

Fact Check: Certificate of Need Laws and Rural Health Care

“Repealing CON will decrease access to care in rural areas.”

FALSE. A large and growing body of research shows that patients in states with CON laws have less access to health care than patients in states without CON, including those in rural areas.¹ The Mercatus Center finds that states with CON have 30% fewer rural hospitals and 13% fewer rural ambulatory surgical centers.²

States are beginning to acknowledge that CON laws harm rural areas and are moving to exempt them from CON requirements. Alabama, Indiana, Kentucky, Montana, Ohio, Oregon, Tennessee, and Washington have rural exemptions to their CON requirements.

“Repealing CON will allow some providers to offer only the most profitable services, hurting rural hospitals that offer a full suite of care.”

FALSE. Politically proficient providers often appeal to lawmakers that they must be protected from competition to remain financially viable. They claim their market power will enable them to use revenue from more profitable services to offset the costs of less profitable ones and provide charity care.

However, hospitals are not doing so. According to the U.S. Department of Health and Human Services, Federal Trade Commission, and the U.S. Department of Justice Antitrust Division, the empirical evidence contradicts these claims.³ Similarly, the Mercatus Center finds no evidence of this type of cross-subsidization.⁴

Research also shows that safety-net hospitals in states without CON laws had higher margins than safety-net hospitals in states with CON.⁵

“The advocates of CON programs (typically, the representatives of large hospital systems) often characterize CON repeal as risky, dangerous, or unknown. These concerns are unfounded. Over 100 million Americans—nearly a third of the population—live in states without CON laws in health care. Four-in-ten Americans live in states with limited CON regimes that only apply to one or two services such as ambulance services or nursing homes.”

—Matthew D. Mitchell, Senior Research Fellow & Certificate of Need Research Coordinator at The Knee Regulatory Research Center at West Virginia University.⁶

“States continue to repeal or reform their outdated CON laws.”

TRUE. A [dozen states](#) have eliminated CON, and at least 18 more are currently reassessing their CON programs. In the face of mounting evidence against CON, multiple states, including states bordering Tennessee, have recently made changes to deregulate or eliminate CON programs:

- South Carolina repealed CON requirements for virtually all facilities and services except nursing homes in 2023.
- North Carolina reformed CON to exempt numerous services and ease the regulatory burden in 2023.
- West Virginia repealed CON requirements for birthing centers and all hospital services in 2023.
- Florida eliminated CON requirements for numerous services in 2019.
- Montana reformed its CON law in 2021 to cover only long-term care facilities.
- New Hampshire legislation from 2012 phased out the state’s CON program in 2016.

¹ JAMIE CAVANAUGH & MATTHEW D. MITCHELL, STRIVING FOR BETTER CARE: A REVIEW OF KENTUCKY’S CERTIFICATE OF NEED LAWS, INSTITUTE FOR JUSTICE (AUGUST 2023), available at <https://ij.org/wp-content/uploads/2023/08/Kentucky-CON-Report-Aug.-2023.pdf>.

² Thomas Stratmann & Christopher Koopman, *Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals* (Mercatus Ctr. At George Mason Univ. Working Paper, 2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3191476.

³ DEP’T OF HEALTH & HUMAN SERVS. *et al.*, REFORMING AMERICA’S HEALTHCARE SYSTEM THROUGH CHOICE AND COMPETITION AT 50 (2018), available at <https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf>.

⁴ Thomas Stratmann & Jacob Russ, *Do Certificate-of-Need Laws Increase Indigent Care?* (Mercatus Ctr. At George Mason Univ. Working Paper, 2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211637.

⁵ Al Dobson *et al.*, *An Evaluation of Illinois’ Certificate of Need Program*, STATE OF ILLINOIS COMMISSION ON GOVERNMENT FORECASTING AND ACCOUNTABILITY (2007), available at <https://cgfa.ilga.gov/Upload/LewinGroupEvalCertOfNeed.pdf>.

⁶ MATTHEW D. MITCHELL, MISSISSIPPI’S CERTIFICATE OF NEED LAWS: OPTIONS FOR REFORM, MISSISSIPPI CENTER FOR PUBLIC POLICY (January 2024), available at <https://mspolicy.org/wp-content/uploads/2024/01/CON-paper-FINAL.pdf>.