



October 17, 2025

Submitted Via Email

MDHHS
333 S. Grand Ave
P.O. Box 30195
Lansing, Michigan 48909
MDHHS-ConWebTeam@michigan.gov

Re: Certificate of Need (CON) Review Standards

To Whom it May Concern:

We write on behalf of Americans for Prosperity Foundation (“AFP Foundation”), a 501(c)(3) nonpartisan organization that educates and trains citizens to be advocates for freedom, creating real change at the local, state, and federal levels.¹ Americans for Prosperity Foundation runs the [Permission to Care](#) project, featuring original empirical research on how certificate-of-need (“CON”) laws harm patients and stifle health care innovation.² We appreciate the opportunity to comment on the CON Review Standards.

MDHHS’s proposed revisions to the CON Review Standards appear to do little more than redefine “metropolitan” and “rural” areas to align with certain federal definitions. However, the CON Review Standards act as a barrier that reduces access, increases costs, and lowers the quality of health care. MDHHS should deregulate the standards to the greatest extent allowed by law.

Comments on the CON Review Standards: Hospital Beds

The current CON Review Standards for hospital beds reduce access and increase costs. Research shows that states with CON programs, such as Michigan, have fewer hospitals and other medical facilities in both metropolitan and rural areas.³ Another study finds that each additional service covered by CON reduces the number of hospital beds per 100,000 persons by 4.7%.⁴ The Mercatus Center found that without CON, Michigan would have 71 additional hospitals, 15 of

¹ See AMS FOR PROSPERITY FOUND., <https://americansforprosperityfoundation.org/> (last visited October 15, 2025).

² See Permission to Care, AMS FOR PROSPERITY FOUND., <https://americansforprosperityfoundation.org/permission-to-care> (last visited October 15, 2025).

³ Thomas Stratmann and Christopher Koopman, *Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals* (Working Paper, Mercatus Center at George Mason University, 2016), <https://www.mercatus.org/research/working-papers/entry-regulation-and-rural-health-care-certificate-need-laws-ambulatory>.

⁴ Stratmann, T., & Russ, J., *Do Certificate-of-Need Laws Increase Indigent Care?*, (Working Paper No. 14-20, Mercatus Center at George Mason University, July 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211637.

which would serve rural areas.⁵ Deregulating the CON Review Standards for hospital beds would facilitate the addition and relocation of beds to provide more efficient and effective care for Michiganders.

Comments on the CON Review Standards: Cardiac Catheterization Services

The current CON Review Standards for cardiac catheterization services reduce access, increase costs, and lead to worse health outcomes for patients. CON states are associated with higher mortality rates for heart attacks and heart failure. In the absence of CON regulations, Michigan could expect a 2 percent decrease in heart attack mortalities and a 3.5 percent decrease in heart failure mortalities.⁶ Readmission rates for heart attacks and heart failure would also be expected to decrease by 2.2 percent and 1.7 percent, respectively.⁷

MDHHS issues dozens of CON compliance orders every year—256 over the last five years.⁸ Many of these impose harsh penalties on providers for failing to meet minimum volume requirements. AFP Foundation has a copy of a compliance order dated December 10, 2009, received in response to a FOIA request, reflecting a \$35,000 penalty imposed on a mobile diagnostic service provider for failing to perform a minimum number of MRI procedures in a year. These exorbitant fines do not serve to increase access to or improve the quality of health care; rather, they drive up costs for providers and patients.

Comments on the CON Review Standards: Megavoltage Radiation Therapy (MRT) Services/Units

In 2019, the Michigan Legislature blocked a move by the CON Commission to regulate a class of innovative cancer treatments known as immune effector cell therapy (“IECT”) through the CON program. It was reportedly the first time the state legislature had overruled the Commission.⁹ The legislature’s resolution disapproving of the Commission’s regulatory power grab notes that the CON program would limit access to the new cancer treatment and discourage providers from offering it.¹⁰

It should be clear that these statements hold true for MRT and other cancer treatments beyond IECT. The CON Review Standards stifle innovation in and limit access to cancer treatments.

⁵ Matthew D. Mitchell et al., *Certificate-of-Need Laws: Michigan State Profile*, MERCATUS CENTER AT GEORGE MASON UNIVERSITY (Nov. 11, 2020), https://www.mercatus.org/system/files/michigan_constateprofile_2020.pdf.

⁶ Thomas Stratmann & David Wille, *Certificate-of-Need Laws and Hospital Quality* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Matthew D. Mitchell et al., *Certificate-of-Need Laws: Michigan State Profile*, MERCATUS CENTER AT GEORGE MASON UNIVERSITY (Nov. 11, 2020), https://www.mercatus.org/system/files/michigan_constateprofile_2020.pdf.

⁷ *Id.*

⁸ MICHIGAN DEPT. OF HEALTH & HUMAN SERV., CERTIFICATE OF NEED (CON) PROGRAM ANNUAL ACTIVITY REPORT: OCTOBER 2023 THROUGH SEPTEMBER 2024 (FY2024) at 17, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Eval/Annual-Reports/FY-2024-CON-Annual-Report_FINAL.pdf.

⁹ *Michigan Senate rejects regulation over CAR-T cancer treatment*, MODERN HEALTHCARE, Oct. 31, 2019, <https://www.modernhealthcare.com/law-regulation/michigan-senate-rejects-regulation-over-car-t-cancer-treatment/>.

¹⁰ Mich. S. Concurrent Resolution 0014 (2019).

The Community Oncology Alliance opposes CON requirements “because they can limit patient access to important cancer care services such as imaging and radiation therapy. CON-driven limitations in services create hardship in accessing local treatments, limits patients’ choice of providers, and fragments the care teams when all necessary services cannot be obtained in one location.”¹¹

MDHHS issues dozens of CON compliance orders every year—256 over the last five years.¹² Many of these impose harsh penalties on providers for failing to meet minimum volume requirements. AFP Foundation has a copy of a compliance order dated December 10, 2009, received in response to a FOIA request, reflecting a \$35,000 penalty imposed on a mobile diagnostic service provider for failing to perform a minimum number of MRI procedures in a year. These exorbitant fines do not serve to increase access to or improve the quality of health care; rather, they drive up costs for providers and patients.

Comments on the CON Review Standards: Open Heart Surgery Services

The current CON Review Standards for cardiac catheterization services reduce access and increase costs. CON states are associated with higher mortality rates for heart attacks and heart failure. In the absence of CON regulations, Michigan could expect a 2 percent decrease in heart attack mortalities and a 3.5 percent decrease in heart failure mortalities.¹³ Readmission rates for heart attacks and heart failure would also be expected to decrease by 2.2 percent and 1.7 percent, respectively.¹⁴

MDHHS issues dozens of CON compliance orders every year—256 over the last five years.¹⁵ Many of these impose harsh penalties on providers for failing to meet minimum volume requirements. AFP Foundation has a copy of a compliance order dated December 10, 2009, received in response to a FOIA request, reflecting a \$35,000 penalty imposed on a mobile diagnostic service provider for failing to perform a minimum number of MRI procedures in a year. These exorbitant fines do not serve to increase access to or improve the quality of health care; rather, they drive up costs for providers and patients.

¹¹ *COA Position Statement on Certificate of Need Requirements*, COMMUNITY ONCOLOGY ALLIANCE (Feb. 24, 2025), <https://mycoa.communityoncology.org/position-statements/publications/coa-position-statement-on-certificate-of-need-requirements>.

¹² MICHIGAN DEPT. OF HEALTH & HUMAN SERV., CERTIFICATE OF NEED (CON) PROGRAM ANNUAL ACTIVITY REPORT: OCTOBER 2023 THROUGH SEPTEMBER 2024 (FY2024) at 17, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Eval/Annual-Reports/FY-2024-CON-Annual-Report_FINAL.pdf.

¹³ Thomas Stratmann & David Wille, *Certificate-of-Need Laws and Hospital Quality* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Matthew D. Mitchell et al., *Certificate-of-Need Laws: Michigan State Profile*, MERCATUS CENTER AT GEORGE MASON UNIVERSITY (Nov. 11, 2020), https://www.mercatus.org/system/files/michigan_constateprofile_2020.pdf.

¹⁴ *Id.*

¹⁵ MICHIGAN DEPT. OF HEALTH & HUMAN SERV., CERTIFICATE OF NEED (CON) PROGRAM ANNUAL ACTIVITY REPORT: OCTOBER 2023 THROUGH SEPTEMBER 2024 (FY2024) at 17, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Eval/Annual-Reports/FY-2024-CON-Annual-Report_FINAL.pdf.

Comments on the CON Review Standards: Positron Emission Tomography (PET) Scanner Services

The current CON Review Standards for Positron Emission Tomography (PET) scanner services reduce access and increase costs. CON requirements for imaging services are associated with higher utilization rates for these services in hospital settings, which drive up costs. In the absence of these CON regulations, Michigan could expect to see an 80.7 percent increase in PET scans performed in nonhospital settings.¹⁶ Additionally, there would be a 3.7 percent reduction in patients traveling out-of-county to receive PET scans.¹⁷

MDHHS issues dozens of CON compliance orders every year—256 over the last five years.¹⁸ Many of these impose harsh penalties on providers for failing to meet minimum volume requirements. AFP Foundation has a copy of a compliance order dated December 10, 2009, received in response to a FOIA request, reflecting a \$35,000 penalty imposed on a mobile diagnostic service provider for failing to perform a minimum number of MRI procedures in a year. These exorbitant fines do not serve to increase access to or improve the quality of health care; rather, they drive up costs for providers and patients.

Comments on the CON Review Standards: Surgical Services

The current CON Review Standards for surgical services reduce access and increase costs. In the absence of CON regulations, Michigan could expect a 6.2 percent reduction in post-surgery complications alongside a 4.5 percent increase in patient ratings.¹⁹ Readmission rates for heart attacks and heart failure would also be expected to decrease by 2.2 percent and 1.7 percent, respectively.²⁰

MDHHS issues dozens of CON compliance orders every year—256 over the last five years.²¹ Many of these impose harsh penalties on providers for failing to meet minimum volume requirements. AFP Foundation has a copy of a compliance order dated December 10, 2009, received in response to a FOIA request, reflecting a \$35,000 penalty imposed on a mobile diagnostic

¹⁶ Thomas Stratmann & Matthew C. Baker, *Barriers to Entry in the Healthcare Markets: Winners and Losers from Certificate-of-Need Laws* (Mercatus Working Paper, Mercatus Center at George Mason University, 2017); Matthew D. Mitchell et al., *Certificate-of-Need Laws: Michigan State Profile*, MERCATUS CENTER AT GEORGE MASON UNIVERSITY (Nov. 11, 2020), https://www.mercatus.org/system/files/michigan_constateprofile_2020.pdf.

¹⁷ *Id.*

¹⁸ MICHIGAN DEPT. OF HEALTH & HUMAN SERV., CERTIFICATE OF NEED (CON) PROGRAM ANNUAL ACTIVITY REPORT: OCTOBER 2023 THROUGH SEPTEMBER 2024 (FY2024) at 17, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Eval/Annual-Reports/FY-2024-CON-Annual-Report_FINAL.pdf.

¹⁹ Thomas Stratmann & David Wille, *Certificate-of-Need Laws and Hospital Quality* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Matthew D. Mitchell et al., *Certificate-of-Need Laws: Michigan State Profile*, MERCATUS CENTER AT GEORGE MASON UNIVERSITY (Nov. 11, 2020), https://www.mercatus.org/system/files/michigan_constateprofile_2020.pdf.

²⁰ *Id.*

²¹ MICHIGAN DEPT. OF HEALTH & HUMAN SERV., CERTIFICATE OF NEED (CON) PROGRAM ANNUAL ACTIVITY REPORT: OCTOBER 2023 THROUGH SEPTEMBER 2024 (FY2024) at 17, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Eval/Annual-Reports/FY-2024-CON-Annual-Report_FINAL.pdf.

service provider for failing to perform a minimum number of MRI procedures in a year. These exorbitant fines do not serve to increase access to or improve the quality of health care; rather, they drive up costs for providers and patients.

Michigan's CON Regime

Fifty years ago, Congress passed the National Health Planning and Resources Development Act of 1974, which included a mandate that states enact CON laws to receive certain federal health care funds.²² Like nearly every state, Michigan complied, passing the CON law as part of Act 368 of 1978.²³ The federal mandate was based on a now-debunked theory that “a hospital bed built is a bed filled.”²⁴ At the time, lawmakers thought they could control rising health care costs by limiting the supply of health care, but Congress lifted the mandate in 1986 after CON laws proved ineffective at doing so. Since then, the [last eight presidential administrations](#) have called on the states to repeal their CON laws.²⁵ At least a dozen states have done so.

Michigan maintains 25 CONs for facilities, services, and beds despite a large and growing body of research—spanning decades—showing that CON does not work. By design, CON laws limit the supply of health care, thereby reducing access to care. Compared to states without CON, states with CON laws have fewer hospitals and other medical facilities (e.g., ambulatory surgical centers, psychiatric care facilities, dialysis clinics, etc.).²⁶ In CON states, patients have access to “fewer medical imaging devices, must wait longer for care, must travel farther for care, and are more likely to leave their state for care.”²⁷ Furthermore, studies show that CON laws contribute to lower quality care, worse health outcomes, and higher health care spending.²⁸

So why does the CON program still exist? The CON scheme persists to protect politically proficient health care providers from competition by limiting the supply of health care at the patients' expense. Rather than appeal to patients, providers petition the government's central planners for permission to care.

CON Precludes Billions in Health Care Investment

AFP Foundation finds CON prevents billions in new health care investment and needlessly delays the development of new health care provisions. AFPP's analysis of CON applications

²² National Health Planning and Resources Development Act of 1974, Pub. L. No. 93-641, 88 Stat. 2225 (1975) (formerly codified at 42 U.S.C. §§ 300k–300n-5), *repealed by* Pub. L. No. 99-660, § 701, 100 Stat. 3743, 3799 (1986).

²³ Michigan Act 368 of 1978 Part 222.

²⁴ M.I. Roemer, *Bed supply and hospital utilization: a natural experiment*, PubMed (1961), <https://pubmed.ncbi.nlm.nih.gov/14493273>.

²⁵ *What do the last eight presidential administrations have in common? They all agree certificate-of-need (CON) laws are bad for health care.*, AMS FOR PROSPERITY FOUND. (2025), <https://americansforprosperityfoundation.org/wp-content/uploads/2025/08/AFPE-CON-AdminQuotes-081325-v2.pdf>.

²⁶ JAIMIE CAVANAUGH & MATTHEW D. MITCHELL, *STRIVING FOR BETTER CARE: A REVIEW OF KENTUCKY'S CERTIFICATE OF NEED LAWS*, INSTITUTE FOR JUSTICE (Aug. 2023), <https://ij.org/report/striving-for-better-care/con-laws-in-kentucky/>.

²⁷ *Id.*

²⁸ *Id.*

submitted from January 2018 to February 2021 finds that MDHHS disapproved of more than \$500 million in new health care.²⁹

However, the true cost of CON is much greater than the amount of proposed investment denied or withdrawn. There is a latent supply of health care that does not appear in CON applications. **Miles of red tape, incumbent gatekeeping, and restrictive need calculations—like those at issue here—deter many providers from ever applying to offer services they otherwise would without CON.** In fact, MDHHS requires providers seeking to add new beds to submit a form certifying that the CON Commission has projected a need for those beds in the provider’s area of operation; otherwise, the application will not be accepted.

The Competitor’s Veto and CON’s Unseen Costs

Although Michigan does not allow competing providers to challenge others’ CON applications, the CON program still affords incumbent providers with a veto over potential competitors. A recent example illustrates how the competitor’s veto works and provides a peek at CON’s usually unseen costs.

In 2019, the Michigan CON Commission projected a need for about 3,000 additional nursing home beds based on MDHHS’s research. Within three months, the state received dozens of CON applications to build new nursing homes and expand existing facilities—estimated at over \$630 million in new health care investment.³⁰ Then, suddenly, the Commission arbitrarily reduced the projected need by nearly ten-fold at the urging of existing nursing home providers.³¹ About 4/5 of the applications were subsequently disapproved or withdrawn,³² denying health care access to thousands of people that the market, MDHHS, and providers predicted would need it. In other words, the latent marginal supply of nursing home beds in Michigan in 2019 was at least ten times larger than the CON-restricted marginal supply.³³

CON Unnecessarily Causes Dangerous Delays and Shortages

Michigan suffers from a dire shortage of psychiatric care beds, especially for children, adolescents, and the elderly. When the psychiatric bed review standards came up for discussion at a CON Commission meeting in 2020, one commissioner asked if a change in the standards could result in the overabundance of psychiatric care beds. The Chair of the Commission at the time responded no, explaining, “And so especially with psych, [providers] don’t want to overbuild because

²⁹ KEVIN SCHMIDT & THOMAS KIMBRELL, PERMISSION TO CARE: HOW CERTIFICATE OF NEED LAWS HARM PATIENTS AND STIFLE HEALTHCARE INNOVATION, AMS. FOR PROSPERITY FOUND. (Oct. 2021), <https://americansforprosperity.org/wp-content/uploads/2023/11/Permission-to-Care-AFPE-CON-report-Oct-2021.pdf>.

³⁰ *Id.*

³¹ Michigan Dept. of Health and Human Services Certificate of Need Comm’n, Commission Meeting Transcript, Sept. 19, 2019, https://www.michigan.gov/documents/mdhhs/9.19.19_CON_Commission_Transcript_667476_7.pdf.

³² *Supra* note 29.

³³ Thomas Kimbrell & Kevin Schmidt, *Permission to Care: An Analysis of Certificate-of-Need Application Data in Seven States* (Ams for Prosperity Found. Working Paper, May 2024), https://americansforprosperityfoundation.org/wp-content/uploads/2024/05/Kimbrell_Schmidt_CON_PermissionToCare.pdf.

then [they] have a built in [sic] expense and if [they] don't have the patients to fill it, that's not a good situation economically or patient carewise.”³⁴

In other words, the Chairperson acknowledged both that CON restrictions are not necessary to balance the supply of psychiatric care beds and that providers respond rationally to market signals and patient needs when unrestricted. And this is true for all health care services in Michigan. Meanwhile, children across the state, some with severe and dangerous mental health disorders, were forced to wait “stacked up” for days to weeks in emergency rooms for psychiatric care beds to become available.³⁵

Conclusion

CON acts as a costly regulatory barrier to entry to health care markets. Red tape and incumbent gatekeeping discourage providers from offering low-cost, high-quality healthcare. MDHHS should seek to deregulate the CON Review Standards to the furthest extent allowed by law to facilitate the development and deployment of abundant and affordable health care in Michigan.

Respectfully Submitted,

/s/

Tim Golding
State Director
Americans for Prosperity – Michigan

Sonny Koch
Legislative Liaison
Americans for Prosperity – Michigan

Thomas Kimbrell
Investigative Analyst
Americans for Prosperity Foundation

Sofia Hamilton
Policy Analyst
Americans for Prosperity

³⁴ Michigan Dept. of Health and Human Services Certificate of Need Comm’n, *Commission Meeting Transcript*, Dec. 10, 2020, https://www.michigan.gov/documents/mdhhs/12.10.20_Commission_Transcript_712174_7.pdf.

³⁵ Ross Jones, *Kids ‘stack up’ in Michigan ERs as hospitals resist adding 100+ needed psychiatric beds*, WXYZ DETROIT, Jun. 14, 2021, <https://www.wxyz.com/news/local-news/investigations/kids-stack-up-in-michigan-ers-as-hospitals-resist-adding-100-needed-psychiatric-beds>.