

# CRITICAL CHANGES TO CERTIFICATE OF NEED (CON) REQUIREMENTS AND HSDA PROCEDURES UNDER PUBLIC CHAPTER NO. 557, HB0948/SB1281

## HEALTHCARE INSTITUTIONS AND SERVICES

	Existing TCA Title 68, Chapter 11, Part 16	Public Chapter No. 557, HB0948/SB1281
<b>Home Care Organizations</b>	<ul style="list-style-type: none"> <li>• CON is required to establish a facility, initiate services and/or make certain location changes.</li> <li>• No CON is required for principal office relocations within the same county.</li> </ul>	<ul style="list-style-type: none"> <li>• If certain requirements are met, CON no longer required to establish HHAs limited to serving the following patient groups: <ul style="list-style-type: none"> <li>• Patients under the federal Energy Employees Occupational Illness Compensation Program Act of 2000 or subsequent laws.</li> <li>• Patients &lt; 18 years old (may treat certain patients up to age 21).</li> <li>• Patients under the care of a healthcare research institution (limited to HHAs providing hospice services).</li> </ul> </li> <li>• Expands CON exemption for principal office relocations to those within <i>licensed service area</i>.</li> </ul>
<b>Hospice</b>	<ul style="list-style-type: none"> <li>• CON is required to establish a facility, initiate services and/or make certain location changes.</li> <li>• No CON is required for principal office relocations within the same county.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required to establish residential hospice limited to providing hospice services to patients under the care of a healthcare research institution, if certain requirements met.</li> <li>• Expands CON exemption for principal office relocations to those within <i>licensed service area</i>.</li> </ul>
<b>Hospitals - Operating Nonresidential Substitution-Based Treatment Centers (NSBTC)</b>	<ul style="list-style-type: none"> <li>• CON is required to establish NSBTC and/or initiate opiate addiction services. No specific CON exemptions for hospitals operating NSBTCs.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required for hospital operation of NSBTC if the following are true: <ul style="list-style-type: none"> <li>• Treatment center is on hospital campus.</li> <li>• Hospital is licensed under Title 33 or 68.</li> </ul> </li> </ul>
<b>Hospitals - Satellite EDs and Inpatient Facilities</b>	<ul style="list-style-type: none"> <li>• CON is required to establish satellite ED at a location other than a hospital's main campus.</li> </ul>	<ul style="list-style-type: none"> <li>• Adds CON requirement for the establishment of satellite inpatient facilities at a location other than the hospital's main campus.</li> </ul>

## HEALTHCARE INSTITUTIONS AND SERVICES, CONT.

	Existing TCA Title 68, Chapter 11, Part 16	Public Chapter No. 557, HB0948/SB1281
<b>Hospitals - Renewal of License for Closed Hospitals</b>	<ul style="list-style-type: none"> <li>• CON is required to develop or establish a hospital. No specific CON exemptions targeting the renewal of closed hospitals in rural or distressed counties.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required to establish hospital licensed under Title 68 if the following criteria are met: <ul style="list-style-type: none"> <li>• Hospital was previously licensed under Title 68 or another hospital was previously licensed under Title 68 at the proposed location.</li> <li>• Hospital is located in a county designated as tier 2, tier 3 or tier 4 enhancement county or has a population &lt; 49,000 (per 2010 or subsequent census).</li> <li>• Last date of operations at the hospital was no more than 15 years prior to date party seeking to establish new hospital submits licensure information to TDOH.</li> <li>• Party seeking to establish the new hospital applies for a CON within 12 months of submitting licensure information to TDOH.</li> </ul> </li> </ul>
<b>Magnetic Resonance Imaging</b>	<ul style="list-style-type: none"> <li>• For counties with a population ≤ 250,000 (per 2010 or subsequent census), CON is required to: <ul style="list-style-type: none"> <li>• Initiate MRI for <i>any patients</i>.</li> <li>• Increase the number of MRI machines by ≥ 1 (CON is not required for replacing or decommissioning existing machines).</li> </ul> </li> <li>• For counties with a population &gt; 250,000 (per 2010 or subsequent census), CON is required for MRI for <i>pediatric patients</i> only (e.g. Davidson, Hamilton, Knox, Rutherford and Shelby Counties).</li> </ul>	<ul style="list-style-type: none"> <li>• In counties with a population &gt; 175,000 (per 2010 or subsequent census), CON is no longer required to initiate MRI services or increase the number of MRI machines <i>if</i> MRI services are not provided to patients 14 years of age or younger on more than 5 occasions per year (essentially adds Williamson County to the list of counties largely exempt from MRI CON requirements).</li> </ul>
<b>Mental Health Hospitals</b>	<ul style="list-style-type: none"> <li>• CON is required to establish mental health hospital.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required (removes mental health hospital from the definition of “healthcare institution”).</li> </ul>
<b>Psychiatric Services</b>	<ul style="list-style-type: none"> <li>• CON is required to initiate psychiatric services.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required to initiate psychiatric services.</li> </ul>

## HEALTHCARE INSTITUTIONS AND SERVICES, CONT.

	Existing TCA Title 68, Chapter 11, Part 16	Public Chapter No. 557, HB0948/SB1281
<b>Positron Emission Tomography</b>	<ul style="list-style-type: none"> <li>• CON is required to initiate PET services.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required to initiate PET services in counties with a population &gt; 175,000 (per 2010 or subsequent census) (e.g. Davidson, Hamilton, Knox, Rutherford, Shelby and Williamson Counties), if certain accreditation requirements met.</li> </ul>
<b>Recuperation Center</b>	<ul style="list-style-type: none"> <li>• CON is required to establish recuperation center.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required (removes recuperation center from the definition of “healthcare institution”).</li> </ul>

## OTHER CON ACTIONS

	Existing TCA Title 68, Chapter 11, Part 16	Public Chapter No. 557, HB0948/SB1281
<b>Actions in Economically Distressed Counties</b>	<ul style="list-style-type: none"> <li>• No specific CON exemptions targeting economically distressed counties.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required for actions in counties that, as of 1/1/2021, are economically distressed and lack an actively licensed Title 68 hospital within the county.</li> <li>• For PET/MRI services, must also satisfy certain accreditation requirements.</li> </ul>
<b>Changes in Bed Complement</b>	<ul style="list-style-type: none"> <li>• CON is required for any bed complement change that accomplishes one of the following: <ul style="list-style-type: none"> <li>• Increases licensed beds by <math>\geq 1</math>.</li> <li>• Redistributes beds from acute to LTC or from any category to acute, rehab or child/adolescent/adult psychiatric.</li> <li>• Relocates beds to another facility or site.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Modifies CON requirements to require CON for a change in bed complement that accomplishes one of the following: <ul style="list-style-type: none"> <li>• Increases <i>nursing home beds</i> by <math>\geq 1</math>.</li> <li>• Redistributes beds from any category to acute, rehab or LTC, if, at the time of redistribution, the institution lacks beds licensed for the category to which beds will be redistributed.</li> <li>• Relocates beds to another facility or site.</li> </ul> </li> </ul>
<b>Increasing Number of Licensed Beds - Hospitals, Rehabilitation Facilities and Mental Health Hospitals</b>	<ul style="list-style-type: none"> <li>• No CON is required for hospitals, rehabilitation facilities or mental health hospitals to increase licensed beds in any category by 10% or less of licensed capacity if increase requested no more frequently than once every 3 years and other requirements met.</li> </ul>	<ul style="list-style-type: none"> <li>• CON is no longer required for hospitals, rehabilitation facilities and mental health hospitals to increase the number of licensed beds.</li> </ul>

## OTHER CON ACTIONS, CONT.

	<b>Existing TCA Title 68, Chapter 11, Part 16</b>	<b>Public Chapter No. 557, HB0948/SB1281</b>
<b>Increasing Number of Licensed Beds - Nursing Homes</b>	<ul style="list-style-type: none"> <li>No CON is required for a nursing home to increase licensed beds by lesser of 10 beds or 10% of licensed capacity if certain requirements met. Otherwise, CON is required for new nursing home beds and application is subject to detailed criteria and formula.                             <ul style="list-style-type: none"> <li>For fiscal years 7/1/2016 - 6/30/2021, HSDA limited to issuing CONs for new nursing home beds, including conversion of hospital beds to nursing home or swing beds, to 125 beds per fiscal year certified as Medicare SNF beds (no more than 30 beds per applicant).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Decreases frequency with which nursing home can increase number of licensed beds under 10 bed/10% capacity provision without a CON to no more than 1 time every 3 years.</li> <li>Eliminates detailed analysis and formula for issuance of CONs for new nursing home beds.</li> <li>Extends 125-bed limit per fiscal year to 7/1/2020 - 6/30/2025.</li> </ul>
<b>Change in Location or Replacement of Existing Facilities or Medical Equipment</b>	<ul style="list-style-type: none"> <li>With certain exceptions, CON is required to change the location of or replace existing healthcare facility or medical equipment requiring a CON.</li> <li>CON applications proposing to replace licensed nursing home with 1 single licensed nursing home subject to certain review requirements depending on whether the project seeks to increase the number of licensed beds.</li> </ul>	<ul style="list-style-type: none"> <li>For existing facilities, removes reference to “or the replacement of” in current TCA § 68-11-1607(a)(5).</li> <li>CON no longer required to change the location of or replace medical equipment requiring a CON.</li> <li>Executive Director may exempt relocation of existing facilities from CON requirements if certain criteria are met.</li> <li>No changes to process for considering applications to replace multiple licensed nursing homes with a single nursing home.</li> </ul>
<b>Relocation of Nursing Home Beds</b>	<ul style="list-style-type: none"> <li>CON applications involving relocation of nursing home beds subject to a number of provisions with very specific requirements and criteria.</li> </ul>	<ul style="list-style-type: none"> <li>Deletes the following provisions related to relocation of nursing home beds:                             <ul style="list-style-type: none"> <li>TCA § 68-11-1628 (prescribing conditions for licensed nursing home relocation of less than all of its licensed beds to new location or site).</li> <li>TCA § 68-11-1629 (prescribing conditions for licensed nursing home relocation of all or fewer than all of its licensed beds to no more than 2 locations).</li> <li>TCA § 68-11-1631 (prescribing requirements for “qualified partial relocation” of nursing home facility).</li> <li>TCA § 68-11-1632 (prescribing requirements for “qualified divided relocation” of nursing home facility).</li> <li>TCA § 68-11-1634 (prescribing conditions under which existing nursing home can relocate 62 or less of its beds to new, separately licensed nursing home).</li> </ul> </li> </ul>

## OTHER CON ACTIONS, CONT.

	<b>Existing TCA Title 68, Chapter 11, Part 16</b>	<b>Public Chapter No. 557, HB0948/SB1281</b>
<b>Changes of Ownership and Control and CON Transfers</b>	<ul style="list-style-type: none"> <li>Healthcare institutions must provide HSDA notice of CHOWs occurring within 2 years of the date of initial licensure.</li> <li>Generally, changes of control void CONs for the establishment of new healthcare institutions unless HSDA approves.</li> <li>Generally, transfer of CONs is prohibited unless CON is transferred as part of transfer of ownership of an existing healthcare institution and is not for the establishment of a new healthcare institution.</li> <li>CONs are invalidated if they are the subject of a development contract or agreement to sell or lease a facility not fully disclosed in CON application.</li> </ul>	<ul style="list-style-type: none"> <li>Eliminates the requirement to notify HSDA of CHOWs within 2 years of initial licensure.</li> <li>No revisions to the change of control process for CONs involving the establishment of a new healthcare institution.</li> <li>Authorizes the transfer of CONs if HSDA approves and the CON is transferred as part of ownership of a licensed healthcare institution.</li> <li>Maintains prohibition against making CON the subject of an undisclosed contract or agreement to sell or lease a facility.</li> </ul>

## HSDA PROCEDURES AND ADMINISTRATION

	<b>Existing TCA Title 68, Chapter 11, Part 16</b>	<b>Public Chapter No. 557, HB0948/SB1281</b>
<b>HSDA Review Cycle</b>	<ul style="list-style-type: none"> <li>1st day of month = 1st day of review cycle.</li> <li>Review cycles begin on 1st day of: January, March, May, July, September and November (unless HSDA provides otherwise by rule).</li> <li>Generally, 60-day review cycle.</li> </ul>	<ul style="list-style-type: none"> <li>Changes 1st day of review cycle to the 15th day of month.</li> <li>Changes start of review cycles to the 15th of each month.</li> <li>Reduces review cycle to 30 days.</li> </ul>
<b>Letter of Intent Filing</b>	<ul style="list-style-type: none"> <li>LOI must be filed between the 1st and 10th of month before the commencement of relevant review cycle.</li> </ul>	<ul style="list-style-type: none"> <li>Changes LOI filing deadline to between the 1st and 15th of the month before the application's submission.</li> </ul>

## HSDA PROCEDURES AND ADMINISTRATION, CONT.

	<b>Existing TCA Title 68, Chapter 11, Part 16</b>	<b>Public Chapter No. 557, HB0948/SB1281</b>
<b>CON Application Filing Deadline</b>	<ul style="list-style-type: none"> <li>• CON application must be filed within 5 days from date LOI published.</li> </ul>	<ul style="list-style-type: none"> <li>• Changes the CON application filing deadline to 1st business day of the month following the date LOI published.</li> </ul>
<b>Annual Fees for Licensure</b>	<ul style="list-style-type: none"> <li>• Healthcare providers subject to annual fees ranging from \$50-\$300 per license, depending on license type.</li> </ul>	<ul style="list-style-type: none"> <li>• Substantially increases the annual fees for all healthcare provider types except the following, for which annual fees remain the same: residential hospices, birthing centers, mental health residential treatment facilities and intellectual disability institutional habilitation facilities.</li> <li>• Eliminates annual fees for mental health hospitals.</li> </ul>
<b>Emergency CONs</b>	<ul style="list-style-type: none"> <li>• HSDA must promulgate rules for obtaining emergency CONs.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishes detailed emergency CON review and issuance policy.</li> </ul>
<b>Process for Opposing CONs</b>	<ul style="list-style-type: none"> <li>• Healthcare institutions wishing to oppose CON must file written objection and serve a copy on the applicant at least 15 days before the HSDA meeting at which the application will be heard.                             <ul style="list-style-type: none"> <li>• If the opposing party fails to adhere to written objection requirements, it may oppose the project but lose certain appeal rights.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Except for healthcare institutions opposing home care organization-related projects, limits permissible opposing healthcare institutions to those within a 35-mile radius of the proposed project location.</li> <li>• Creates specific requirements for healthcare institutions opposing home care organization-related projects. Healthcare institution must have served patients within at least 1 of the counties in the applicant's proposed service area within the 730 days (2 years) immediately preceding the date the CON was filed.</li> <li>• Adds a requirement that written objection must specify reasons why 1 or more criteria for granting CONs are not met.                             <ul style="list-style-type: none"> <li>• Timing of filing and serving written objection remains the same, but the new law does not permit opposing healthcare institution to be heard in the absence of filing and serving written objection.</li> </ul> </li> <li>• Authorizes individuals acting as private citizens to oppose CON applications without adhering to the above requirements.</li> </ul>
<b>Voidance of CON</b>	<ul style="list-style-type: none"> <li>• Generally, depending on project type, CONs are valid for 2 or 3 years from the date of issuance. Upon expiration, CON becomes null and void.</li> </ul>	<ul style="list-style-type: none"> <li>• Adds the following additional avenues for voiding CON:                             <ul style="list-style-type: none"> <li>• Unless exemption granted or other exception met, CON is voided if actions CON authorizes are not performed for a continuous period of 1 year after the date the CON is implemented.</li> <li>• For home care organizations, the requirement applies to each county in which the organization is licensed.</li> <li>• If CON voided, TDOH and TDMHSAS may not issue or renew license for activity authorized by voided CON.</li> </ul> </li> </ul>

# HEALTHCARE INSTITUTIONS, HEALTH SERVICES OR CON ACTIONS FOR WHICH CON REQUIREMENTS REMAIN UNCHANGED

UNDER PUBLIC CHAPTER NO. 557, HB0948/SB1281

## CON is required to establish the following types of healthcare institutions:

- Nursing Homes\*
- Hospitals\*
- ASTCs
- ID Institutional Habilitation Facilities
- Home Care Organizations (or category of service provided by home care organization)\*
- Outpatient Diagnostic Centers\*\*
- Rehabilitation Facilities
- Residential Hospices\*

\* Note certain limited changes or exceptions to CON requirements highlighted above.

\*\* HB0948/SB1281 establishes the time period within which ODCs must become American College of Radiology accredited (within 2 years of receiving CON).

## CON is required to initiate the following healthcare services\*:

- Burn Unit
- Neonatal ICU
- Open Heart Surgery
- Organ Transplantation
- Cardiac Catheterization
- Linear Accelerator
- Home Health\*\*
- Hospice\*\*
- Opiate addiction treatment through NSBTC\*\*

\* HB0948/SB1281 adds annual reporting requirement for all healthcare services except linear accelerators and NSBTCs.

\*\* Note certain limited changes or exceptions to CON requirements highlighted above.