

2025 CERTIFICATE OF NEED FULL REPEAL

The number one reform state lawmakers can adopt to increase access to higher quality, more affordable health care: full repeal of all certificate of need laws.

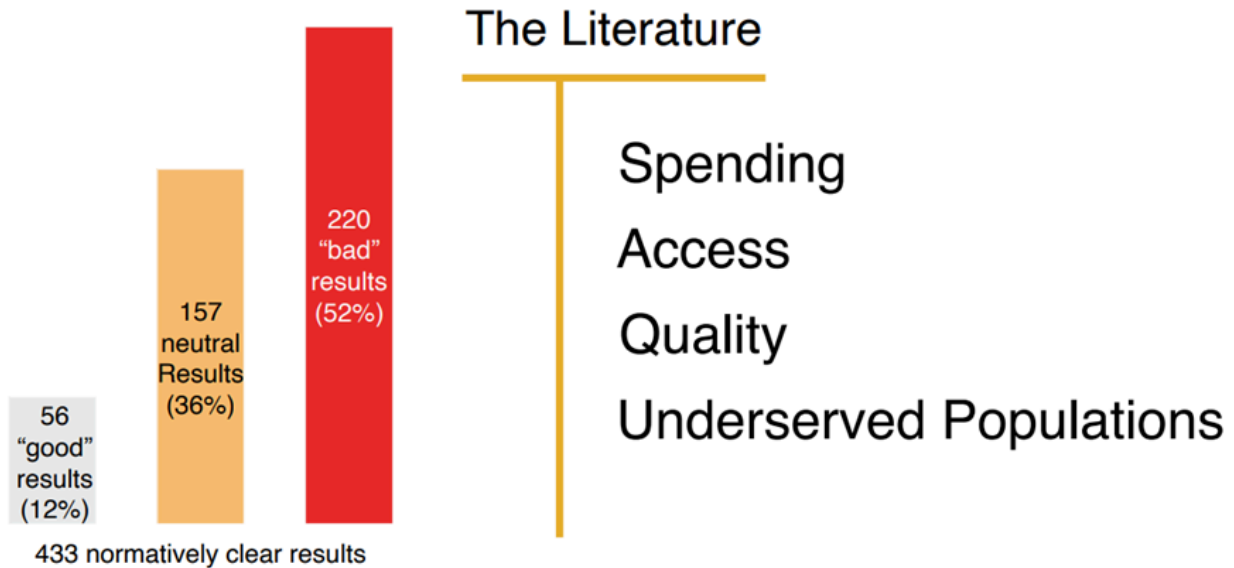
Health care is too complicated, expensive, and one-size-fits-all. As policymakers in red states continue to push back against harmful federal health care policy and inflationary effects from out-of-control spending in congress, one state-based reform stands out. Fully repealing all certificate of need (or CON) laws represents the most significant step state policymakers can take toward providing more access to better quality care at a price West Virginians can afford.

The federal government under President Jimmy Carter forced states to establish Certificate of Need (CON) laws out of fear that health care providers would overbuild unnecessary facilities and drive-up health care costs. Decades later, data informs that CON laws have only served to reduce the availability of essential health care services, increase medical costs, and worsen patient health. CON laws force health care providers to acquire a “permission slip” from government by proving their community “needs” a service before expanding services or capacity. This is why the Reagan administration removed the federal mandate and nearly every Department of Justice under both democrat and republican presidents has called for states to repeal CON their laws.

In essence, we have handed over power to unaccountable bureaucrats who can arbitrarily deny local medical providers the ability to meet a need they see in their community. Even more concerning, the current process has established a mechanism for potential competitors to file an objection to their certificate-of-need application. This stifles expansion of new services in favor of anti-free market principles.

With the mounting evidence that CON laws are harmful and the myriad benefits from repeal shown by numerous case studies conducted across the country, West Virginia lawmakers should be confident that repealing all CON laws to well help Mountaineers access the personalized health care they deserve. Lawmakers should shift trust to our hometown medical providers who are better suited to meet the needs of their communities instead of unelected bureaucrats who prop up the status quo. This is how the Mountain State can take steps towards providing more access to better quality care at a price West Virginians can afford.

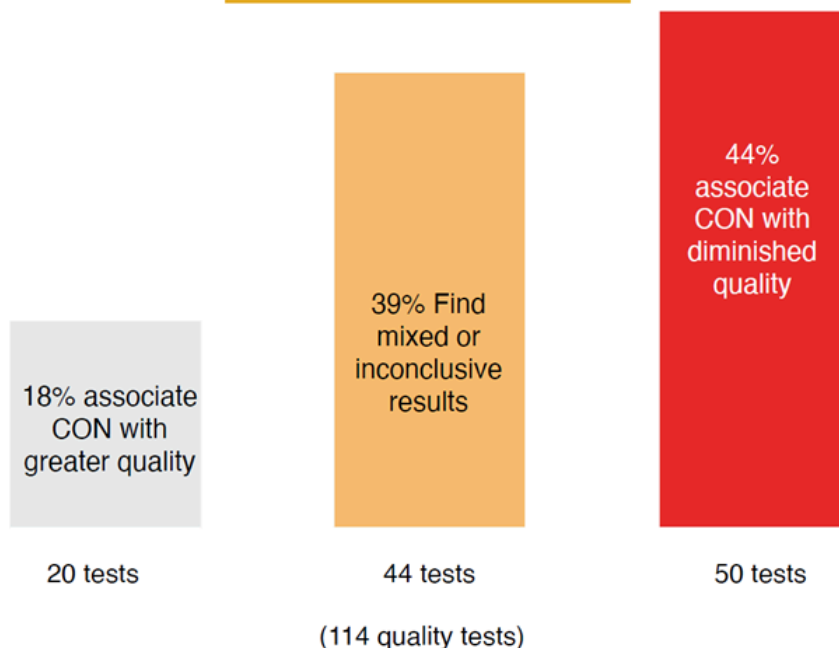
What does the research on Certificate of Need tell us?



According to the Knee Regulatory Research Center at the John Chambers College of Business and Economics at West Virginia University, 88 percent of scholarly research conducted indicates that CON has either no effect or has a detrimental effect on health care. The harmful effects of CON range from low-quality health care to higher costs and lower access to services. This analysis comes from an extensive review of available academic research focused on the impacts of CON laws on health care.

What does the research on Certificate of Need tell us?

How CON Affects: Quality



According to the Knee Center, nearly half of scholarly research regarding how CON impacts health care quality found that CON laws are associated with diminished quality. These results concluded that CON corresponds with:

How CON Affects: Quality

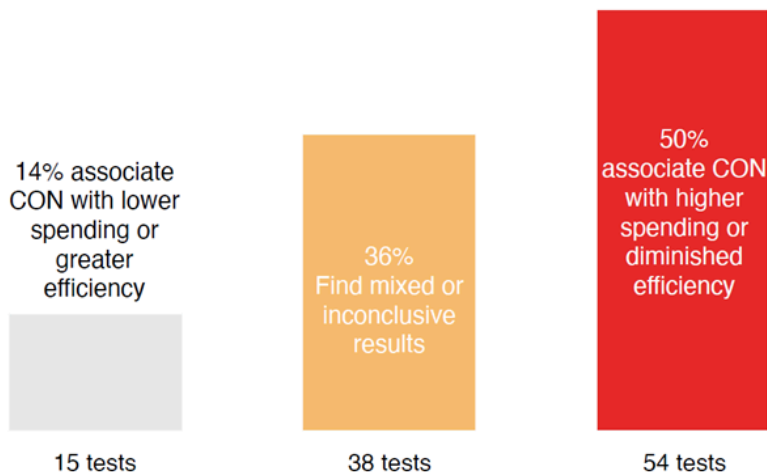
- Higher mortality rates following heart attack, heart failure, and pneumonia.
- Higher readmission rates,
- Higher death rates from postsurgery complications,
- Lower hospital ratings,
- Lower nursing home ratings,
- Lower home health agency scores,
- Nursing home patients are more likely to be restrained,
- Home health agency clients are less likely to see improvements in mobility,
- Surgeries are more likely to be performed by lower-quality surgeons.
- Most positive quality results suggest that CON suppresses unwarranted or expensive procedures.

(114 quality tests)



How does a full repeal of CON impact health care affordability?

How CON Affects: Spending



(107 total spending or efficiency tests)

When it comes to how CON laws impact spending, the Knee Center indicates that CON laws are associated with both higher spending and diminished efficiency in health care. The literature on CON's impact on spending further concludes:

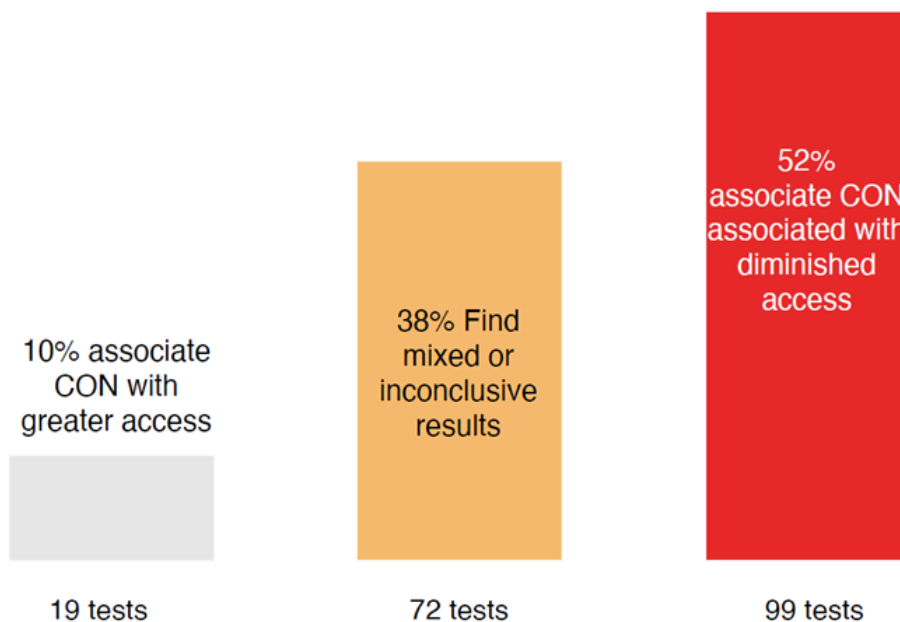
How CON Affects: Spending

\$/person
“Expenditures”

- Medicaid community-based care expenditures per capita are higher in CON than in non- CON states (Miller, Harrington, and Goldstein 2002)
- Hospital expenditures per adjusted admission are higher in CON than in non-CON states (Rivers, Fottler, and Younis 2007)
- States that eliminate CON experience **5** percent reductions in real per capita health care spending (Bailey 2019)
- Medicare spending per rural beneficiary is **\$295** more in CON than in non-CON states (Stratmann and Baker 2020)

How would fully repealing CON laws impact health care access?

How CON Affects: Access



The Knee Center has also compiled nearly 200 scholarly articles on the impact CON laws have when it comes to access to health care. 90 percent of those studies show that CON laws are either associated with diminished access to health care or have no impact. Some important highlights are on the negative effects CON laws create when it comes to accessing health care, especially in rural areas.

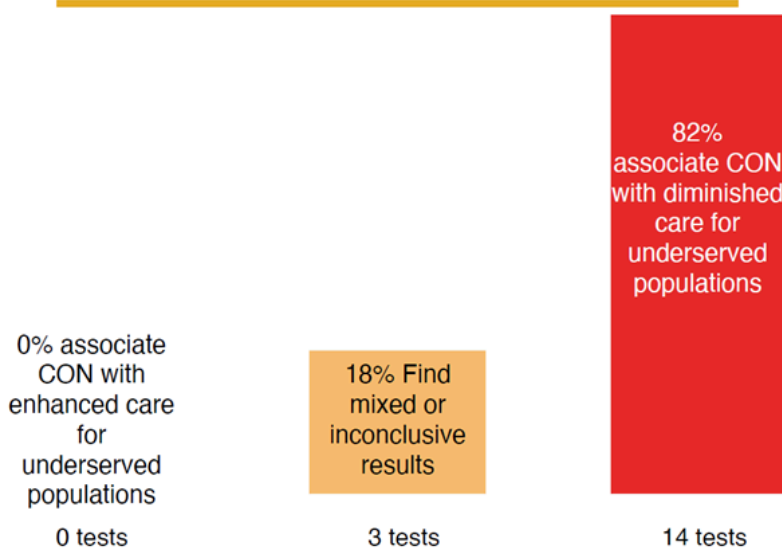
How CON Affects: Access

- The typical patient in a CON state has access to fewer hospitals, ASCs, hospice care facilities, dialysis clinics, cancer treatment facilities, home health agencies, psychiatric care facilities, drug and substance abuse centers, open-heart surgery programs, revascularization programs, and percutaneous coronary intervention programs.
- There are also fewer rural hospitals and rural ASCs in CON states
- Patients in these states have access to fewer hospital beds and are more likely to have been denied beds during the COVID-19 pandemic.
- These patients have access to fewer medical imaging devices.
- No evidence of 'cream skimming'; hospitals don't close following repeal
- Patients in states with CON laws must travel longer distances for care, are more likely to leave their state for care, and must wait longer for care.

(171 total access tests)

Does fully repealing CON laws harm health care providers in rural areas or underserved populations?

How CON Affects: Underserved Populations



(17 underserved populations tests)

The vast majority of the research suggests that having CON laws actually diminishes care for underserved populations. While less research has been done regarding the impact CON laws have on underserved (e.g. rural) populations, the literature that is available does not indicate CON has a positive impact on these communities, particularly in the rural setting.

How CON Affects: Underserved Populations

- Rural hospitals in CON states are less likely to adapt (D'Aunno et al. 2000)
- Safety net hospitals in CON states have lower margins (Dobson et al. 2007)
- A large black-white disparity in angiography disappeared after repeal (Cantor et al. 2009; DeLia et al 2009).
- No difference in charity care between CON and non-CON states (Stratmann and Russ, 2014)

Will existing medical providers shut down if we fully repeal CON laws? Will existing medical providers lose their most profitable services to outsiders without CON laws in place?

No. There is zero evidence to suggest that “cherry picking” of services will occur once West Virginia repeals its CON laws. It has not occurred in any other state that has repealed CON laws. It will not occur in West Virginia. The “cherry picking” of profitable services and hospital closures as a result is a myth. Remember, at some point in time, every state had CON laws for health care due to the federal mandate. Yet today, about 40% of the nation’s population live in a state with one or zero CON laws. That means all of these states have had to go through the repeal process. And states without CON laws have more facilities per capita. That means health care facilities are able to open after CON laws are repealed and they stay open. For example, Florida and South Carolina recently repealed nearly all of their CON laws and they have seen growth in needed services like psychiatric beds and facilities.

Despite the large and growing research portfolio that supports repeal of CON laws, incumbent providers continue to lean on false narratives to keep government-imposed barriers in place that limit their competition. Decades of research shows that:

1. States with CON laws have fewer hospitals and ASCs in both rural and non-rural areas than non-CON states. [5] CON laws result in fewer providers, which limits access to health care services and drives up costs, often resulting in lower quality services. [6]
2. “Safety-net” hospitals which treat a significant number of underinsured and uninsured patients and are often located in rural areas have **higher aggregate profit margins in non-CON states than in CON states**. This undercuts the claim made by CON supporters that cherry picking threatens the financial stability of hospitals. To the contrary, hospitals are in better shape financially in states with increased competition. [7]
3. There is **no evidence that hospitals are better equipped to subsidize care** for underinsured or uninsured patients by exclusively offering high-profit services to well-insured patients. CON laws stifle the proliferation of additional healthcare providers, tightening the supply of critical services, and resulting in higher prices. [8]

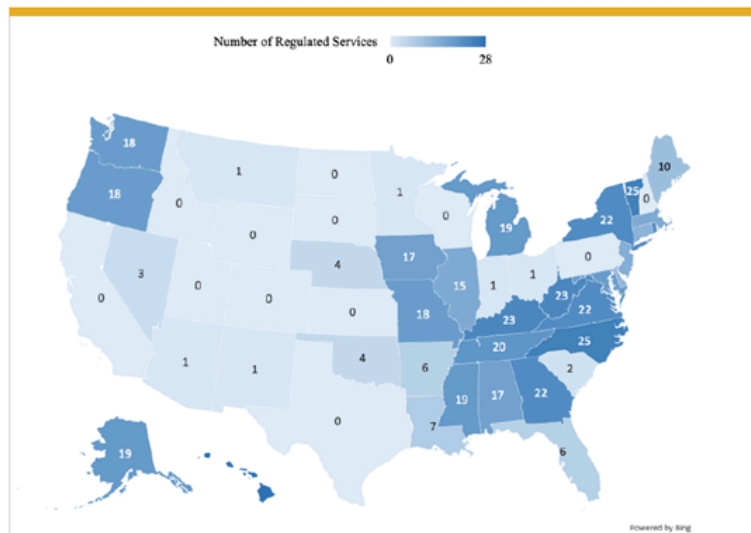
THE CHERRY PICKING MYTH IS UNFOUNDED AND HARMFUL TO THE HEALTH OF ALL PATIENTS.

4. Comment on the Proposed Repeal of Alaska's Certificate-of-Need Laws, U.S. Department of Justice: Antitrust Division, May 2023.
5. Thomas Stratmann and Christopher Koopman Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals, Mercatus Center, February 2016.
6. Thomas Stratmann and Matthew C. Baker, Examining Certificate-of-Need Laws in the Context of the Rural Health Crisis, Mercatus Center, July 2020.
7. Al Dobson, et al., An Evaluation of Illinois' Certificate of Need Program, The Lewin Group, Feb. 15, 2007.
8. Thomas Stratmann and Jacob W. Russ, Do Certificate-of-Need Laws Increase Indigent Care?, Mercatus Center, July 2014.

How many states have repealed their CON laws?

2024

MT, WV, NC, GA
and SC reforms



Twelve states have fully repealed their CON laws. While 35 states have some form of CON in code, several states have significantly reduced the number of CON laws including several states which now only apply CON to nursing homes. Many states are considering eliminating their CON laws entirely as data-backed research continues to mount against CON laws.

Why is a piecemeal approach to repealing CON laws a bad idea?

Given the mountain of evidence that shows that CON laws fail to achieve their goals and, in fact, hamper health care access and quality, there's no reason to delay repeal of all West Virginia's CON laws. The longer lawmakers wait, the more their constituents will suffer the ill-effects of the failed central planning policy that is CON.

Can the full repeal of all CON laws be phased in over time?

Yes. Florida and South Carolina both took that approach in their nearly-universal CON repeals.

What organizations support the repeal of CON laws?

There are several organizations on both the state and national level that strongly support the elimination of CON laws. The CEO of the American Medical Association is on record urging the South Carolina State Senate to repeal their CON laws:

“To be clear, CON represents a failed public policy. It may have made sense when most reimbursement was cost-based, and health care market participants would be paid for increasing supply regardless of demand and the actual need of patients. Today, however, managed care forces providers and physicians to be efficient. CON invites obstructionist behavior and is incompatible with the evolution of competitive health care markets. In the changed and now competitive environment, the continued existence of CON, despite overwhelming evidence of its ineffectiveness as a cost control device, suggests that ‘something other than public interest is being sought.’ Physicians are frustrated by CON programs that tend to be influenced heavily by political relationships, such as a provider’s clout, organizational size, or overall wealth and resources, rather than policy objectives. Ultimately, the CON laws undercut consumer choice, stifle innovation, and weaken markets’ ability to contain health care costs. The AMA strongly urges South Carolina to conclude that CON does not work and consequently to enact S 290 and repeal CON.”

Americans for Prosperity West Virginia has full repeal of all CON laws as a top legislative priority. In a letter to state lawmakers in 2022, State Director for AFP-WV wrote, “Certificate of need (CON) laws were meant to keep health care costs under control by artificially limiting the supply of services. But, as decades of data demonstrates the CON experiment has not only completely failed, but it has directly resulted in more expensive, less available, and lower quality health care.”

How Certificate of Need Laws are Detrimental to Health Outcomes

OUTCOME	# OF STUDIES	POSITIVE EFFECT	INCONCLUSIVE	NEGATIVE EFFECT
How CON Affects Overall Costs	45	3	15	27
How CON Affects Cost Per Person	52	8	21	23
How CON Affects Access to Care	83	6	12	65
How CON Affects Utilization of Services	107	13	60	34
How CON Affects Quality	114	20	44	50
How CON Affects Underserved Populations	17	0	3	14
Total	418	50	155	213

*Data Compiled by Matthew Mitchell, Ph.D. Senior Research Fellow, Knee Regulatory Research Center at WVU

The Cardinal Institute for West Virginia Policy has also called for the elimination of CON laws and has published significant research on the topic. “It’s an understatement to say abolishing these outdated laws is overdue. By eliminating CON laws, West Virginia can promise competition and innovation in the healthcare industry which will lower costs and improve care for all Mountaineers.”

Given the increasing volume of compelling research supporting repeal of CON laws, a growing number of principled policy organizations are calling for repeal of these laws across the nation. Other organizations against CON laws: WVU Knee Center, Institute for Justice, Pacific Legal Foundation, Cato Institute, Mercatus Center, American Legislative Exchange Council, Cicero Institute, and more.

Has the federal government weighed in on CON laws?

Yes. In fact, Department of Justice officials under both republican and democrat presidents have urged states to eliminate CON laws. Beginning with Reagan, the last seven presidential administrations have all agreed that CON laws are bad for health care. In a 2018 report penned directly to President Trump, U.S. Department of Health and Human Services Secretary Alex Azar, U.S. Department of the Treasury Steve Mnuchin, and U.S. Department of Labor Secretary Alexander Acosta strongly urged states to repeal their CON laws:

“States initially adopted CON laws to further laudable policy goals, including cost control and access to care. The evidence to date, however, suggests that CON laws are frequently costly barriers to entry for healthcare providers rather than successful tools for controlling costs or improving healthcare quality. Based on that evidence and their enforcement experience, the two federal antitrust agencies—the FTC and the Antitrust Division of the Justice Department—have long suggested that states should repeal or retrench their CON laws... CON proponents have argued that CON laws support policy goals relating to healthcare quality and access. However, CON laws would be an indirect—and likely inefficient—way to achieve these goals. Moreover, the evidence suggests CON laws are ineffective. There is no compelling evidence suggesting that CON laws improve quality or access, inefficiently or otherwise.”

(<https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf>, Page 50-56)

The former president’s cabinet members go on to say that CON laws have not improved health care quality or access, impose costs, including loss of beneficial competition, and can foster competition problems missed by benefit/cost analysis.