

# Old Regulations, Bureaucracy, and Protectionism

## How Government Reduces Access To Healthcare Through Certificate-of-Need Laws

Innovation in healthcare has led to dramatically better health outcomes. The development of antibiotics, new detection tests, and treatment techniques over the last 150 years has not only dramatically improved the average lifespan, but also the quality of life for billions of humans on Earth. Take someone with diabetes, for example. In exactly 100 years we have gone from the discovery of insulin as a treatment to Continuous Glucose Monitoring devices today.

Despite these advancements, many argue that the American healthcare system is broken. To fix this system, our first goal should be implementing policies that create more access to healthcare that is lower in cost and

higher in quality. Health insurance serves little value when there are no providers in your area who can deliver the care you need. We must embrace a market approach in healthcare that leads to more access, better care, and lower costs.

While a lot of healthcare policy is set at the federal level, state policymakers have options if they are looking to lower prices and increase access to quality care—first and foremost reducing (or preferably eliminating) all certificate-of-need (CON) laws. Under a CON law, a healthcare provider must get the government's permission to open or expand its business, or in some cases, even to add new machines.



For example, a small medical practice that wants to help its patients save time and money with its own MRI machine has to prove to the government that the area it is located in needs one. But competing facilities can easily hinder those efforts to acquire that machine. CON laws have little to do with ensuring quality, as training and licensing requirements already exist to serve that purpose.

Congress originally pushed CON laws on the states in 1974, believing policymakers would control costs by making sure facilities and companies didn't purchase unnecessary equipment and then go belly-up.<sup>1</sup> Naturally, restricting the supply had the opposite effect, and in a rare moment of learning from its mistakes, Congress repealed the mandate in 1986.<sup>2</sup> Yet to this day, Tennessee and 38 other states still have numerous CON laws or similar regulations on the books.<sup>3</sup> And these laws have a real impact on Tennesseans. Research shows that if Tennessee repealed all CONs there would be 63 more hospitals in the state (including 25 more in rural areas), residents would save \$223 per year in healthcare costs, and there would be fewer deaths from post-surgical complications.<sup>4</sup>

However, these are not the only effects that eliminating CON laws would have. CON laws deprive

Tennesseans of access from essential services and the economic benefits of the investment of capital in new facilities and medical equipment. Using publicly available data, we identified 158 applications that have been denied under CON laws since 2000. Based on the proposed project's home county, more than 5.5 million Tennesseans were denied increased access to healthcare services. These projects represented more than \$733.6 million in direct investment into Tennessee's local communities. Adding insult to injury, all but 14 of the denied applications originated in areas now designated by the federal government as counties that are either a whole or partially Medically Underserved Area (MUA) or have Medically Underserved Populations (MUPs).<sup>5</sup> While this designation is meant to designate shortages in primary care access, it stands to reason that if an area has a need for basic primary care services, more specialized services that are often limited by CONs would also be in short supply. Governments should not restrict access to care in areas deemed lacking in sufficient providers.



1 Matthew D. Mitchell and Christopher Koopman, "40 Years of Certificate-of-Need Laws Across America." Mercatus Center. September 27, 2016. <https://www.mercatus.org/publications/corporate-welfare/40-years-certificate-need-laws-across-america>.

2 Ibid.

3 Matthew D. Mitchell, Anne Philpot, and Jessica McBirney, "The State of Certificate-Of-Need Laws in 2020." Mercatus Center. February 19, 2021. <https://www.mercatus.org/publications/healthcare/con-laws-2020-about-update>.

4 "Certificate-of-Need Laws: Tennessee State Profile." Mercatus Center. 2020. [https://www.mercatus.org/system/files/tennessee\\_constateprofile\\_2020.pdf](https://www.mercatus.org/system/files/tennessee_constateprofile_2020.pdf).

5 "Federal Shortage Areas." Tennessee Department of Health. <https://www.tn.gov/health/health-program-areas/rural-health/federal-shortage-areas.html>.

These onerous restrictions have led to a decline in the number of CON applications by healthcare providers over time. In fact, despite being a rapidly growing state, there has been a 70 percent decline in the number of applications from 2004 to 2021.

Why is this so detrimental? In recent years, Tennessee has become a global tourist destination and magnet for people seeking to relocate. The state’s relatively low cost of living, great music, world-class restaurants, zero income tax, outdoor recreation, and natural beauty make it hugely desirable. And it isn’t just average Americans looking to relocate to Tennessee, but businesses and job creators as well. Companies like Amazon, ICEE, Ford, Oracle, and Smith & Wesson, just to name a few,

have relocated or expanded here. Since CON laws were first adopted, Tennessee has transformed from a sleepy Southern state known for country music to a national hub for shipping and logistics, auto and other advanced manufacturing, and a growing tech sector.

However, Tennessee’s place as an economic leader is in danger if Tennesseans are unable to live healthy lives and access the care they need. Just as growing communities make investments in infrastructure, healthcare providers should be free to grow and invest in services and facilities to meet the needs of a growing community but are currently prohibited from doing so due to CON laws.

### The Number of Submitted CON Applications by Year (2000-2022)

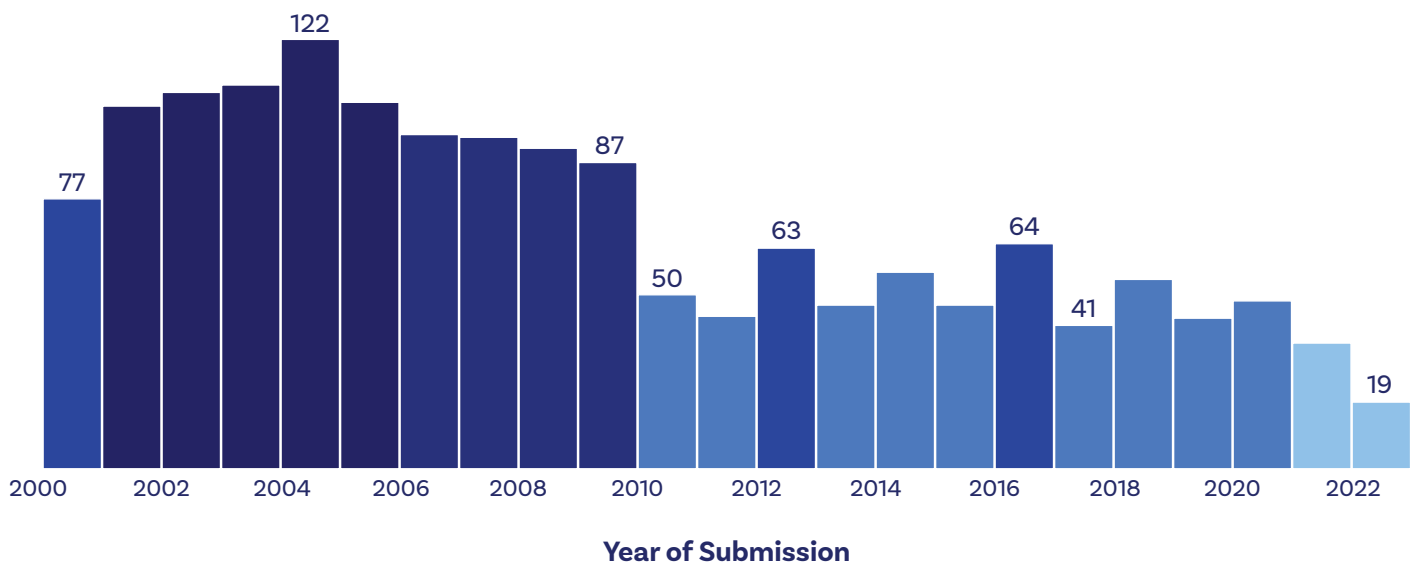


Figure 1. Since the peak in 2004, there has been more than a 70 percent reduction in the number of healthcare applications.

Note: 2022 data was last updated as of May 2022 and does not represent a full year and may be underreported.

With so much of the nation's healthcare policy set at the federal level, there is only so much the state can do. There's not one silver-bullet policy that will lower costs and provide high-quality care to every Tennessean. However, state policymakers have an opportunity and responsibility to remove all barriers to more access and better care. CON laws have been proven to restrict supply and drive-up prices while quality remains stagnant. Here, we have shown how CONs also deprive millions of people of additional access to care and deprive communities of hundreds of millions of dollars in economic benefits.

With healthcare as expensive and complex as it is, the government shouldn't arbitrarily limit access for patients by protecting current providers from competition. Reducing the costs and burden of applying for a CON, preventing denials in areas deemed to have a lack of access to care—or better yet, eliminating CON laws outright—would be a simple and cost-effective way of making our healthcare system cheaper, more efficient, and more patient-centered.

**If Congress realized  
CONs were a bad idea,  
what's our rationale  
for keeping them  
alive in Tennessee?**





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