



# Permission to Care:

Certificate of Need Laws Stifle Innovation  
and Reduce Access to Care in Alabama



## About Americans for Prosperity Foundation

Americans for Prosperity Foundation is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.

## About The Authors

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# 47

Number of CON requirements  
Alabama maintains

# \$7.7 MILLION

amount providers paid in CON  
application fees from 2014-2024

# \$17,263

average CON application  
fee from 2014-2024

# 52

Number of additional  
hospitals Alabama would  
have without CON

Alabama's certificate of need (CON) law empowers an unelected special interest board to determine what health care is available throughout the state. For health care providers to establish or expand health care facilities, services, and equipment, the state must first grant permission through the approval of a CON. A CON is essentially a government-issued permission slip that providers must obtain before they are legally permitted to care for their patients. Under this system, the expansion of the health care market is based on the will of government bureaucrats instead of the demands of patients in local communities.

The original theory behind CON laws is attributed to Milton Roemer, who was a health researcher at the University of

California, Los Angeles in the 1950s. Roemer theorized that any established hospital bed would be filled by a patient. Applying this idea, policymakers at the time believed that reducing the supply of health care services would reduce demand and, therefore, health care spending.<sup>1</sup>

Following Roemer's theory, the **federal government coerced states to implement their own CON laws**. Under this pressure, Alabama legislators established the state's CON law in 1979.<sup>2</sup> Just seven years later, however, the U.S. Congress repealed the CON mandate after realizing that the program failed to meet its intended goal of limiting health care spending.<sup>3</sup> Every presidential administration since — both Republican and Democrat — has called for states to repeal their CON laws.<sup>4</sup>

## CON Cuts Off Patients and Providers

Today, Alabama maintains 47 CON requirements on health care facilities, services, and equipment, giving the state one of the most restrictive health care markets in the country.<sup>5</sup> These regulations affect almost every aspect of health care, from complex open-heart surgery to simply adding more hospital beds.

In the absence of a CON program, researchers estimate Alabama would have more than 178 hospitals compared to the current 126. Patients would also expect to save over \$200 a year in total health care spending if CON were no more. Post-surgery complications would also be expected to decrease by 5.2 percent if the Alabama Legislature were to repeal the state's CON law.<sup>6</sup> **By artificially limiting the supply of health care in the state, Alabama's CON law increases costs while decreasing the quality of care available for patients.**

A growing body of research shows that CON laws have an adverse effect on patients.<sup>7</sup> Despite a lengthy history of imposing a large menu of CON regulations, which are reportedly aimed at improving patient care, Alabama consistently ranks at the bottom of the country for health care quality and outcomes.<sup>8</sup>

CON laws don't only hurt patients — these regulations also severely limit the ability of health care providers and entrepreneurs to engage in the market. Every CON application must be accompanied by a non-refundable fee. The fee is dependent on the type and size of investment and indexed to increase with inflation. The current maximum

<sup>1</sup> Jaimie Cavanaugh and Matthew D. Mitchell, "Striving for Better Care: A Review of Kentucky's Certificate of Need Laws," Institute for Justice, August 2023.

<sup>2</sup> "How Alabama's Certificate-of-Need Laws Increase Costs and Reduce Access to Healthcare," Alabama Policy Institute, March 3, 2023.

<sup>3</sup> Pub. L. No. 99-660, Title VII, § 701, 100 Stat. 3743, 3799 (1986).

<sup>4</sup> "What do the last seven presidential administrations have in common?" Americans for Prosperity Foundation, April 2024.

<sup>5</sup> Jaimie Cavanaugh et al., "Conning the Competition: A Nationwide Survey of Certificate of Need Laws," Institute for Justice, August 2020.

<sup>6</sup> "Alabama and Certificate-of-Need Programs 2020: How CON Laws Affect Healthcare Access, Quality, and Cost in Alabama," Mercatus Center, March 18, 2021.

<sup>7</sup> Matthew Mitchell, "Certificate-of-Need laws in healthcare: A comprehensive review of the literature," Southern Economic Journal, May 2024.

<sup>8</sup> David C. Radley et al., "Advancing Racial Equity in U.S. Health Care: The Commonwealth Fund 2024 State Health Disparities Report," The Commonwealth Fund, April 18, 2024.



fee for a CON application is set at \$25,706.<sup>9</sup> Americans for Prosperity Foundation's (AFP Foundation) original analysis of Alabama's CON data finds that the average application fee paid from January 2014 to October 2024 was \$17,262.70.

AFP Foundation finds that during the same time, Alabama's Certificate of Need Review Board denied only four of the 448 applications it received. Even though the amount of denied CON applications is low, especially compared to other states that employ CON laws, the figure makes clear the CON program is unnecessary and calls into question its efficacy. If the Certificate of Need Review Board merely rubber-stamps most CON applications, what is the board's purpose?

As it sits now, it seems that Alabama's CON process only serves to extort thousands of dollars from applicants while making them navigate miles of unnecessary red tape — just to tell these health care providers what they already knew: their communities need more access to quality and affordable health care services. From January 2014 to October 2024, **applicants paid \$7.7 million in application fees — money that could have been invested in health care in Alabama.**

But the costs associated with obtaining a CON don't end there. CON applications are complex and typically require the applicants to hire consultants to complete the paperwork. In Alabama, like many states with CON, existing hospitals and health care providers are permitted to contest others' CON applications through the so-called "competitor's veto."<sup>10</sup> Essentially, the CON regime allows established businesses to employ lawfare to keep competition out of the market.

AFP Foundation finds that approximately 25 percent of CON applications are contested. To fight back against these inevitable blockades, applicants must hire legal representation — and these bills can balloon up to six and seven figures as litigation is drawn out to dissuade would-be competitors from entering the market and offering more choices to patients.

## CON Case Study

The problems with Alabama's CON regulations are perfectly encapsulated in the recent case of the Hoover Health Care Authority (HHCA).<sup>11</sup> In November 2023, HHCA (a board within the City of Hoover) began the process of obtaining a CON for an ambulatory surgery and diagnostics center. The city's mayor, Frank Brocato, noted at the time that Hoover had no hospital despite being the sixth largest city in Alabama.<sup>12</sup> The city government extensively highlighted the

need for greater access to health care in Hoover; however the CON application became embroiled in legal proceedings and controversy. Utilizing the "competitor's veto," Loree Skelton, a health care attorney and CEO of Hoover's South Haven Nursing Home, tied up the CON application in months of contentious litigation after claiming the application was insufficient.

The HHCA case garnered national attention due to salacious blackmail claims and the daunting legal bill amassed over months of litigation.<sup>13</sup> During the 10-day hearing, 42 witnesses gave 2,539 pages of testimony.<sup>14</sup> In total, HHCA — and, presumably, Hoover taxpayers — were left with a staggering legal bill of over \$1 million.<sup>15</sup> While the Certificate of Need Review Board ultimately approved HHCA's CON application, the process dramatically increased the cost of entering the market. Despite the city being well aware of the need for more health care services, potential competitors were able to weaponize the CON system at the expense of patients and taxpayers.

The pushback HHCA received from its competitors isn't unique. When going through the CON process in 2024, Southern Orthopedic Surgery Center (SOSC) also encountered intense resistance from hospitals that were already established in the Montgomery area. The incumbent hospitals argued that their businesses were not profitable and the entrance of SOSC into the market would further hurt their financials. The chair of the Certificate of Need Review Board dismissed their arguments, noting the hospitals' claims called their business acumen into question. SOSC ultimately received their CON, but not until after their competitors dragged them through lengthy legal proceedings.<sup>16</sup>

While Alabama may boast a low number of CON disapprovals, the CON program has lost the state more health care investment than is represented in the application data. Many potential providers are not willing or able to cover the costs of litigating a contested CON application and are dissuaded from ever entering the market. In other words, many providers never apply to offer services they otherwise would without CON in the way.

## CON Reforms Across the Country

In recent years, a growing number of states have begun to repeal or extensively reform their CON programs to rightfully prioritize patient outcomes over business interests.

<sup>9</sup> Emily T. Marsal, "[New Certificate of Need Application Fee and Monetary Threshold for Review Effective October 1, 2024](#)," Alabama State Health Planning and Development Agency, September 23, 2024.

<sup>10</sup> Ala. Admin. Code r. [410-1-7-.13](#) (2025).

<sup>11</sup> Adam Thompson and Sofia Hamilton, "AFP: Alabama's certificate of need laws are crushing Hoover's healthcare expansion," Yellowhammer News, October 10, 2024.

<sup>12</sup> Jon Anderson, "[Hoover files letter of intent for ambulatory surgery, medical diagnostics center](#)," Hoover Sun, November 21, 2023.

<sup>13</sup> Jon Anderson, "[Sister of former Hoover mayor is contesting push for surgery center in Riverchase](#)," Hoover Sun, May 28, 2024.

<sup>14</sup> Healthcare Authority of the City of Hoover, Alabama, [Certificate of Need Recommended Order](#), August 23, 2024.

<sup>15</sup> Jon Anderson, "[Hoover gets state approval for surgery & diagnostics center in Riverchase](#)," Hoover Sun, September 18, 2024.

<sup>16</sup> Alexander Willis, "[Proposed Montgomery surgery center receives state approval despite local hospitals' opposition](#)," Alabama Daily News, January 16, 2025.

*“I am very grateful that Judge DeGraffenried has ruled in our favor. I felt all along that the testimony given and evidence presented to support our position was overwhelmingly positive. It is time to make up for the ground we lost from being put through this proceeding.”*

*- HHCA Chairman Alan Paquette*

The COVID-19 pandemic highlighted the faults with CON regulations. Unable to properly respond to a rapid increase in patient need, many governors — including Governor Ivey — temporarily eased their CON regulations.<sup>17</sup> These temporary exemptions act as tacit admissions that the CON system prevents health care entrepreneurs from responding to the needs of patients in a timely manner. We know, however, that CON laws always prohibit providers from responding to market demands in real time — not just during pandemics.

While Alabama continues to stifle health care innovation, many states are using this momentum to improve their delivery of care:

- During the 2025 legislative session, the Arkansas Legislature passed **H.B. 1653** to exempt psychiatric residential treatment facilities from CON regulations.<sup>18</sup>
- Kentucky legislators repealed the CON requirement for freestanding birthing centers through **H.B. 90** in 2025.<sup>19</sup>

- In 2024, Tennessee passed **H.B. 2269** to exempt freestanding emergency department facilities, ASCs, long-term care hospitals, intellectual disability institutional habilitation facilities, open heart surgery, PETs, and MRIs from the CON process.<sup>20</sup>
- Georgia passed **H.B. 1339** in the 2023 legislative session to exempt freestanding birthing centers and psychiatric and substance abuse care centers from the CON process.<sup>21</sup>
- The West Virginia Legislature passed **S.B. 613** in 2023 to repeal CON requirements for hospitals and birthing centers.<sup>22</sup>
- In 2023, South Carolina repealed CON requirements for virtually all facilities and services through **S. 164**.<sup>23</sup>
- North Carolina passed **S.B. 462** in 2021 to increase the expenditure threshold for diagnostic center equipment, major medical equipment, and new institutional health services.<sup>24</sup>
- In 2019, Florida passed **H.B. 21** to exempt hospitals from the CON process, resulting in a large increase in planned and built hospitals.<sup>25</sup>

Patients in CON states pay for these laws through longer wait times, higher health care costs, and lower quality of care. Despite the negative effects on patient care, incumbent businesses continue to lobby for CON laws to protect their entrenched economic interests. CON laws effectively ration health care for the economic benefit of these providers. Perhaps more than any other state, Alabama’s CON regime is uniquely useless red tape that stifles investment and reduces access to care, creating a very costly barrier between patients and their trusted providers.

The Alabama Legislature should take note from progress in neighboring states, as well as the lessons learned from the pandemic and the HHCA debacle, and roll back their CON regulations.

<sup>17</sup> “[Temporary Waiver of Certificate of Need Requirements During State of Emergency](#),” Alabama State Health Planning and Development Agency; Alabama Certificate of Need Review Board, “[Certificate of Emergency Rules Filed with Legislative Services Agency](#),” Alabama State Health Planning and Development Agency, April 7, 2020; and Kay Ivey, [Proclamation by the Governor](#), April 2, 2020.

<sup>18</sup> [Ark. H.B. 1653](#), 95th Gen. Assemb., Reg. Sess. (Ark. 2025) (enacted as Act 636).

<sup>19</sup> [Ky. H.B. 90](#), 2025 Gen. Assemb., Reg. Sess. (Ky. 2025) (enacted as Act ch. 121).

<sup>20</sup> [Tenn. H.B. 2269](#), 113th Gen. Assemb., Reg. Sess. (Tenn. 2024) (enacted as Pub. Ch. 985).

<sup>21</sup> [Ga. H.B. 1339](#), 2023–2024 Gen. Assemb., Reg. Sess. (Ga. 2024) (enacted as Act 384).

<sup>22</sup> [W. Va. S.B. 613](#), 86th Leg., Reg. Sess. (W. Va. 2023) (enacted as Act ch. 255).

<sup>23</sup> [S.C. S.B. 164](#), 125th Gen. Assemb., Reg. Sess. (S.C. 2023) (enacted as Act No. 20).

<sup>24</sup> [N.C. S.B. 462](#), 2021 Gen. Assemb., Reg. Sess. (N.C. 2021) (enacted as Sess. Law 2021-129).

<sup>25</sup> [Fla. H.B. 21](#), 2019 Leg., Reg. Sess. (Fla. 2019) (enacted).

## Biden Administration (2023)

“Empirical studies demonstrate certificate-of-need laws **fall short** of achieving better access to healthcare... CON laws do not ensure access to care in rural areas; rather, they act as a **barrier** to entry, leading to lower access to care and less innovation.”

– [Department of Justice Letter](#) on the Proposed Repeal of Alaska’s Certificate-of-Need Laws

## 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

## 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 Concerning Certificate of Need Reform

## 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 Mary George Concerning Hawaii S.B. 213 to Abolish the State Planning and Health Agency, Including its Administration of Certificates of Need

**WHAT DO THE LAST SEVEN  
PRESIDENTIAL ADMINISTRATIONS  
HAVE IN COMMON? THEY ALL AGREE  
CERTIFICATE-OF-NEED (CON) LAWS  
ARE BAD FOR HEALTH CARE.**

## 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.”

– Reforming America’s Healthcare System Through Choice and Competition. A joint [report](#) by the U.S. Department of Health and Human Services, U.S. Department of the Treasury, and U.S. Department of Labor

## Bush Administration (2004)

The Agencies believe that CON programs can pose serious competitive **concerns** that generally outweigh CON programs’ purported economic benefits. Where CON programs are intended to control health care costs, there is considerable evidence that they can actually drive up prices by fostering **anticompetitive** barriers to entry... CON programs can retard entry of firms that could provide higher quality services than the incumbents...The Agencies believe that CON programs are generally not successful in containing health care costs and that they can pose **anticompetitive** risks...CON programs risk entrenching oligopolists and **eroding** consumer welfare.

– A Dose of Competition: A [Report](#) by the Federal Trade Commission and the Department of Justice

## H.W. Bush Administration (1989)

“[W]e believe that Nebraska’s current CON regulatory process may, on balance, **harm** health care consumers. Ongoing improvements in health care financing are resolving the principal problems that prompted CON regulation. Moreover, the benefits of CON regulation, if any, are likely to be outweighed by its **adverse** effects on competition in health care. As a result, continuing CON regulation is likely to harm consumers by increasing the price and decreasing the quality of health services in Nebraska.”

– [FTC Staff Comment](#) to the Hon. Bernice Labedz Concerning Nebraska L.B. 429, 439, and 745 to Liberalize or Repeal Certificate of Need Regulation



A wide-angle photograph of a city skyline at dusk. The sky is filled with heavy, dark clouds, with a soft glow of light from the setting or rising sun visible near the horizon. In the foreground, a train of dark, cylindrical tank cars is moving along tracks on the left. To the right of the tracks is a parking lot with several cars parked. In the background, several tall buildings are visible, some with lights on. One building on the right has a red sign that says "CITY FEDERAL BANK". Another building in the center has a sign that says "SHIPT".

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