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POLICY FOCUS

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Reform and Repeal Certificate of Need Laws

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HIGHLIGHT

Health care continues to become more expensive despite having worse access and outcomes. Certificate of Need laws are an anti-competitive relic of the 20th century that limits the supply of care and worsens the problems we face. States should reform and repeal their CON programs, allowing providers and facilities to meet the needs of their patients.

INTRODUCTION

The American healthcare system has become a financial burden for families, employers, and our government while our population gets sicker. Almost **20 percent** of our national GDP is spent on health care, a much higher amount than other developed nations. Insurance premiums rise each year as workers' **wages stagnate** and **out-of-pocket** costs continue to grow. Despite our high costs, we have **worse outcomes** compared to other developed countries, such as lower life expectancy and higher numbers of preventable deaths.

There are many reasons why healthcare costs are out of control, but one is that the supply of health care is often restricted by arbitrary government rules and regulations. Decades of government policies have made it extremely difficult for doctors and other medical providers to build strong relationships with their patients and provide the care they need. One of these many laws is the Certificate of Need (CON). CON laws require medical facilities such as hospitals, nursing homes, birth centers, and more to get approval from the state to open or expand their services. While initially thought of as a cost and quality control measure, decades of research have shown that this actually increases costs and limits access to healthcare options for patients.

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Evidence shows that CON laws **reduce** the number of hospitals and surgical centers, **worsen health outcomes**, and **raise prices** by protecting existing providers from competition. States that do not have CON see **expanded access**, **lower costs**, and **improved care** compared to states that do. Removing CON means that providers will be able to respond to the needs of their patients, and all Americans will have an easier time finding the care they need in their community without breaking the bank.

WHAT ARE CON LAWS?

CON laws are a regulatory process by which a state must give approval for the creation or expansion of certain healthcare facilities. The process varies by state, but generally requires a healthcare facility to apply through the department of health, a health planning agency, or other designated entity to seek approval based on a specific set of criteria. The criteria that the approving body looks for may include the current and future need for that facility in the area, how it would impact certain populations and healthcare costs, and if it has prepared the necessary staff and financing.

The **primary objective** of CON is to control healthcare costs, improve quality, and ensure access for rural and underserved communities. When they were first being implemented, the common belief was that having too many hospital beds or extra technological equipment would lead to unnecessary use and higher spending. With CON, states aimed to prevent an oversupply of services by only approving projects that they decided were necessary. States could also ensure that healthcare facilities were more evenly distributed across populations, rather than only opening in wealthy or urban areas.

New York was the first state to implement a CON law in 1964, and 25 more states did the same in the ten years following. Then, in 1974, Congress passed the National Health Planning and Resources Development Act, which provided more federal funding for health planning regulations and required states to adopt CON laws. All states except for Louisiana had done so by 1982. However, the federal government repealed the CON law mandate just 12 years later in 1986 due to CON laws not achieving their intended goals. Eleven states repealed their CON laws by 1990, and a few more followed, with New Hampshire being the most recent to do so in 2016. There are currently 35 states and the District of Columbia that still have CON law restrictions.

A BARRIER TO AFFORDABLE AND ACCESSIBLE HEALTH CARE

The nature of a policy that attempts to centrally plan healthcare access requires that there be a process to do so, and CON laws create a difficult process. Just applying is very expensive and time-consuming, with no guarantee that it will be approved. This creates a barrier for healthcare facilities to open or expand, even if there is a community need for it.

The cost and time of CON applications vary by state.

- In Iowa, the average cost of the **application fees is $15,774**, and the decision can take up to two years if there are no competitor objections. If there are, it can take up to five years.
- In **West Virginia**, an application can cost up to $35,000 and take about four months to complete if there is a hearing scheduled.
- In **Kentucky**, the application cost is between $1,000 and $25,000 and the process can take over a year.

After all the time and money it takes to apply, an application still might not be approved. **Tennessee** has denied about 20 percent of its applications over the last two decades, and has seen a 70 percent decrease in applications in that same time frame. Similarly, it was **discovered** that Louisiana denied 75 percent of applicants between 2019 and 2020. Providers will often withdraw applications throughout the process as well. For example, over a **three-year period**, Virginia had 17 percent of applications withdrawn, and 25 percent were withdrawn or appealed in South Carolina. In 2019, **four of five applications** for nursing homes were denied or withdrawn in Michigan after existing nursing home businesses complained that too many new beds would be added.

CON laws typically allow for existing facilities to object to an application, which contributes heavily to the lengthy process and denials or withdrawals. Depending on the state, competitors can protest by submitting public comments, requesting hearings, or even litigating to delay or block an application. These existing facilities use this to their advantage, protecting their market share rather than the needs of the community. For example, two existing hospitals **opposed and delayed** a new 72-bed psychiatric facility in Iowa, despite authoring a report two years prior about the lack of mental health infrastructure. The Department of Justice and Federal Trade Commission have explicitly **warned** that CON laws are not an effective tool to control costs or improve quality, as they exacerbate anticompetitive effects.

CASE STUDY: BARRIERS TO BIRTH CENTERS

Georgia is the fifth-worst state to have a baby in the nation, which is why **Katie Chubb** decided to work with a birth center, as they are known to have **excellent outcomes** for the mother and baby. However, the closest one to her was in Atlanta– two and half hours away from her home in Augusta. Frustrated by this, Katie and her husband wanted to open a nurse-wife-led birth center in Augusta. Despite local enthusiasm and support from the Georgia Department of Community Health, their CON application was denied because all three of Augusta's area hospitals refused to sign a transfer agreement to accept their patients in an emergency. Ironically, hospitals are required by federal law to accept all patients in an emergency regardless of transfer agreements, but the CON law required one to move forward. Although the CON has since been **changed** to exempt birth centers, Georgia law still requires a transfer agreement, and Katie's birth center cannot yet open.

A FAILED POLICY

Although intended to make health care more affordable and accessible, decades of research have shown that CON laws, by preventing market competition, do not achieve that goal and even have the opposite effect.

First, it has been shown that CON laws lead to fewer hospitals overall and especially in rural areas. The Mercatus Center's **study** of state-level CON data for 1992 to 2011 found that states with a CON law have 30 percent fewer hospitals across the entire state, and 30 percent fewer rural hospitals, per 100,000 residents. Similarly, in states with CON laws for ambulatory surgical centers (ASCs), there were 14 percent fewer ASCs across the state, and 13 percent fewer in rural areas per 100,000 residents. A **2024 study** comparing CON and non-CON states found that repealing ASC-specific CON laws substantially increased the number of ASCs by 44 to 47 percent statewide and 92 to 112 percent in rural areas. Florida showed proof of this when, after repealing most of their CON laws in 2019, **65 hospitals** in the state announced construction in just one year.

When there is reduced access to healthcare facilities, the data also suggests that it leads to worse health outcomes. For example, a 2019 **study** found that states with CON have 4 percent fewer MRI scans, 3.52 percent fewer CT scans, and 8.13 percent fewer PET scans compared to non-CON states. Another **analysis** also found that mortality rates are statistically significantly higher in CON states than in non-CON states. The average 30-day mortality rate for patients discharged with pneumonia and heart failure was between 1.7 percent and 3.2 percent higher, and there were six more deaths on average per 1000 surgical discharges that resulted in complications.

Not only is there limited access and worse quality of care, but artificially limiting the supply leads to greater prices. When existing facilities are protected from competing with new ones, they are able to exercise more power over their pricing, most likely increasing prices since patients don't have a choice to go elsewhere. CON laws are **associated** with 10 percent higher variable costs in general acute hospitals, 20.6 percent higher expenditures per capita, and higher Medicare and Medicaid costs. **Research** has also found that repealing CON can decrease costs, with overall healthcare spending falling by 4 percent after five years in states that repealed CON.

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REFORMING AND REPEALING CON

It is clear that the risks of CON laws outweigh any possible benefits, and it is in the best interest of the remaining CON states to reform or repeal all CON requirements. As noted, 12 states (Arizona, California, Colorado, Idaho, Kansas, New Hampshire, New Mexico, Pennsylvania, South Dakota, Texas, Utah, and Wyoming) have completely repealed CON, with **New Hampshire** being the most recent in 2016. The 2016 law eliminated the CON board and removed the state approval requirement for most new facilities, expansions, and equipment purchases. Evidence **suggests** that healthcare services in the state have increased, although specific data haven't been tracked.

There are eleven other states (Montana, Florida, North Dakota, Ohio, Wisconsin, Arkansas, Indiana, Nebraska, Minnesota, Oklahoma, and South Carolina) that either have a very limited CON program or a different law that functions similarly, but is not an official CON program. For example, **Arizona** was one of the handful of states that eliminated CON in the 80s, but it has maintained an application for ambulances and ambulatory services. **Montana** passed a bill in 2021 that exempted almost all facilities from CON except for long-term care. Reforming CON has become a trend across the country as 23 states and Washington, D.C., have passed legislation reforming their CON programs **since 2021**.

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Even states with strict CON programs have made changes to expand access to care. **New York**, which has a strict and very complicated CON program, raised the financial thresholds for a full review, expanded exemptions, and created a self-certification pathway for certain projects. This was done by an amendment through the administrative rule-making process in 2025. We also saw changes during the pandemic when twelve state governors **signed** executive orders to suspend their programs due to concerns that it would limit their ability to respond to health needs. While temporary, this demonstrates that CON is a barrier to expanding healthcare access, and it is feasible to reform and repeal these laws.

CONCLUSION

Certificate of Need laws were created with the intention of controlling costs and ensuring access to quality health care. However, decades of evidence show that they have had the opposite effect by restricting competition, reducing the supply of care, and driving up prices. By having costly barriers to entry and allowing existing competitors to block new facilities, CON laws undermine the very goals they were meant to achieve. States that have repealed or reformed these requirements have greater access to care, better outcomes, and lower costs. The lesson is clear that health care does not thrive under bureaucratic gatekeeping, but free-market competition. To make our healthcare system more affordable and accessible, policymakers must dismantle these outdated regulations and allow communities to meet their own healthcare needs without unnecessary interference.

WHAT YOU CAN DO!

Get Informed

Learn more about the role of masculinity in the military. Visit:

- CON Quarterly | Pacific Legal Foundation
- States Can Pave the Way to Better Maternal Healthcare | Cicero Institute
- Phasing Out Certificate-of-Need Laws: A Menu of Options | Mercatus Center

Talk to Your Friends:

Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

Become a Leader in the Community:

Join Independent Women's Network and get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

Remain Engaged Politically:

Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

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Independent Women is dedicated to building support for free markets, limited government, and individual responsibility. Independent Women, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.