	■			■	■				19
West Virginia	■		■	■		■			■	■	■	■		■	■	■	■	■	■	■	■	■	■	■		■	■	■		Behavioral hlth	23
North Carolina	■	■	■	■		■		■	■	■	■	■		■	■	■		■	■	■	■	■	■	■	■		■			IC & others	23
Tennessee	■	■	■	■		■	■		■	■	■	■			■	■	■	■		■	■	■	■			■	■	■		hospice, meth	22
Mississippi	■		■			■		■	■	■	■	■			■			■		■	■	■	■	■			■	■			17
Alabama	■		■			■		■	■		■	■			■	■	■	■	■	■	■	■	■	■			■	■	■	ESRD & ALC	21
Dist. of Columbia	■		■			■	■	■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■			23
Rhode Island	■		■			■	■	■				■		■	■	■	■	■	■	■	■	■	■			■	■	■			19
New York	■		■	■		■	■	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■	■		■	■	■		25
Hawaii	■	■	■	■		■	■	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■		■	■	■			25
Maryland	■		■	■		■			■	■		■				■	■	■			■		■			■	■			fed. swing bed	16
Michigan	■	■	■			■	■	■			■	■		■	■	■		■	■	■	■	■						■		Hosp & Surg	18
Kentucky	■		■			■			■	■	■	■		■	■	■		■	■		■	■	■		■	■				Mobile svcs	18
Illinois	■		■	■		■		■		■		■				■	■	■	■	■	■	■	■	■		■		■		Other	19
Washington	■		■	■		■			■			■				■	■	■	■		■		■	■		■		■		Hospice	16
New Hampshire	■		■			■	■				■	■		■	■			■		■	■	■	■				■				14
New Jersey	■			■		■			■	■		■				■		■	■		■		■								11
Missouri						■	■	■		■	■	■		■	■					■		■		■	■					New hosp.	13
Iowa	■		■			■				■		■						■	■	■		■									9
Virginia	■		■			■	■	■		■	■	■		■	■	■	■	■	■	■	■	■	■				■			MSL SPECT	20
Florida	■			■						■		■				■		■	■		■		■			■	■			Hospice	11
Oklahoma										■		■									■					■				psych. chem.	5
Montana			■						■	■		■											■				■	■			7
Arkansas									■	■		■									■				■						5
Massachusetts		■	■					■		■	■	■			■	■		■	■	■	■	■	■				■			ECMO	16
Delaware	■		■			■					■	■								■		■								Birthing cts.	8
Wisconsin										■		■														■				Others	4
Nevada	■		■							■		■											■			■	■				7
Nebraska												■											■								2
Oregon												■																■			2
Ohio												■																			1
Louisiana										■		■																			2

Scope of CON Programs

- 30 programs = “comprehensive programs” covering a range of facilities, some specialized or tertiary medical services, and most major medical equipment
- 7 programs = “long term care programs” focusing on regulation of home health services, intermediate care facilities, psychiatric services, rehabilitative services, residential care facilities, and other long term care services and facilities

Review Thresholds

- Review thresholds = expenditures which trigger review
- Most states have multiple thresholds, with different triggers for capital expenditures, major medical equipment purchases, and addition of services
- Alaska has a single threshold, reviewing all capital expenditures, major medical equipment purchases, and additions of new services of over $1M in value
- A few states review only one or two of these classes of activities, e.g. Delaware reviews any capital expenditure or purchase of major medical equipment of more than $5M but does not review any addition of new services
- Florida has *no* review threshold, requiring review of *all* capital expenditures, major medical equipment purchases and additions of new services

Review Thresholds by State

State	Capital Expenditure	Acquisition specified MME	Addition of Specified New Service
Alabama	$4.1M	$2M	Any
Alaska	$1M	$1M	$1M
Arkansas	$500,000 NH only	n/a	n/a
Connecticut	$1M	$400,000	any
Delaware	$5M	$5M	n/a (spec. serv.)
Dist. Col.	$2.5 M	$1.5M	$600,000
Florida	n/a	n/a	n/a
Georgia	$1.3M HCF $1.4 phys.-owned ASC	$734,695	any
Hawaii	$4M	$1M	any
Illinois	$6.7M	$6.4M	any
Iowa	$1.5M	$1.5M	$500,000
Kentucky	$1.9M	$1.9M	any
Louisiana	n/a	n/a	any NH or MR LTC
Maine	$2.4M	$1.2M	$110,000 capital exp. or $400,000 3rd yr. op. cost
Maryland	$1.55M	n/a	any
Massachusetts	$12M acute $1.2M non-acute	$640,000	any
Michigan	$2.66M	any	any
Mississippi	$2M	$1.5M	any
Missouri	$1M	$1M	$1M
Montana	$1.5M	n/a	$150,000
Nebraska	LTC only		n/a
Nevada	$2M	n/a	n/a
New Hampshire	$1.9M acute $1.3M ASC/specialty	$400,000	any
New Jersey	$2M	$2M	any
New York	$3M	$3M	any
North Carolina	$2M	$750,000	any
Ohio	$2M	n/a	any LTC
Oklahoma	$1M	n/a	any inc. beds
Oregon	n/a	n/a	any hosp/nh
Rhode Island	$2M	$1M	$750,000
South Carolina	$2M	$600,000	$1M
Tennessee	$5M hosp/$2M other	$1.5M	any
Vermont	$3M hosp/$1.5M other	$1M	$500,000
Virginia	$5M	any	any

CON Fees

- 34 states and the District of Columbia charge fees for review of CON applications
  - Many states charge a proportional fee, ranging from 0.1% of project cost with a min. of $1,000 to 1.0% of project cost, with a min. of $1,000 and max. of $20,000
  - Some states charge a flat fee ranging from $200 to $1000
  - Other states use a combination approach, charging an initial flat fee plus an additional fee based on a percentage of the project cost
  - LA charges a flat fee of $10 per bed
- Maryland has no CON fee but does charge an annual user fee based on revenue and admissions for hospitals and nursing homes
- Alaska has no CON fee of any type

CON Program Fees by State

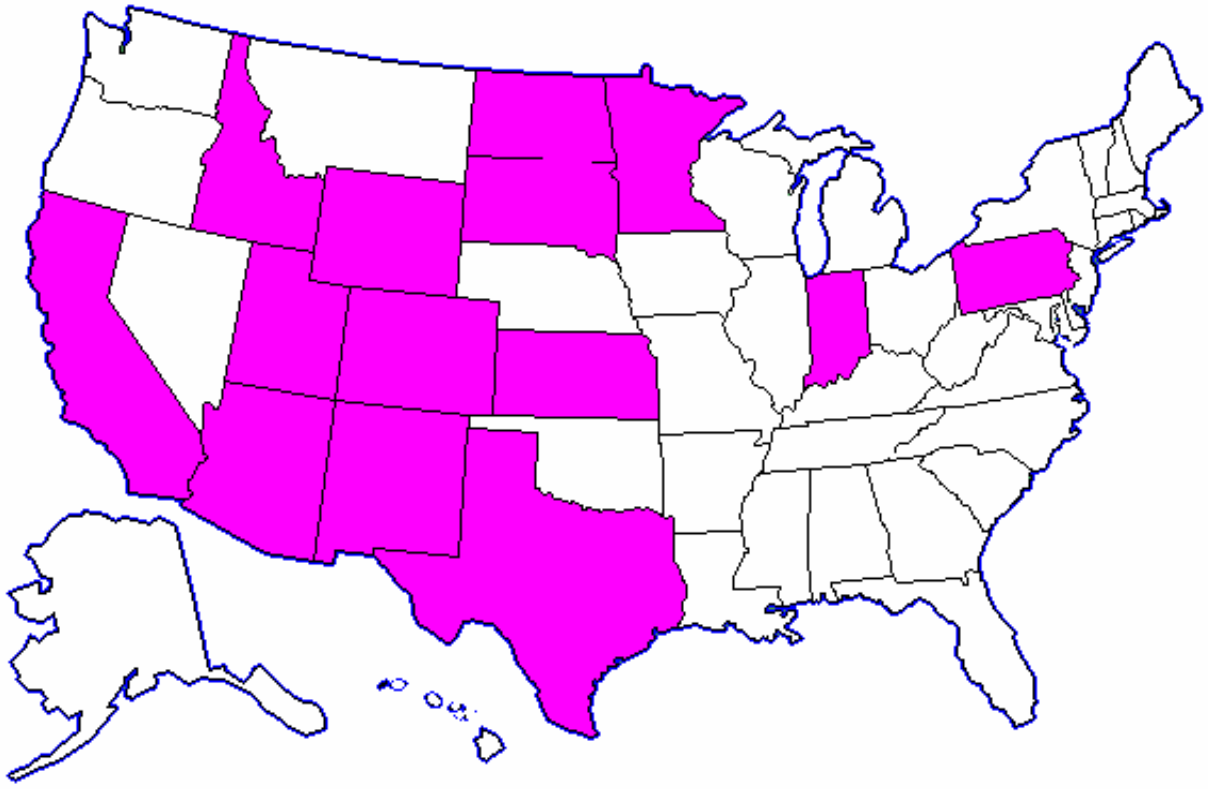
State	Description of Fees
Alabama	1% of project cost, max. $15, 641
Alaska	no CON fee; all conversions of space to nursing home beds reviewed
Arkansas	$1,000 flat fee for all reviews
Connecticut	Base fee of $1,000 for any application for capital expenditure >$1M and new equipment purchase >$400,000 plus adjustment of .0005 x total expenditure
Delaware	<$0.5M= $100, $0.5M - $1M = $750, $1M - $5M = $3,000, $5M - $10M = $7,500, >$10M = $10,000
Dist. Columbia	greater of 3% of capital expenditure or $5,000 with max of $300,000. A voluntary "Tax" on hospitals established in March of 2003 provides operating funds in lieu of application fees
Florida	$5000 + 0.015 of project cost; max. $22,000
Georgia	<$.5M = $500, >$.5M = 0.1%; max. $20,000
Hawaii	Base fee of $200 +).1% total capital cost up to $1M + 0.05% costs of the project above $1M
Illinois	0.2% of capitalized cost; min. $700 max $100,000
Iowa	0.3% of capital expenditure, min. $600 max $21,000
Kentucky	<$50,000 cap. expenditure = $250; $50,000 - $100,000 = $500; $100,000 - $1M = $2,000; $1M - $5M = $6,000; $5M - $10M = $11,000; >$10M = $11,000 + 0.05% of expenditure
Louisiana	$10 per bed participating in Medicaid
Maine	$1,000 per any portion of $1M increments or 3rd year operating $400,000
Maryland	no CON fee; annual facility user fee based on revenue and admissions for hospitals and nursing homes
Massachusetts	0.1% of project cost
Michigan	<$150,000 = $750,000; $150,000 - $1.5M = $2750, > $1.5M = $4,250
Mississippi	0.5% of project cost; min. $500, max. $25,000
Missouri	0.1% of project cost; min. $1,000, no max.
Montana	0.3% project cost; min $500, no max.
Nebraska	$1,000 per application
Nevada	$9,500 for any new construction project in specified counties
New Hampshire	$.25% of project cost; min. $500, max. $12,000. $1,000 for standard development, 0.1% of annual revenues
New Jersey	$57,500 + 0.25% of total project cost for projects of $1M or more
New York	$1,000 plus 0.45% of project cost, if reviewed
North Carolina	$2,000 min fee; if capital expenditure, then $3,500 plus .003% of project cost over $1M, max $17,500
Ohio	greater of $3,000 or 0.9% of project cost; max $20,000 ($3,000 for noncapital projects)
Oklahoma	for psych and chemical dependency - $.75% of project cost, min. $1,,500, max. $10,000. For long term care facilities, 1% of project cost, min $1,000. $1,000 on facility replacement projects.
Oregon	Full review = 2% of cost, min. $10,000, max. $25,000. abbreviated/expedited review = 1%, min $5,000, max. $15,000
Rhode Island	$500 plus .33% of total capital expenditure
South Carolina	Initial filing fee = $500 per application, Application fee = 0.005% of total project cost up to $1.4M; Issuance fee = $7,500 for projects greater than $1.4M
Tennessee	0.225% of project cost, min. $3,000, max $45,000. Hospital threshold $5M, all other projects $2M
Vermont	0.125% of project cost, min. $250, max. $20,000
Virginia	1% of project cost; min. $1,000, max. $20,000.
Washington	Variable based on service
West Virginia	$25 to 0.1% of cost of project depending on type of facility, type of application and rate assessment
Wyoming	0.37% of project cost; min. $1850, max $37,000.

Costs and Revenues of Selected States

- Three states responded to questions concerning costs and revenues associated with CON programs
  - FL's total operating costs = $1.4M, total revenues = $2.5M
  - MI's total operating costs = $1.2M, total revenues = $1.3M
  - MO's total operating costs = $160,000, total revenues = $460,000
- Costs included expenses associated with staffing, office space and processing applications
- Revenues included amounts collected from fees, sale of copies and other miscellaneous sources
- Excess revenues generally roll into agency reserve funds or state general fund

Deregulation – State Experiences after CON

14 states have repealed CON laws since 1983, including AZ, CA, CO, ID, IN, KS, MN, NM, ND, PA, SD, TX, UT, and WY.



Deregulation – State Experiences after CON

- California has “relinquished a direct planning role in favor of requiring health care facilities to provide comprehensive and detailed data about health care delivery and costs; this transition also required the state to provide information to the public and to the industry, leaving siting decisions to ‘the market.’ The only remaining direct regulatory role had to do with facility safety (i.e. building standards).”
- California has noticed that “new hospital construction has followed concentrations of available resources, with denser, affluent areas experiencing new construction and poorer, rural areas seeing their facilities close or reduce services.”
- California has experienced “no recent legislative attempts to reassert state control over facility siting and construction.” However, there have “been steady additions in legislative requirements to increase facility reporting.”

Source: Jonathan Teague, Healthcare Information Resource Center, Healthcare Information Division, Office of Statewide Health Planning and Development.

Deregulation – State Experiences after CON

- In Idaho, “a number of specialty hospitals” have been built or have been proposed for construction in the near future
- The Idaho Hospital Administration is drafting legislation for the upcoming legislative session to reintroduce CON in light of their recent experiences with hospital expansion

Source: Richard Schultz, Idaho Department of Health and Welfare

Deregulation – State Experiences after CON

- Indiana has experiences “a growth in specialized hospitals” but no extensive addition of new hospital beds
- Indiana has experienced “a great increase in cost more due to the lack of a rate review committee”
- “I would recommend that a state maintain its rights to collect data to track these statistics. In Indiana, ISDH lost its authority to collect surveys of specialized services and to examine costs” – Tom Reed, IDSH

Source: Tom Reed, Indiana State Department of Health

Conclusion

- CON programs are diverse
- States' experiences have varied widely
- Post-CON experiences have been mixed