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Fact Sheet for the Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, House of Representatives

August 1986

HEALTH CARE FACILITIES

Capital Construction Expenditures by State

GAO/HRD-86-134FS

GAO

United States
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Human Resources Division

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August 11, 1986

The Honorable Henry A. Waxman
Chairman, Subcommittee on Health
and the Environment
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

On July 25, 1986, your office requested that we provide information on capital expenditures in the health care sector for states that had eliminated certain regulatory mechanisms over these expenditures. We obtained health care capital construction data for all states and the District of Columbia for the period 1981 through June 1986 from the Commerce Department and from a private concern that accumulates such data.

Since 1982 two states--Arizona and Utah--eliminated their programs for prior approval of health facility construction without imposing a moratorium on construction. In Utah, health facility construction activity increased after the approval program was eliminated; in Arizona, there is no clear pattern of changes in construction activity. A number of other factors, such as occupancy rates, age and condition of the existing facilities, or population changes, can affect decisions to construct health facilities. We do not know the extent to which such other factors affected changes in construction activity in these two states.

This fact sheet provides details about the health planning programs and health facility construction by states, which are grouped by their planning programs.

As arranged with your office, we will send copies of this fact sheet to the Department of Health and Human Services and other interest parties and make copies available to others on request. Should you need additional information on the specifics of this matter, please call me on 275-6195.

Sincerely yours,

Michael Zimmerman
Senior Associate Director

Contents

ABBREVIATION

CON	certificate-of-need

HEALTH CARE FACILITIES:

CAPITAL CONSTRUCTION EXPENDITURES BY STATE

The fact sheet provides information on health care capital construction activity by state, grouped by mechanisms used to regulate such activity. Three such mechanisms are discussed: certificate-of-need (CON), section 1122 review programs, and construction moratoria. To obtain measures of construction activity in the health care sector, we obtained data from the Commerce Department and a private concern, the F. W. Dodge Division of the McGraw-Hill Information Systems Company. We also obtained information, prepared by state planning agencies, describing the recent experiences of Arizona and Utah--two states that eliminated their CON programs.

CON programs are state regulatory mechanisms for reviewing and approving or disapproving hospital-related or other capital expenditures (e.g., for nursing home beds) or provision of certain new services (e.g., open-heart surgery or organ transplantation). In a state with a CON program, for projects subject to review (e.g., those that involve capital outlays above a certain dollar amount or provision of a new service), a health care provider cannot initiate construction unless a certificate-of-need is obtained from the state. Review of each project is based on certain preestablished planning criteria, and approval requires a finding of community need.

In 1964 New York was the first state to adopt a CON law. By the early 1980s, following passage of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641), which authorized federal funding for state CON programs and provided for penalties for those states not establishing programs meeting federal standards, all states except Louisiana had a CON program. As of July 1, 1986, eight states did not have such a program. (See p. 6.)

The Social Security Amendments of 1972 added section 1122 to the Social Security Act. It directs the Secretary of Health and Human Services to enter into agreements with states electing participation in the program, to provide for and fund (on a reasonable cost basis) the review of proposed hospital capital expenditures. In a state with a section 1122 program, if a hospital were to proceed with a project disallowed by the state, it would be denied reimbursement for interest and depreciation related to the capital expenditures under Medicare, Medicaid, and the Maternal and Child Health Programs. As of July 1, 1986, 15 states had a section 1122 program.

Following are two of the differences between the CON and section 1122 programs:

--Prior approval of a project is required for licensure (without which the facility cannot operate) in states with a CON program, whereas disapproval under section 1122 review would lead to a loss of federal payments for depreciation, interest, and other expenses related to the capital expenditure.

--Unlike in CON, section 1122 does not have provisions for penalizing states electing not to have a section 1122 program.

As part of the administration's "pro-competition" health strategy, the administration's budget requests for fiscal years 1982-86 have proposed repealing the CON program to reduce the regulatory burden on the private sector. Although the program's authorizations for appropriations expired at the end of fiscal year 1982, the program was funded through a series of continuing resolutions at the 1982 level. During this period, seven states (Arizona, Idaho, Kansas, Minnesota, New Mexico, Texas, and Utah) eliminated their CON programs.

If federal funding for the CON program is eliminated, more states could be expected to terminate their programs. Currently, seven states have sunset provisions[1] that would lead to the expiration of their CON programs on or before June 1989, unless their legislatures reauthorize the programs. However, eliminating CON will not necessarily result in the demise of state regulation of capital expenditures because of the potential expansion of the section 1122 program or state decisions to fund CON programs themselves.

The Social Security Amendments of 1983 (Public Law 98-21) established the Medicare prospective payment system for inpatient hospital services, but did not include capital-related costs,[2] which continue to be paid on a retrospective cost basis. If the Congress does not enact legislation to provide for Medicare payment of hospital-related capital costs of inpatient hospital services by October 1, 1987, no Medicare payment may be made for such costs for projects obligated after September 30, 1987, unless the state has a section 1122 agreement with the Department of Health and Human Services and, under the agreement, the state has recommended approval of the capital

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[1]California (January 1987), Indiana (July 1987), Montana (June 1987), Oklahoma (June 1988), West Virginia (July 1987), Wisconsin (June 1989), and Wyoming (January 1989).

[2]Capital costs are those facility costs associated with furnishing the buildings and equipment necessary to provide patient care. Allowable capital costs under Medicare include depreciation for these assets and interest paid on funds borrowed to acquire them.

project. Thus, unless the Congress enacts such legislation by October 1, 1987, more states can be expected to adopt a section 1122 review program.

In addition to the CON and section 1122 programs, state regulating agencies also use moratoria as a means of regulating the growth of health-related capital expenditures. A moratorium is a ban on a class of projects, enforced through a state's CON program or directly through state licensure of health facilities. Appendix I shows that as of July 1, 1986, 16 states had either explicit or de facto moratoria on selected types of projects, according to a draft report prepared by the Intergovernmental Health Policy Project, George Washington University.

STATUS OF STATE CON AND SECTION 1122 PROGRAMS

Since 1982, CON legislation has either been eliminated or expired through sunset provisions in seven states. Thirty-one states and the District of Columbia have CON only. Another 11 states have both types of programs. Four have 1122 only (Idaho, Louisiana, Minnesota, and New Mexico). Four have neither program (Arizona, Kansas, Texas, and Utah). Of those four, two--Kansas and Texas--have or had a moratorium on the construction of particular classes of institutional beds. The status of the 50 states and the District of Columbia as of July 1, 1986, is shown in table 1.

Table 1:

CON and Section 1122
Regulatory Coverage by
State as of July 1, 1986

CON only	CON and 1122	1122 only	Neither
Alabama	Arkansas	Idaho	Arizona
Alaska	Delaware	Louisiana	Kansas
California	Georgia	Minnesota	Texas
Colorado	Iowa	New Mexico	Utah
Connecticut	Kentucky		
District of Columbia	Maine		
Florida	Michigan		
Hawaii	Nebraska		
Illinois	New Jersey		
Indiana	Oklahoma		
Maryland	West Virginia		
Massachusetts			
Mississippi			
Missouri			
Montana			
Nevada			
New Hampshire			
New York			
North Carolina			
North Dakota			
Ohio			
Oregon			
Pennsylvania			
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Vermont			
Virginia			
Washington			
Wisconsin			
Wyoming			

Note: Details on CON capital expenditure thresholds, sunset provisions, and moratoria appear in appendix I. Of the 42 states with CON programs, 7 have sunset provisions.

CAPITAL EXPENDITURES IN ARIZONA AND UTAH FOLLOWING DEREGULATION

Of the four states with neither a CON nor a section 1122 program, Texas and Kansas imposed a moratorium when their CON legislation expired, but Arizona and Utah did not. A review of recent experience in the latter two states may provide information on what other states might expect following deregulation. However, other factors besides termination of CON programs, such as current hospital or nursing home occupancy rates, age and condition of the existing facilities, or population changes, could affect decisions to build facilities or expand services.

We contacted the Arizona Office of Planning and Budget Development for information on the recent experience in that state. A November 1985 study by that office attempted to assess the effect on nursing homes, which were deregulated on July 15, 1982, and on hospitals, which were deregulated on March 15, 1985. The study found that in the period following deregulation--41 months for the nursing home industry and 8 months for hospitals--Arizona had experienced:

> ". . . unprecedented growth in health care facilities and steady increases in hospital and nursing home revenues. Since deregulation there has been dynamic activity in nursing home construction, proposed hospital construction, bed expansion, bed redesignations and rate increases."

We were told that another study is being conducted within the Arizona Department of Health Services which will report the value of total health care construction as reported on building permits for the period July 1, 1982, to June 30, 1986. According to an official of that agency, however, there has been a decline in the value of construction reported on permits over the last 2 years (a period including 15 months since the termination of the Arizona CON program).

The Utah CON legislation expired on January 1, 1985. In response to our inquiry about pre- and postregulation of health-related construction activity in Utah, the Utah Health Systems Agency characterized the experience in Utah as follows:

> "During the 18-month period prior to Certificate of Need expiration, 8.4 million dollars in capital expenditures were approved in Utah. For the same number of months since CON's sunset 63.6 million dollars have been expended in new hospital construction; 25 million

dollars in new nursing home construction; and 8 million dollars in purchase of magnetic resonance equipment. This total expenditure of 96.6 million does not include construction of freestanding ambulatory surgery centers, existing facility renovations, and other equipment purchases which we are unable to monitor."

NATIONAL DATA ON CONSTRUCTION ACTIVITY

Two national data sets provide information on construction activity initiated within the various states: (1) the Commerce Department's Bureau of the Census unpublished data on Building or Zoning Permits Issued and (2) the F. W. Dodge Construction Analysis System.[3] We obtained data for 1981 through June 1986 from both sources.

The Bureau of the Census data contain a grouping for hospitals and other institutional facilities (including building at hospitals and institutional facilities, convalescent homes, rest homes, homes for the aged, nursing homes, orphanages, jails, and similar establishments for prolonged institutionalization). Census data included only nongovernmental facility data and did not separate health and other institutional additions and alterations from the total of all additions and alterations. As a result, the Census Bureau data presented in table 2 are for nongovernmental facilities only and exclude additions and alterations.

Table 2 presents construction starts data annually for 1981-85 and for the first 6 months of 1986. The states are grouped into four categories: (1) CON only, (2) CON and section 1122, (3) section 1122 only, and (4) neither. In table 3, the same four groups of states are used for the presentation of F. W. Dodge construction data. The Dodge data include additions and alterations.

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[3]This is a data base, maintained by the F. W. Dodge Division of the McGraw-Hill Information Systems Company, which includes construction activities in health care and other sectors of the economy, by state and county.

Table 2:

Census Bureau Data on Private Hospital and Other Institutional Building Construction

	1981	1982	1983	1984	1985	Jan.-June 1986
	(thousands)					
CON only states (31 states and District of Columbia)	$1,066,123	$1,270,691	$1,509,209	$1,289,421	$1,625,523	$759,569
CON and 1122 states (11 states)	$296,220	$324,792	$293,099	$285,938	$392,968	$224,571
1122 only states:						
Louisiana	$ 51,627	$ 33,782	$148,219	$108,522	$ 43,550	$11,705
Idaho	4,827	5,673	15,593[a]	3,695	27,982	5,655
Minnesota	21,494	21,241	45,102	29,161[b]	13,359	3,539
New Mexico	28,140	49,926	60,982[c]	51,185	34,083	4,714
Total	$106,088	$110,622	$269,896	$192,563	$118,974	$25,613
Neither CON nor 1122 states:						
Arizona	$ 14,581	$106,367[d]	$ 41,513	$ 92,070	$ 58,995[e]	$ 46,411
Kansas	3,064	7,080	10,838	5,873	31,470[f]	30,490
Texas	164,385	147,975	223,568	174,209	207,634[g]	150,258
Utah	1,417	24,046	8,619	19,232[h]	38,786	29,475
Total	$183,447	$285,468	$284,538	$291,384	$336,885	$256,634
United States	$1,651,878	$1,991,573	$2,356,742	$2,059,306	$2,474,350	$1,266,387

[a]CON expired June 1983.
[b]CON expired June 1984; 3-year moratorium in effect.
[c]CON expired June 1983.
[d]Nursing homes construction deregulated July 1982.
[e]CON expired March 1985.
[f]CON expired July 1985; 1-year moratorium on new hospital bed or increased capacity.
[g]CON expired August 1985; moratorium on nursing home beds seeking Medicaid funds.
[h]CON expired December 1984.

Note: These data were collected from an unpublished Census Bureau survey and do not include additions or alterations.

Table 3:

F. W. Dodge Data on Hospitals and Other Health-Related Construction

	1981	1982	1983	1984	1985	Jan.-June 1986
	(thousands)					
CON only states (31 states and District of Columbia)			$5,618,734	$4,848,739	$5,092,073	$2,449,493
CON and 1122 states (11 states)			$1,343,508	$1,020,337	$1,250,335	$428,620
1122 only states:						
Idaho:						
Hospitals	$ 7,495	$27,926	$ 7,030[a]	$ 2,898	$73,935	$1,003
Clinics and other medical facilities	4,234	7,185	7,440	14,026	22,606	4,203
Total	$11,729	$35,111	$14,470	$16,924	$96,541	$5,206
Louisiana:						
Hospitals			$200,274	$154,398	$ 78,459	$27,129
Clinics and other medical facilities			54,604	144,842	109,662	48,044
Total			$254,878	$299,240	$188,121	$75,173
Minnesota:						
Hospitals			$ 89,815	$ 36,814[b]	$38,740	$15,895
Clinics and other medical facilities			47,792	79,013	51,032	18,929
Total			$137,607	$115,827	$89,772	$34,824
New Mexico:						
Hospitals	$24,342	$13,667	$108,153[c]	$37,484	$46,344	$ 3,630
Clinics and other medical facilities	13,671	24,742	31,782	31,731	16,409	9,359
Total	$38,013	$38,409	$139,935	$69,215	$62,753	$12,989
Total (4 states)			$546,890	$501,206	$437,187	$128,192

	1981	1982	1983	1984	1985	Jan.-June 1986
	(thousands)					
Neither CON nor 1122 states:						
Arizona:						
Hospitals	$19,002	$175,266[d]	$ 37,103	$ 57,864	$ 28,755[e]	$ 67,125
Clinics and other medical facilities	44,025	29,573	65,108	107,498	93,305	38,288
Total	$63,027	$204,839	$102,211	$165,362	$122,060	$105,413
Kansas:						
Hospitals			$14,698	$17,467	$45,727[f]	$24,130
Clinics and other medical facilities			38,132	28,715	49,221	33,020
Total			$52,830	$46,182	$94,948	$57,150
Texas:						
Hospitals			$551,999	$323,936	$393,329[g]	$164,541
Clinics and other medical facilities			272,852	327,809	321,738	152,391
Total			$824,851	$651,745	$715,067	$316,932
Utah:						
Hospitals			$13,432	$13,788[h]	$28,286	$ 3,690
Clinics and other medical facilities			10,030	20,969	10,720	16,442
Total			$23,462	$34,757	$39,006	$20,132
Total (4 states)			$1,003,354	$898,046	$971,081	$499,627
U.S. TOTAL	$6,432,403	$8,037,545	$8,512,486	$7,268,328	$7,750,676	$3,505,932

[a]CON expired June 1983.
[b]CON expired June 1984; 3-year moratorium in effect.
[c]CON expired June 1983.
[d]Nursing homes construction deregulated July 1982.
[e]CON expired March 1985.
[f]CON expired July 1985; 1-year moratorium on new hospital bed or increased capacity.
[g]CON expired August 1985; moratorium on nursing home beds seeking Medicaid funds.
[h]CON expired December 1984.

For Utah, both data sets show increased health-related construction activity since terminating CON, but in Arizona there is no clear pattern. For example, table 2 shows that since deregulation on January 1, 1985, private hospital and other institutional building construction in Utah increased from about $19 million in 1984 to $39 million in 1985. For the 6-month period ended in June 1986, the value was about $29.5 million. Table 3, which presents the F. W. Dodge data, shows the same trend for Utah but lower increases in construction activity. In contrast, the construction activity trends from either table 2 or 3 for Arizona are not as clear as in Utah. In both tables construction activity decreased in 1983, the year following nursing home deregulation in July 1982, but increased following hospital deregulation in 1985, based on the 6-month period ended June 1986. A number of other factors, such as occupancy rates, age and condition of the existing facilities, or population changes, can affect decisions to construct health facilities. We do not know the extent to which such other factors affected changes in construction activity in Arizona and Utah.

APPENDIX I

STATUS OF STATE CON PROGRAMS
(July 1, 1986)

	THRESHOLDS			STATUS		
	Capital Expenditures	Major Medical Equipment	New Institutional Services	Con Sunset	Section 1122	Moratoriums
AL	$736,200	245,000	any	none		new hospital and nursing home beds and HHAs til 11/86
AK	$1,000,000	1,000,000	1,000,000	none		none
AZ	(No CON)			3/85		none
AR	$736,200	400,000	306,750	none	yes	acute psychiatric and acute care beds til 1/87
CA	none	none	none	1/87		none
CO	$2,000,000	1,000,000	1,000,000	none		none
CT	$714,000	400,000	any	none		none
DE	$150,000	150,000	any	none	yes	none
DC	$600,000	400,000	250,000	none		none
FL	$736,200	400,000	306,750	none		none
GA	$736,200	429,012	any	none	yes	none
HI	$600,000	400,000	any	none		none
ID	(No CON)			6/83	yes	none
IL	$736,200	400,000	306,750	none		none
IN	$1,000,000	1,000,000	250,000	7/87		conversion to ICF/MR beds til 7/87
LA	$600,000	400,000	250,000	none	yes	none
KS	(No CON)			7/85		new hospital beds or increased capacity til 8/86
KY	$634,200	422,800	264,250	none	yes	additional SNF, ICF or nursing home beds and HHAs til 1/87
LA	(No CON)				yes	none
ME	$350,000	300,000	155,000	none	yes	none
MD	$735,000	none	305,000	none		none

Source: Intergovernmental Health Policy Project (IHPP), George Washington University. IHPP told us that this information is subject to revision prior to its expected publication in September 1986.

APPENDIX I

MA	$600,000	400,000	250,000	none		none
MI	$150,000	150,000	any	none	yes	none
MN	(No CON)			6/84	yes	nursing home beds and facilities indefinitely; hospital beds and facilities til 7/87.
MS	$1,000,000	750,000	200,000	none		CONs with some exceptions til 7/87
MO	$736,000	400,000	306,000	none		nursing home beds and bed conversions til 7/88 and construction til 7/89.
MT	$750,000	500,000	100,000	6/87		none
NE	$542,450	400,000	271,225	none	yes	SHP recommends no additional LTC beds with exceptions.
NV	$736,000	400,000	306,750	none		none
NH	$1,000,000	400,000	none	none		substance abuse beds til 1987, 'de facto' moratorium on rehab and acute care beds.
NJ	$600,000	400,000	any	none	yes	none
NM	(No CON)			6/83	yes	none
NY	$300,000	300,000	any	none		none
NC	$1,000,000	600,000	315,000	none		none
ND	$750,000	500,000	300,000	none		none
OH	$736,250	400,000	306,500	none		none
OK	$2,000,000	3,000,000	250,000	6/88	yes	none
OR	$1,000,000	1,000,000	340,000	none		none
PA	$736,200	400,000	306,750	none		'de facto' moratorium on nursing home beds
RI	$150,000	150,000	75,000	none		CONCAP annual limit on interest and depreciation expenses for hospital projects requiring CON
SC	$600,000	400,000	250,000	none		'de facto' Medicaid moratorium on nursing home beds
SD	$670,404	400,000	279,336	none		none
TN	$1,000,000	1,000,000	500,000	none		'de facto' moratorium on HHAs

TX	(No CON)			8/85		new nursing home beds seeking Medicaid funds
UT	(No CON)			12/84		none
VT	$300,000	250,000	150,000	none	none	
VA	$700,000		400,000	any	none	none
WA	$1,071,000		1,071,000	536,000	none	none
WV	$714,000		400,000	297,500	7/87	yes none
WI	$1,000,000		1,000,000	none	6/89	new hospitals and hospital relocation til 7/88, 'de facto' moratorium on acute care beds, statewide limit on nursing home beds.
WY	$744,000		400,000	$10,250	1/89	none

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