

# Now & Next

## Healthcare Alert

September 4, 2025

### **New York State adopts revisions to Certificate of Need (CON) process for healthcare facility construction**

By Scott Simpson and Mukta Chilakamarri

New York State implements comprehensive reforms to its Certificate of Need process, easing regulatory burdens for healthcare facility development.



#### **What's the impact?**

- New York adopted several regulatory changes intended to significantly streamline and modernize the state's Certificate of Need (CON) process.
- The changes reduce regulatory and administrative burdens for healthcare facility construction projects by raising cost thresholds and expanding eligibility for expedited review pathways.

The New York State Department of Health (NYSDOH) adopted [revisions](#) to the Certificate of Need ("CON") regulations for healthcare facility construction under Title 10, Part 710 of the New York State Codes, Rules and Regulations. These changes implement Governor Hochul's 2024 State of the State directive to modernize the CON process and better align regulatory thresholds with current construction costs and healthcare delivery trends. The revised CON regulations

received the broad support of the Greater New York Hospital Association, Healthcare Association of New York State, Community Healthcare Association of New York State, New York State Association of Ambulatory Surgery Centers, and Suburban Hospital Alliance.

**Increases to cost thresholds:** A central feature of the amendments is the significant increase in cost thresholds that trigger CON review. For general hospitals, the threshold for requiring a CON application doubled from \$15 million to \$30 million. For other types of healthcare facilities, the threshold increased from \$6 million to \$8 million. These adjustments reflect a balance in the rising costs of construction and the State's commitment to ensure that regulatory oversight remains appropriate for large-scale projects.

- / **Proposals requiring Full Review:** Projects at general hospitals with projected costs that exceed \$60 million, or 10% of operating costs (with a limit of up to \$150 million), will now require Full Review, including a recommendation from the Public Health and Health Planning Council. For other facilities, the Full Review threshold rose to \$20 million, or 10% of operating costs (capped at \$30 million). In addition, any project that adds beds, converts beds to a higher level of care, or changes more than 10% of existing beds will be subject to a Full Review regardless of cost. The regulations also now require Full Review for the addition of lung transplant services.
- / **Proposals eligible for Administrative Review:** The amended regulations increase the cost thresholds for projects eligible for Administrative Review. General hospital projects with total costs between \$30 million and \$60 million, projects at other healthcare facilities with costs between \$8 million and \$20 million, and projects primarily funded by state grants now qualify for Administrative Review. Notably, projects involving emergency department space are no longer subject to Administrative Review, a change intended to expedite approvals and help the State's crowded hospitals respond more quickly to increased demand for emergency services.
- / **Proposals eligible for Limited Review:** The amended regulations increase the cost thresholds for Limited Review from \$15 million to \$30 million for general hospitals and from \$6 million to \$8 million for other healthcare facilities. Mobile van extension clinics are now eligible for Limited Review because they have fewer generally accepted design and construction standards. Facilities that add or renovate exam rooms in existing or adjacent certified space are now exempt from CON review and only need to notify NYSDOH.

## **Architectural self-certification and service-specific changes:**

The amendments also raised the threshold for architectural self-certification from \$15 million to \$30 million, which is expected to expedite lower-risk projects. In addition, the adopted regulations remove or consolidate several services previously requiring Full or Administrative

Review, including Diagnostic Cardiac Catheterization services, changes in bed capacity at an acquired immune deficiency syndrome (AIDS) center, addition of skilled nursing facility beds for individuals with AIDS, acquisition of magnetic resonance imaging (MRI) machines, addition of adult day healthcare services, and acquisition of computed tomography (CT) scanners.

## **Notice-only requirements:**

The CON regulations now require only written notice to NYSDOH for non-clinical projects over \$12 million, an increase from the previous \$6 million threshold. Projects that are otherwise eligible for Limited Review and are architecturally self-certified, provided they do not involve changes to beds or services requiring an update to the operating certificate, will also be eligible for notice-only status.

## **Effective date**

These regulatory changes became effective August 6, 2025. NYSDOH will conduct an initial review of these rules in calendar year 2030, five years after adoption.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

**Scott Simpson**

585.263.1484

[ssimpson@nixonpeabody.com](mailto:ssimpson@nixonpeabody.com)

**Mukta Chilakamarri**

518.427.2665

[mchilakamarri@nixonpeabody.com](mailto:mchilakamarri@nixonpeabody.com)