

CERTIFICATE OF NEED REFORM

HB3 and HB1622 - and their implications

WHAT ARE CERTIFICATE OF NEED LAWS?

Mississippi has required healthcare providers to obtain a Certificate of Need (CON) from the state before establishing, expanding, or relocating services since 1979. The law covers 19 categories of healthcare — from hospital beds and home-health services to PET scanners and psychiatric facilities — and applies to any equipment purchase above \$1.5 million. Congress originally encouraged states to adopt CON laws in 1974 to contain healthcare costs, but repealed the federal mandate within a decade as evidence mounted that they were failing. Today, 15 states have abolished their CON laws entirely. Mississippi's remains among the most restrictive in the nation.

THE COST OF RESTRICTING CARE

Research by the Mercatus Center and others has consistently found that CON laws raise prices, reduce the availability of services, and entrench incumbent providers — all while doing nothing to improve quality of care. By handing existing hospitals a legal mechanism to block new competitors, they deliver worse outcomes for patients while protecting the market position of the powerful.

MCPP'S CAMPAIGN FOR CON REFORM

The Mississippi Center for Public Policy has pursued CON repeal for several years through every available avenue — championing reform legislation in the Capitol, supporting litigation that challenges CON restrictions as a violation of economic liberty, and making the public case that this anticompetitive regime harms the patients it claims to protect. Progress has been hard-won: CON reform is fiercely resisted by the hospital lobby and the large health systems that benefit from barriers to entry. Year after year, bills have stalled, been gutted by amendment, or been vetoed. The 2026 session marked a turning point.

A FIRST SIGNIFICANT VICTORY

These are not the sweeping repeal that MCPP and its allies have long sought. But they are real, meaningful, and — crucially — they establish the precedent that the legislature can and will act on CON. They demonstrate that the political consensus which has protected this anticompetitive regime for decades is no longer impenetrable. And they open the gate to the broader reform that patients, providers, and communities across Mississippi deserve.

After years of groundwork, advocacy, and persistence, the dam has begun to crack.

WHAT THE BILLS DO

HB3 — Targeted CON Amendments

HB3 amends Mississippi's CON statute in several important respects. While some of its provisions are facility-specific, others establish principles with broader application.

The bill significantly raises the capital expenditure thresholds that trigger CON review — in some cases doubling the dollar amounts. This means that healthcare providers can now undertake facility improvements, renovations, and equipment purchases up to those higher thresholds without seeking state permission. For a sector in which every delay has human consequences, this is a meaningful reduction in bureaucratic friction.

HB3 also makes three facility-specific adjustments of note. It removes the blanket prohibition on Medicaid participation for a 40-bed psychiatric residential treatment facility in DeSoto County, placing it on equal regulatory footing with comparable facilities. It mandates issuance of a CON for additional beds in a community living program for adults with developmental disabilities in Madison County. And it eases conditions on a long-term care hospital in Harrison County, permitting it to participate in Medicaid as a crossover provider. Together, these changes improve access and capacity in areas of care — mental health, disability services, long-term care — where Mississippi has chronically underperformed.

Finally, HB3 directs the Department of Health to study the feasibility of exempting small hospitals from CON requirements for dialysis units and geriatric psychiatric services, with a report due by December 1, 2026. This is significant: it embeds the logic of exemption and deregulation into the state's own policy-development process.

HB1622 — Small Community Hospital Pilot Program

HB1622 is the more transformative of the two measures. Building directly on HB3, it establishes a Small Community Hospital Pilot Program that grants qualifying small and rural hospitals CON exemptions for certain services and facilities, without requiring them to seek state approval. Exemptions cover the hospital's main campus and a five-mile radius around it.

For hospitals in the Delta Public Health Region — one of the most medically underserved areas in the United States — the bill provides up to two exemptions. Hospitals in Issaquena and Humphreys counties receive broad exemptions from most CON requirements. The State Health Officer is empowered to license up to eight end-stage renal disease (dialysis) facilities and geriatric psychiatric units at qualifying small hospitals, with those decisions final and non-reviewable.

Perhaps equally significant is HB1622's reform of the CON appeals process. Under the new "loser pays" rule, any party that appeals a CON approval and fails to have it vacated or set aside must reimburse the successful applicant for attorneys' fees, consultant costs, and all related expenses. This provision strikes at one of the most cynical features of the CON regime: the use of the appeals process by incumbent providers not to protect the public interest, but to impose costs and delays on would-be competitors. Under the existing system, filing a speculative or anticompetitive appeal is essentially free for the challenger and enormously expensive for the applicant. HB1622 changes that calculus decisively.

IMPLICATIONS: THE GATE IS OPEN

Taken together, HB3 and HB1622 do more than make incremental improvements at the margins of Mississippi's healthcare regulatory framework. They signal a shift in the political and policy landscape — and they lay the groundwork for the broader reform needed.

- **The pilot exemption model** establishes that CON restrictions can be lifted without the sky falling. The reports mandated by HB1622 will generate real-world data from Mississippi's own experience of CON-free operation in the Delta and other rural communities. If, as the evidence from other states strongly suggests, those communities are better served by more flexible provision than by state-controlled capacity planning, the case for broader repeal will be all but unanswerable.
- **The loser-pays appeal reform** removes a key weapon from the arsenal of incumbent providers. For years, large hospital systems have used the threat of a drawn-out and expensive appeals process to deter new entrants and suppress competition. HB1622 makes that strategy costly. This single change may do more to stimulate new investment in Mississippi healthcare — particularly in underserved areas — than any other provision in either bill.
- **The higher capital expenditure thresholds** in HB3 give existing providers greater freedom to invest in their facilities without seeking state permission. In a state where rural hospitals are struggling financially and many are at risk of closure, the ability to upgrade equipment and facilities without navigating a costly and time-consuming approval process is not a trivial benefit.
- **The mandated studies** in HB3 embed the logic of reform into the state's own bureaucratic agenda. By directing the Department of Health to assess the case for further exemptions, the legislature has signaled that the question is no longer whether Mississippi will continue reforming its CON regime, but how fast and how far.

Full repeal remains the goal, and it remains achievable and the 2026 session has demonstrated that the legislature is willing to act.