



2023 Act No. 20 (Effective May 16, 2023) Frequently Asked Questions

1. What facilities and services require a Certificate of Need (CON)?

The following facilities and services **require** a CON:

- a. Nursing home facilities
- b. Home health agencies
- c. Hospitals (general and specialized hospitals) before undertaking the following:
 - i. The construction or other establishment of a hospital (Except **1**) relocation of a hospital in the same county, **2**) construction of a new hospital up to 50 beds in a county currently without a hospital, and/or **3**) the merger or acquisition of hospital);
 - ii. The addition of beds or the change in licensing classification of beds.
 - iii. **Note:** Effective January 1, 2027, CON is repealed for hospital projects.
- d. MUSC acquisitions of hospitals

2. What facilities and services no longer require a CON?

The following facilities and services **do not require** a CON:

- a. Ambulatory surgical facilities (ASFs)
- b. Opioid (narcotic) treatment programs
- c. Freestanding emergency departments
- d. Hospice facilities
- e. Residential treatment facilities for children and adolescents
- f. Cardiovascular care services
- g. Radiation therapy facilities (linear accelerators)

3. Do the new indigent/charity care requirements apply to ASFs already licensed as of the effective date of Act 20?

No, ASFs that were licensed **prior to May 16, 2023**, are not subject to the new requirement. ASFs constructed or established **after May 16, 2023**, must provide uncompensated indigent/charity care in the amount of at least **2% (Medicaid facilities) or 3% (non-Medicaid facilities)** of the facility's adjusted gross revenue. The requirement goes into effect **after** a new ASF has been in operation for **2 calendar years**.

4. Are there licensure requirements for freestanding emergency departments (FSEDs)?

Yes. An FSED is an extension of an existing hospital's emergency department. As a result, **an FSED requires licensure** under the hospital's license.

5. Is there a separate licensing requirement for cardiac care services, now that the CON requirement for such services has been repealed?

If the facility in which cardiac services are provided meets the definition of a hospital or an ambulatory surgical facility (ASF), it requires licensure pursuant to the hospital or ASF regulation. There is no separate, stand-alone licensure category for cardiac care services.

6. Is a CON required for the acquisition of medical equipment?

As a result of ACT 20, **only nursing homes** are subject to the CON requirement for acquisition of medical equipment to be used for diagnostic or treatment purposes. The monetary threshold is set in regulation (currently \$600,000).

7. Is a CON required for capital expenditures in excess of \$2,000,000?

As a result of ACT 20, **only nursing homes** are subject to the CON requirement for a capital expenditure in excess of the amount set in regulation (currently \$2,000,000). **Note:** Capital expenditures over \$2,000,000 for non-medical projects for nursing homes (e.g., upgrades to facilities) are not exempt from CON review.

8. Do I need to submit quarterly reports, implementation documents, and/or final completion reports for a project where a CON was issued, but due to ACT 20, the project no longer requires a CON?

No. The holder of a CON for a project that no longer requires a CON does not need to submit quarterly progress reports or a final closing report.

9. Do I need to submit extension requests for a project where a CON was issued, but due to ACT 20, the project no longer requires a CON?

No. The holder of a CON for a project that no longer requires a CON does not need to request an extension.

10. Do I need to submit implementation documents for existing exemptions and non-applicability determinations?

No. If you received an exemption or a non-applicability determination prior to May 16, 2023, you do not need to submit implementation documents.

11. CON does not apply to my project; do I still need licensing and/or construction approval for my project?

Yes. Facilities licensed by DHEC still require a license. Construction or alteration of a facility licensed by DHEC still requires plan and specification approval prior to beginning the construction or alteration.