

# FAST FACTS



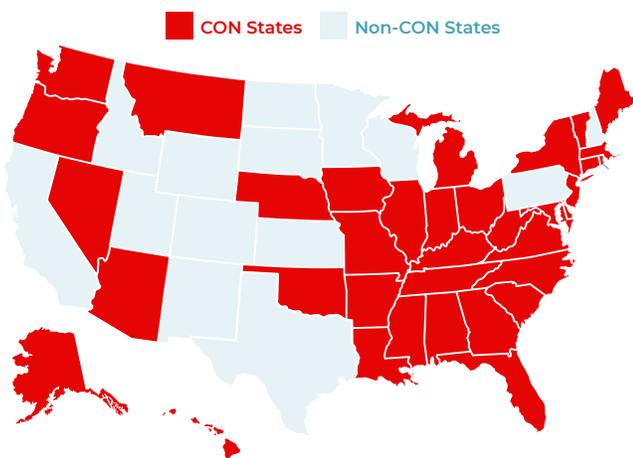
## CERTIFICATE OF NEED (CON)



**PALMETTO  
PROMISE**  
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Since 1971, South Carolina has been among the states that have restricted supply of healthcare services through Certificate of Need, or CON, laws. Rather than market demand determining the supply, under CON laws, clinicians and medical facilities must seek approval from the state before purchasing or expanding services they provide to patients. This is due to the mistaken belief that regulations requiring proof of the *need* for a medical service before its established would somehow reduce or control healthcare costs.

Yet, South Carolina and 34 other states, along with the District of Columbia, have continued to impose and expand upon their CON law programs.



### WHERE DOES SOUTH CAROLINA STAND?

South Carolina's CON program is tied for the ninth most restrictive in the United States.

#### TOP TEN MOST RESTRICTIVE CON STATES (by number of services that require a CON)



Source: Mercatus Center, Produced by Christopher Koopman, Anne Philpot, and Gregory Burns, September 27, 2016.

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### WHY REPEAL CON?

- Higher Costs**  
 The Mercatus Center calculates that per-capita healthcare spending in South Carolina is \$200 higher because of CON laws and spending on physicians is \$69 higher than necessary.
- Less Access**  
 Compared to CON states, non-CON states have more hospitals, including more rural hospitals.
- Lower Quality**  
 Data from Mercatus also suggests there would be a decrease in mortality rates for heart attacks, heart failure, and pneumonia in South Carolina without CON laws.
- Lower Utilization Rates**  
 Without CON laws in place, Mercatus estimates that South Carolina would see a 36% increase in utilization of MRI scans and Positron Emission Tomography (PET) utilization rates would double.

### EXAMPLE - CON'S NEGATIVE IMPACT

The Roper St. Francis Berkeley Hospital (shown here under construction) was delayed for nearly 10 years due to CON litigation. MUSC's planned Berkeley community hospital is now under fire as well.



## TRUMP AND OBAMA ADMINISTRATIONS AGREE ON THIS: REPEAL SC CON LAWS

### 2015 Obama Administration Report:

*“CON laws, when first enacted, had the laudable goals of reducing health care costs and improving access to care. However, after considerable experience, it is now apparent that CON laws can prevent the efficient functioning of health care markets... For these reasons... the Agencies historically have suggested that states consider repeal or retrenchment of their CON laws, and in this case, respectfully suggest that South Carolina repeal its CON laws.”*

Source: Joint Statement of the Federal Trade Commission and the Antitrust Division of the US Department of Justice on Certificate of Needs Laws and South Carolina House Bill 3250, January 11, 2016.

### 2018 Trump Administration Report:

Secretaries Alex Azar, Steven Mnuchin, and Alexander Acosta accused states of holding back innovation in health care laws.

*“Available evidence suggests that CON laws have failed to produce cost savings, higher quality healthcare, or greater access to care, whether in underserved communities or in underserved areas.”*

Source: “Reforming America’s Healthcare System Through Choice and Competition” U.S. Department of Health and Human Services, U.S. Department of the Treasury, U.S. Department of Labor, November 30, 2018



## COMMON QUESTIONS

***What are these laws and why do you think they need reform—aren’t they meant to protect patients and providers anyway?***

**No.** Thirty-five states, including South Carolina, currently use CON laws to purportedly “slow the growth of healthcare prices, promote consolidation of healthcare providers, and limit duplication of services.” These states require agency approval for a wide range of expenditures, including the construction of new hospital bed space, purchase of additional medical technology, or expanding services or medical procedures. CON laws give inappropriate influence to established providers during the vetting process. When a company seeks to enter a new market or expand in an existing market, industry incumbents often use the CON process to block potential competition. Recent studies have shown CON laws fail to achieve many of their stated goals and have instead reduced the availability of healthcare services. Since 1971, South Carolina has been among the states that restrict the supply of healthcare in this way. Of the 34 devices and services subject to CON throughout America, South Carolina restricts 22—ranging from ambulatory service centers to hospice to psychiatric services—requiring a CON from the state before the device may be purchased or the

service offered. In fact, our state has the ninth-most restrictive CON laws in the nation. (Fifteen states either have no CON laws or their CON laws are not in effect. In addition, Arizona is typically not counted as a CON state, but is included because it is the only state to regulate ground ambulance services.)

***If we repeal or reduce certificate of need law requirements, won’t we inhibit the ability for hospitals to provide indigent care?***

**No.** While CON laws significantly reduce available healthcare services for everyone, they do not lead to an increase in care for the needy. Furthermore, there is no evidence to suggest that indigent care in the U.S. has increased as a result of implementing CON laws.

***Would repealing CON laws benefit all patients regardless of insurance status, location, or current health?***

**Yes!** Evidence demonstrates CON laws do not achieve their intended outcomes, but rather decrease the supply and availability of healthcare services for everyone, especially the poor. By lifting these restrictions, we can allow new providers to begin operating and increase access for South Carolinians across the state.

Thankfully, Rep. Nancy Mace (R-Daniel Island) and House Ways and Means Committee Chairman Rep. Murrell Smith (R-Sumter) have renewed the effort to bring an end to CON laws in South Carolina. H.3823 (2019), which has earned 30 co-sponsors, takes an aggressive approach, removing CON from the state code entirely.

Reps. Mace and Smith have chosen to address the CON issue in the face of significant opposition from existing providers. We salute their courage and their belief that the free market, not the government, should determine who provides which healthcare services in South Carolina.