

Repealing CON: Why West Virginia Needs Healthcare Freedom

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Our Mission

Founded in 2014, the Cardinal Institute for West Virginia Policy, Inc. is a 501c(3) non - profit dedicated to researching, developing, and communicating effective free - market public policies for West Virginia.

Our Vision

The Cardinal Institute envisions an economic turnaround that will transform West Virginia into a beacon of prosperity and hope. For this miracle to occur, it must be built on four pillars: economic freedom, education freedom, worker freedom, and a culture of freedom encapsulated in the state's motto and founding ethos, *Montani Semper Liberi* —Mountaineers Are Always Free.

Certificate of Need (CON)



What is Certificate of Need?

Require new and existing healthcare providers to receive permission from a government agency before they are permitted to:

- 1) **Build** a medical facility,
- 2) **Expand** an existing facility,
- 3) Offer a new health service, or
- 4) Update a provided health service

Need methodologies do not consider provider quality or safety, only economic viability.



Historical Context

In the 1970s, the federal government incentivized states to adopt CON.

Supporters argue CON controls cost, improves care, and protects access to healthcare, **but CON has failed each of these initiatives.**



Services Regulated Under WV CON

- Ambulatory Surgical Centers (ASCs)
- Cardiac Catheterization
- Computed Tomography (CT) Scanners
- Home Health
- Hospice
- Hospital Beds
- Intermediate Care Facilities for individuals with intellectual disabilities
- Linear Accelerator Radiology
- Long-Term Acute Care (LTAC)
- Magnetic-Resonance Imaging (MRI) Scanners
- Mobile HI Technology (CT, MRI, PET, etc. Scanners)
- New Hospitals or Hospital-Sized Investments
- Nursing Home Beds/Long-Term Care Beds
- Obstetrics Services
- Open-Heart Surgery
- Organ Transplants
- Positron Emission Tomography (PET) Scanners
- Psychiatric Services
- Radiation Therapy
- Rehabilitation
- Renal Failure/Dialysis
- Substance/Drug Abuse Treatment
- Ultrasound
- Catch-all for expenditures exceeding \$5,803,788



“Health services that cannot be developed” (W e s t Virginia Code | § 16-2D-9)

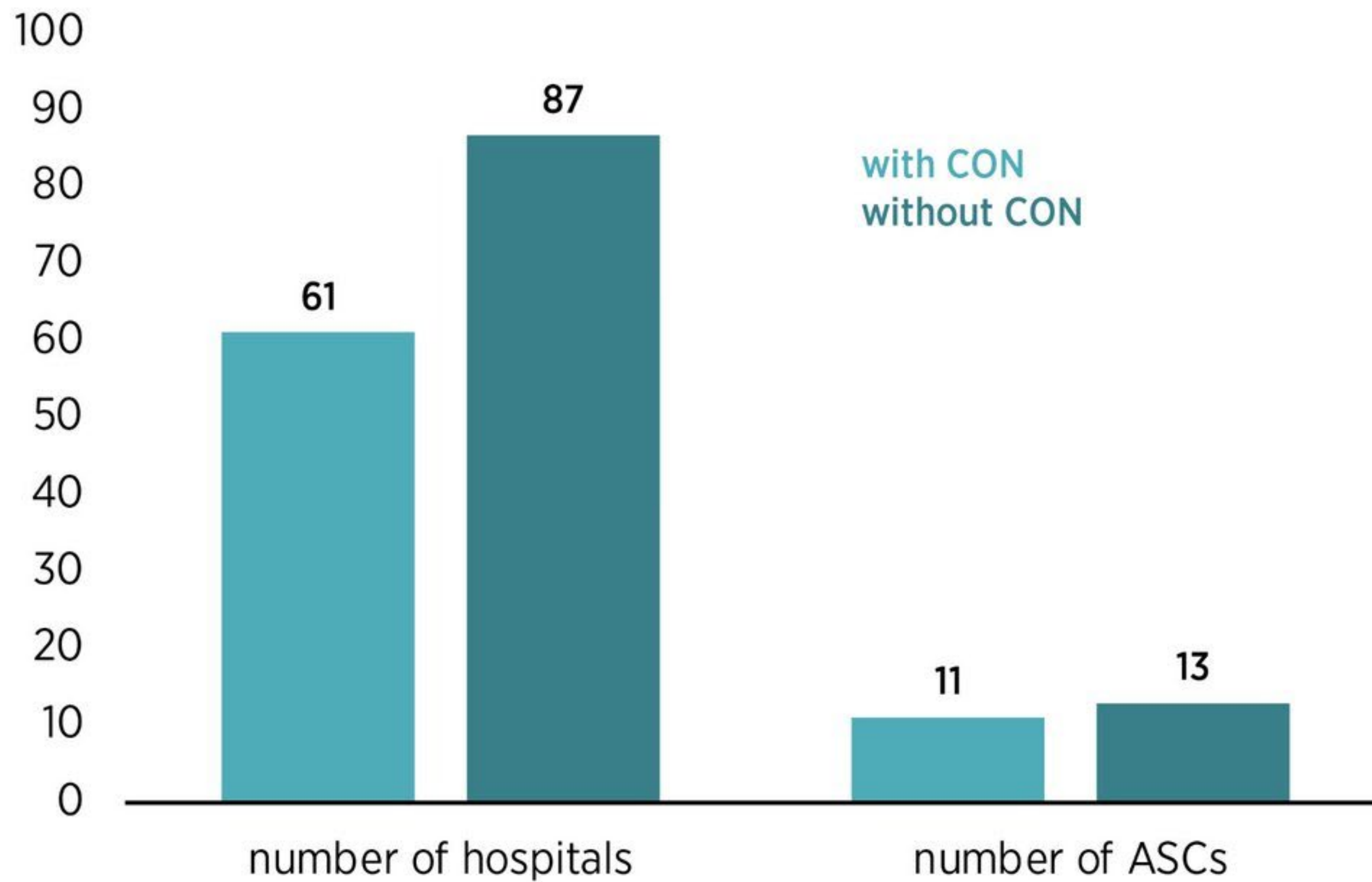
- adding intermediate care or skilled nursing beds,
- adding **beds in an intermediate care facility for individuals with an intellectual disability,**
- developing, constructing, or replacing a **skilled nursing facility,**
- opening **opioid treatment programs,** or
- **licensed substance abuse treatment beds in any county**
which already has greater than 250 licensed substance abuse treatment beds

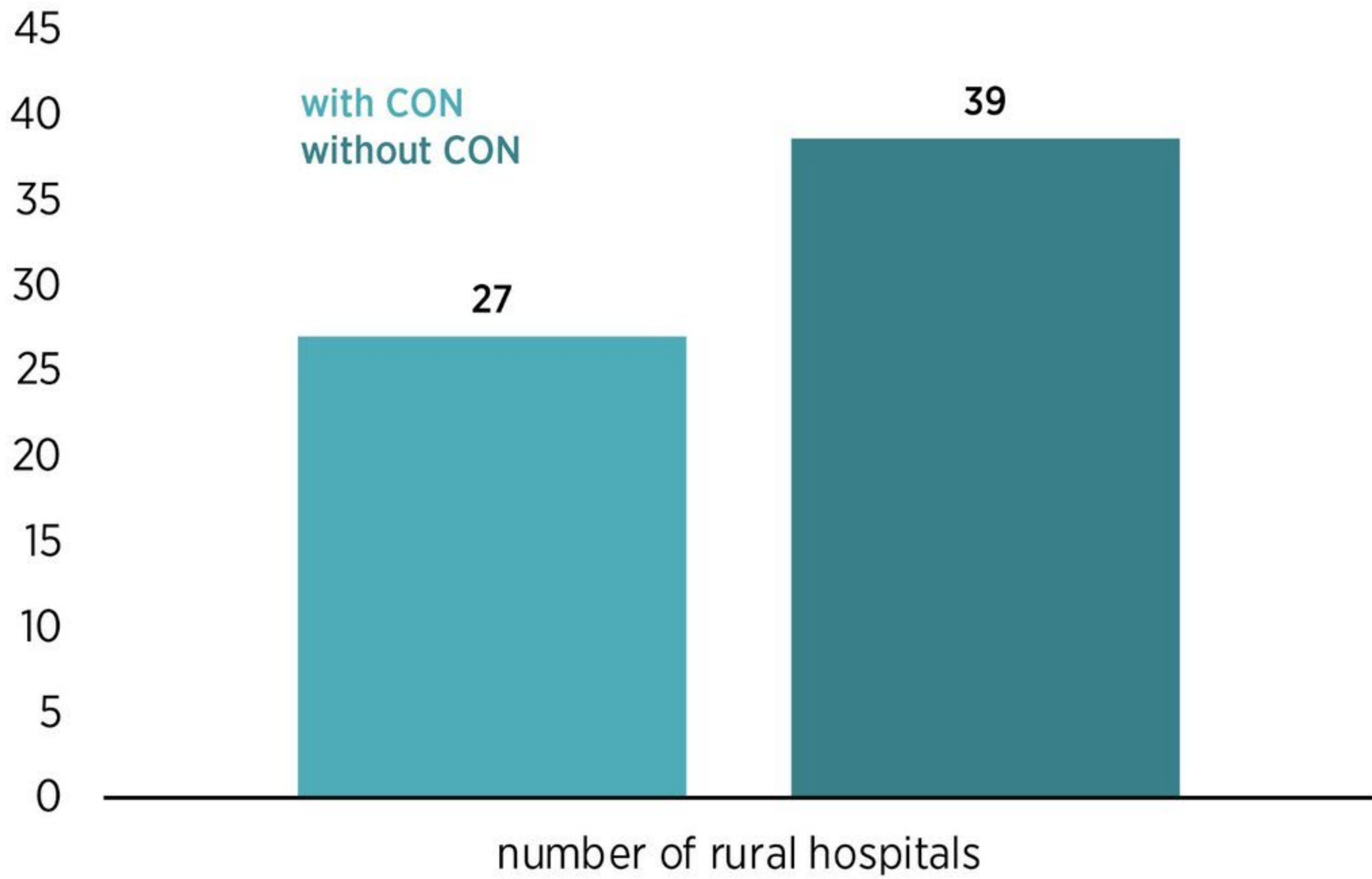


Four Key Reasons for CON Repeal

- 1) Access
- 2) Cost
- 3) Quality
- 4) Innovation

Access







“A lot of hospitals in the system don’t handle labor and delivery at all...”

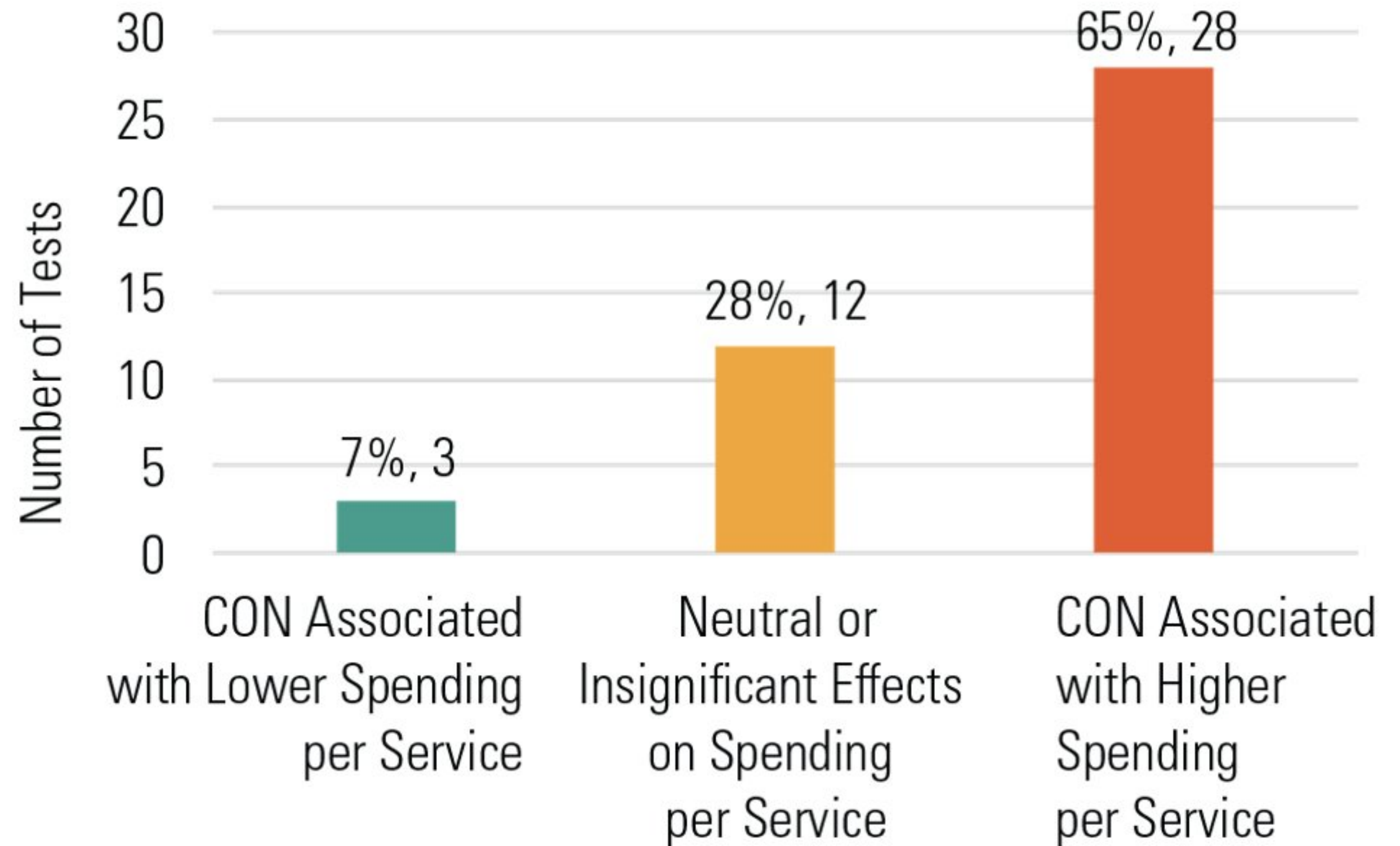
“While we know this will not be a universally popular decision, we do believe it’s the right thing to do...”

There are no plans at this time for a new hospital to be built in Jefferson County. In fact the idea has never been part of an active conversation...

“...any woman in labor who feels that delivery is imminent may, of course, go to [Jefferson’s] emergency department, where cases will be handled.”

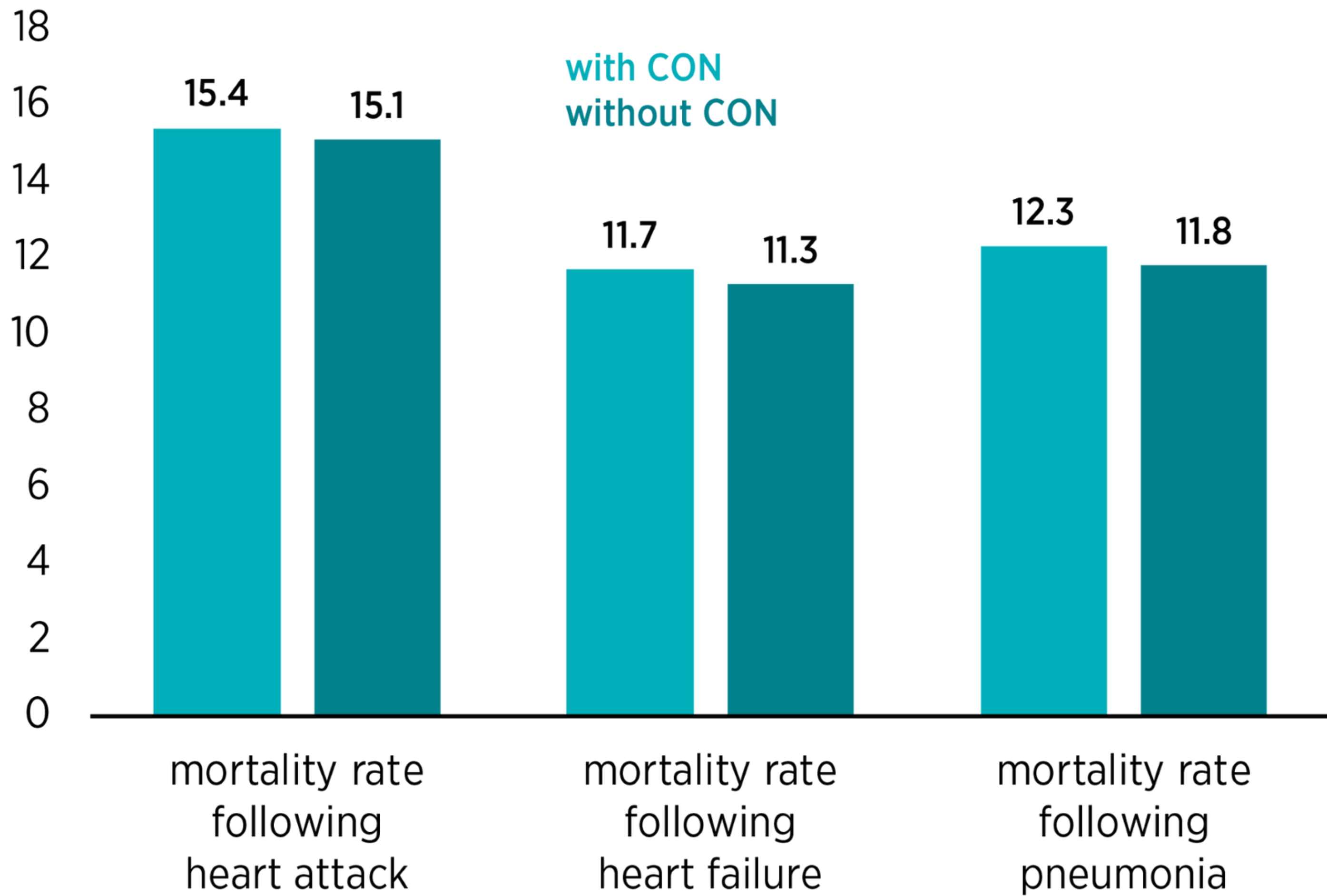
Cost

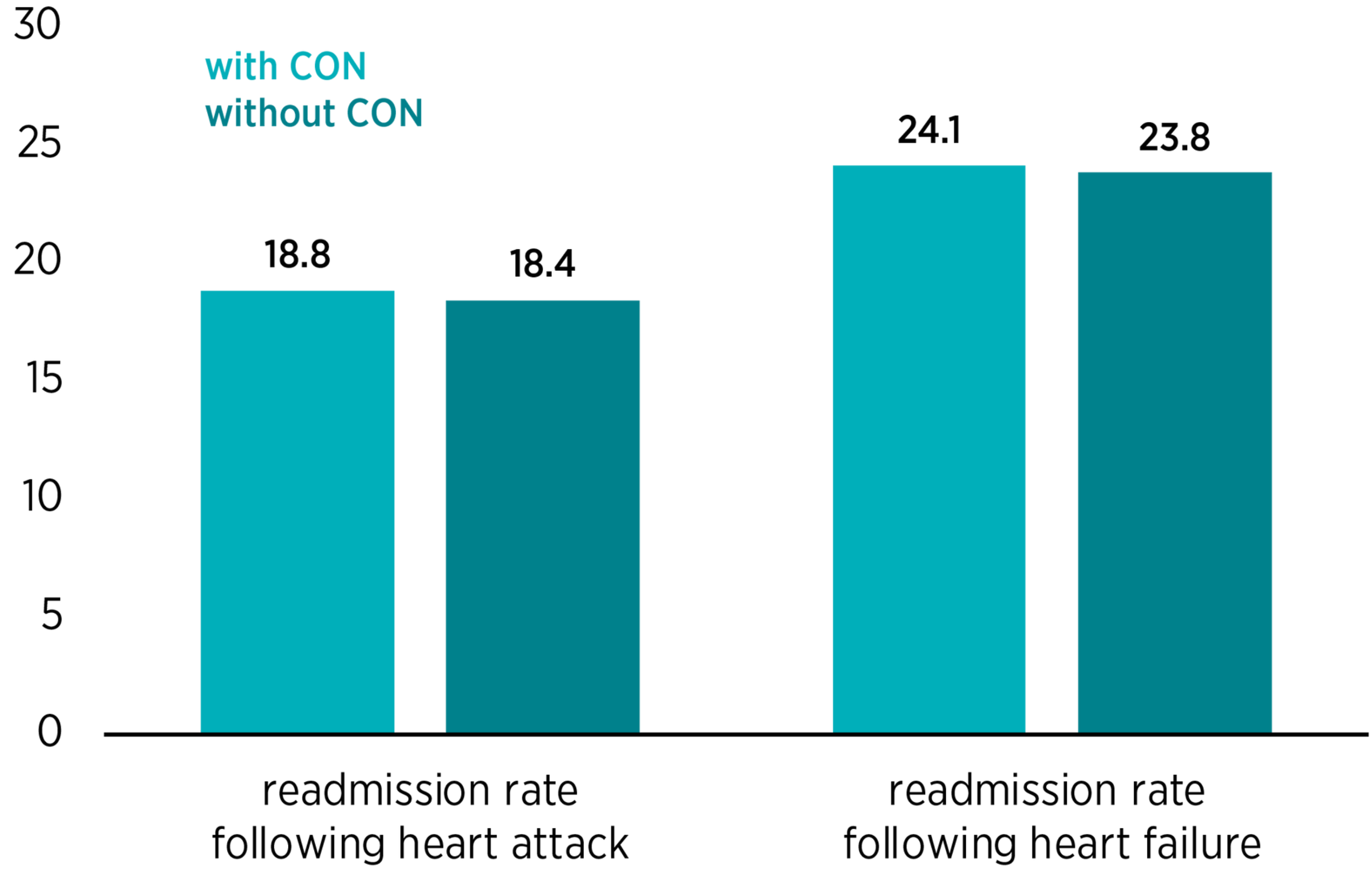
**CON states
have 11%
higher
healthcare
costs.**





Quality





Innovation

The Application Process

Certificate of Need Program



GENERAL APPLICATION FOR CERTIFICATE OF NEED REVIEW

CON File Number: _____
(Assigned upon receipt of Letter of Intent)



CON Application Fees

(W e s t V i r g i n i a C o d e | § 16-2D-13(b)(2))

- Up to \$1,500,000 **a fee of \$1,500**
- From \$1,500,001 to \$5,000,000 **a fee of \$5,000**
- From \$5,000,001 to \$25,000,000 **a fee of \$25,000**
- From \$25,000,001 and above **a fee of \$35,000**

SECTION C: DESCRIPTION OF THE PROJECT

1. Generally describe the project. The description should include:
- Specific services to be provided;

• Proposed service area and population to be served;

• Objectives of the project;

• Components of the project;

• General organization and management structure; and

• Capital expenditures associated with the project.

○ Capital expenditure is defined at W.Va. Code § 16-2D-2(10).

○ Expenditure minimum is defined at W.Va. Code § 16-2D-2(15); the expenditure minimum is adjusted yearly on or before December 31 of each year and is posted on the Authority’s website.
2. If the facility or service is/will be managed or operated by someone other than the owner, specify and explain the relationship. Attach a copy of the contract or proposed contract under which the facility or service will be managed or operated.
3. Complete the following table regardless of the effect the project will have on the facility’s bed capacity.

BED CLASSIFICATIONS	LICENSED BEDS	CON APPROVED	TOTAL CURRENT	PROPOSED PROJECT CHANGES		TOTAL PROPOSED BEDS
				Increase	Decrease	
Gen. med/surg (adult)						
Gen. med/surg (pediatric)						
Psychiatric						
Obstetrics						
Orthopedic						
Chemical Detox						
Other acute (specify)						
Swing beds						
Med/surg intensive care						
Cardiac intensive care						
Pediatric intensive care						
Neonatal intensive care						
Burn care						

“Winning approval for a CON application is often a time consuming and difficult undertaking.”

– A consulting firm that advertises assistance with CON applications in West Virginia

[File name]
[CON File #]

Section H
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SECTION H: RELATIONSHIP TO EXISTING HEALTH CARE SYSTEM

1. Describe the project's relationship to the existing health care system in the service area with regard to accessibility and continuity of services.
2. Describe how patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service.
3. List and describe the nature of all working relationships and/or formal arrangements that have been made to assure shared and support services. Attach copies of all agreements or proposed agreements.

Table 2 Timeline for Uncontested Certificate of Need Process	
Number of Days	Regulatory Action
0	File a letter of intent with the Health Care Authority (Authority)
10	File application for a Certificate of Need
20	Application is deemed complete by the Authority (up to 10 days)
35	Completed applications are batched on 15th and last days of each month (up to 15 days)
95	Authority decision date (application is deemed approved if review is not completed within 60 days from the date the application is batched.)
Maximum Time for Uncontested Review: Approximately 3 Months	
<i>Source: West Virginia Code 16-2D-14</i>	

Table 3 Timeline for Contested Certificate of Need Process	
Number of Days	Regulatory Action
0	File a letter of intent with the Health Care Authority (Authority)
10	File application for a Certificate of Need
20	Application is deemed complete by the Authority (up to 10 days)
35	Completed applications are batched on 15 th and last days of each month (up to 15 days)
65	Window for affected party to request a hearing (30 days from batching)
70	Close-date for affected parties—no further evidence received
85	Request for a hearing approved by Authority
175	Hearing date (up to 3 months from date request approved)
220	Authority decision date (final review period: 45 days)
Maximum Time for Regular Review with a Hearing: Approximately 7 Months	
<i>Source: West Virginia Code 16-2D-13</i>	

Health Industry Influence



From 2017 -2020 alone, at least 20 CON applications totaling \$43.7 million in proposed capital expenditures were withdrawn.

It's estimated that West Virginia applications submitted from 2017 –2020 raked in over \$1 million in CON application fees.

DeCONstruction



A COVID Wake -Up Call

During the pandemic, the average size of nursing homes was larger in states with CON. These states had a greater frequency of COVID -19 cases.

This finding also indicated an important role in nursing home infections being accelerants for community infection rates.

Public Opinion Survey: Is West Virginia Satisfied With Existing Options?



50%

report they'd
had difficulty
accessing care

61%

worry about
future
access

58%

support
repealing CON
laws

Bipartisanship: Repeal CON



Reagan Administration (1987)

“There is no evidence that the CON regulatory process has served its intended purpose of controlling health care costs . Indeed, CON regulation may well increase prices to consumers by restricting supply of hospital services below the level that would exist in a non-regulated competitive environment.”
– FTC Staff Comment to Governor of Hawaii

Clinton Administration (1997)

“Indeed, a large part of the Commission’s antitrust law enforcement efforts in the health care field focuses on competitive problems that would not exist, or would be less severe, if there were no CON regulation...We believe that the continued existence of CON regulation would be contrary to the interests of health care consumers in Virginia.”
– FTC Staff Comment to the Virginia Commission on Medical Facilities

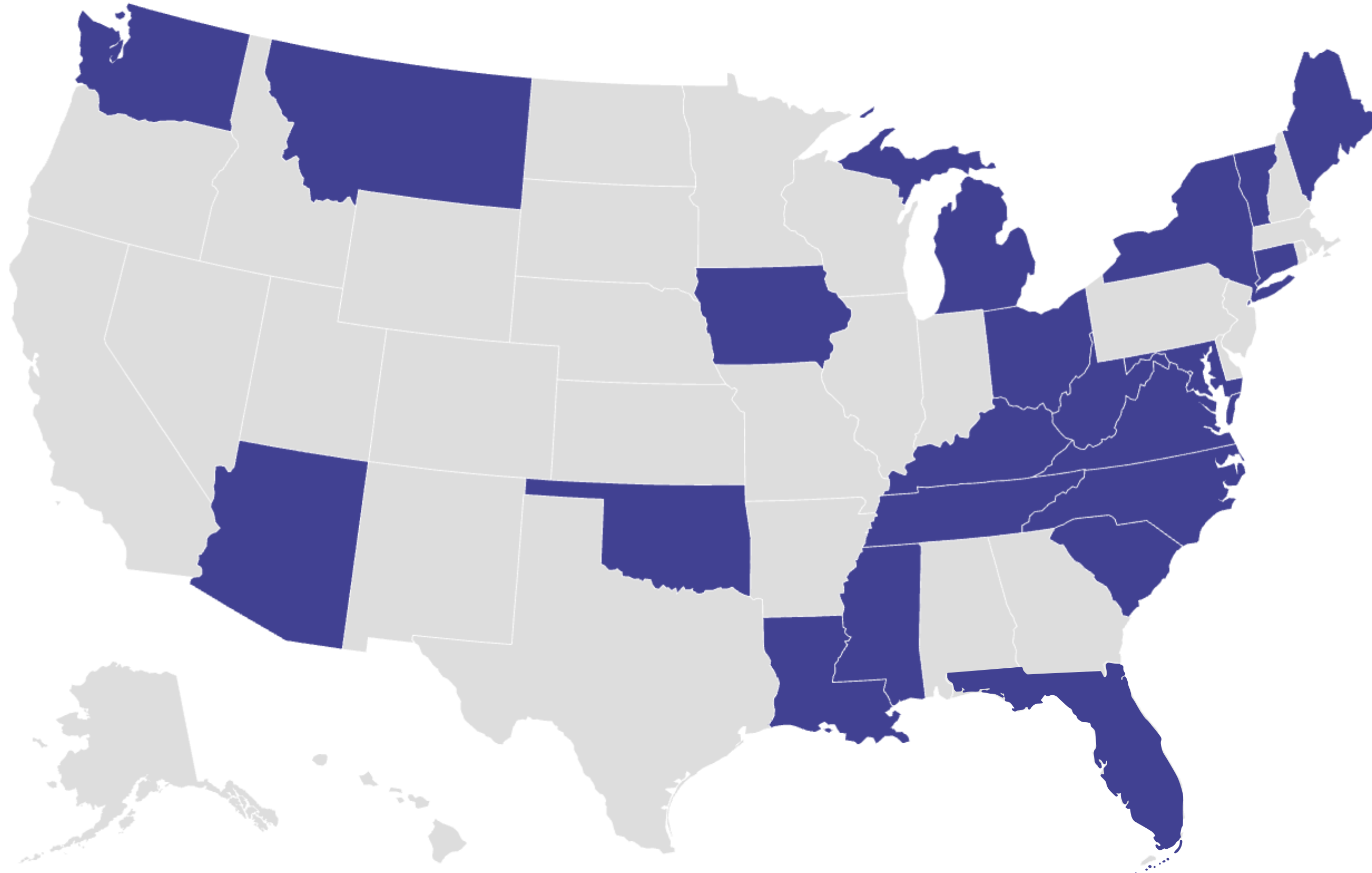
Obama Administration (2015)

“CON laws, when enacted, had the laudable goals of reducing health care costs and improving access to care. However it is now apparent that CON laws can prevent the efficient functioning of health care markets in several ways that may undermine those goals. First, CON laws create barriers to entry and expansion, limit consumer choice, and stifle innovation. Second, incumbent firms seeking to thwart or delay entry by new competitors may use CON laws to achieve that end...Finally, the evidence to date does not suggest that CON laws have generally succeeded in controlling costs or improving quality.”
– Joint Statement of the DOJ Antitrust Division and the FTC to the Virginia CON Work Group

Trump Administration (2018)

“CON laws have failed to produce cost savings, higher quality healthcare, or greater access to care, whether in underserved communities or in underserved areas...the evidence suggests CON laws are ineffective. There is no compelling evidence suggesting that CON laws improve quality or access, inefficiently or otherwise. . . Evidence also fails to support the claim that CON programs would increase access to care for the indigent, or in medically underserved areas.”
– Joint report by the U.S. Department of Health and Human Services, U.S. Department of the Treasury, and U.S. Department of Labor

Nearly two dozen states have modified their CON laws in recent years





Florida

From 2020 to 2022, several providers announced plans to build more than 65 hospitals.

Legal & Regulatory Issues

Florida sees hospital boom after dropping certificate-of-need rules

Noah Schwartz - Thursday, April 27th, 2023



Montana and Iowa

In 2021, Montana repealed all CON requirements except for long-term care facilities.

Before the end of the year, two home health companies had already expanded service to at least 18 additional counties.

Healthcare should
be driven by
innovation and
patients.



Why Is Repeal of CON Good For WV?

States without CON have:

- **5.1% lower rate** of post-surgery complications
- **Higher overall hospital ratings**
- **Lower death rates** from post-surgery complications
- **Fewer readmission rates**
- **Fewer mortality rates**
- **Repealing CON laws increases the number of ambulatory surgical centers (ASCs) in rural areas by 92–112%**



Contact Me!

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