

## CERTIFICATE-OF-NEED LAWS



# MONTANA STATE PROFILE

Certificate-of-need (CON) laws require healthcare providers to obtain permission before they open or expand their practices or purchase certain devices or new technologies. Applicants must prove that the community “needs” the new or expanded service, and existing providers are invited to challenge would-be competitors’ applications. CON laws have persisted in spite of mounting evidence from health economists, regulatory economists, and antitrust lawyers showing that these laws fail to achieve their intended goals. The following charts are based on studies comparing outcomes in states that have CON laws with outcomes in those that do not. These comparisons account for socioeconomic differences and differences in the underlying health of the populations across states. The studies give some insight into what is likely to happen in a Montana without CON laws.



### HEALTHCARE SERVICES THAT REQUIRE A CON IN MONTANA AS OF JANUARY 2020

Ambulatory Surgical Centers (ASCs)  
Home Health

Intermediate Care Facilities (ICFs) for Individuals with Intellectual Disabilities  
Long-Term Acute Care (LTAC)

Nursing Home Beds/  
Long-Term Care Beds  
Psychiatric Services  
Rehabilitation

Substance/Drug Abuse  
Swing Beds

# SPENDING

Research finds that CON laws are associated with higher healthcare spending per capita and higher physician spending per capita.

## Estimated changes in annual per capita healthcare spending patterns in Montana without CON

### TOTAL HEALTHCARE SPENDING



### PHYSICIAN SPENDING

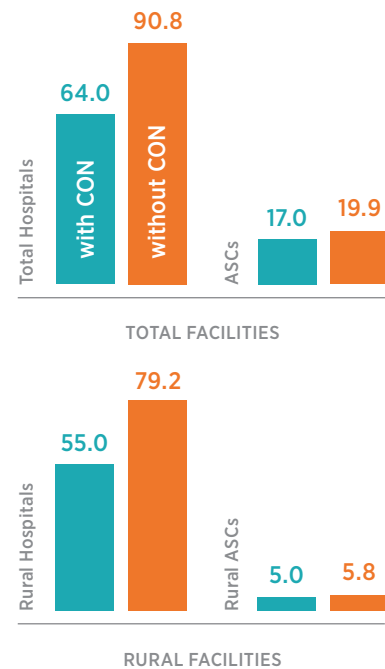


# ACCESS

Comparing rural areas in CON states with rural areas in non-CON states, research finds that the presence of a CON program is associated with fewer rural hospitals. A subset of CON states specifically regulate the entry of ambulatory surgical centers (ASCs), which provide healthcare services and compete with traditional hospitals. These states have fewer rural ASCs.

Research also finds that states with CON programs have fewer hospitals in general (in rural and nonrural areas alike), and states with ASC-specific CON regulations have fewer ASCs in general.

## Estimated changes in access to healthcare facilities in Montana without CON

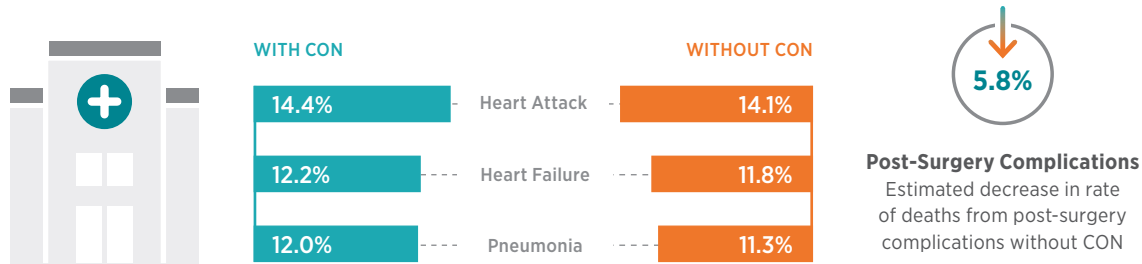


Sources: James Bailey, "Can Health Spending Be Reined In through Supply Constraints? An Evaluation of Certificate-of-Need Laws" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Thomas Stratmann and Christopher Koopman, "Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

# QUALITY

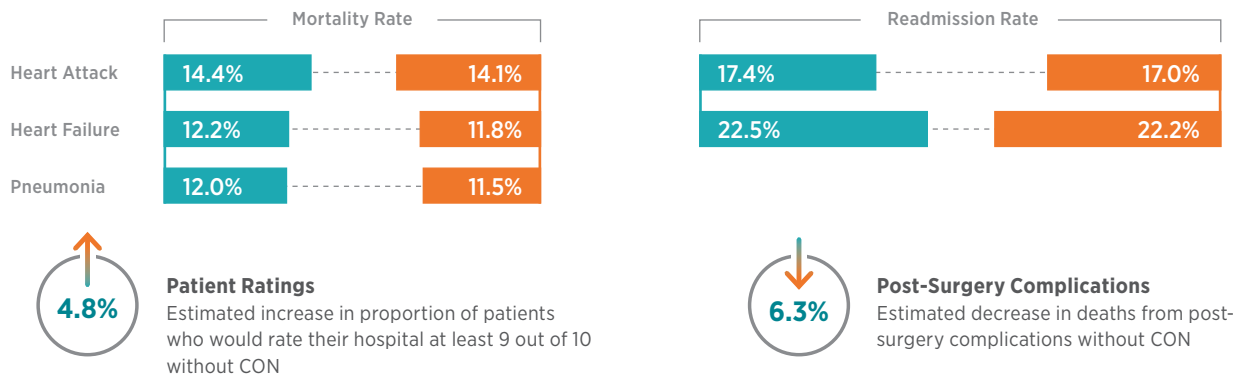
Supporters of CON suggest that these regulations positively impact healthcare quality, but research finds that the quality of hospital care in CON states is not systematically higher than the quality in non-CON states. In fact, mortality rates for pneumonia, heart failure, and heart attacks, as well as patient deaths from serious complications after surgery, are statistically significantly higher in hospitals in states with at least one CON regulation.

## Estimated changes in Montana healthcare quality indicators



Montana is one of 35 states with four or more CON restrictions. The effects of CON regulations may be cumulative, meaning states with more entry restrictions may experience larger quality differences than states with fewer restrictions. Research finds that states with four or more CON laws have systematically lower-quality hospitals than non-CON states. The effect is evident across other quality indicators, including the share of patients surveyed giving their hospital the highest overall quality rating, heart failure readmission rate, and heart attack readmission rate.

## Estimated changes in Montana healthcare quality indicators



Findings on heart failure readmission rates, heart attack readmission rates, and the percentage of patients giving their hospital a 9 out of 10 or 10 out of 10 overall rating were statistically significant only in the restricted sample of states that regulate four or more services with certificate of need.

This study uses an identification strategy that exploits the fact that, on occasion, a local healthcare market is divided between two states, one with a CON law and the other without. Four is the median number of CON laws for CON states in this subsample.

The survey referred to is the Hospital Consumer Assessment of Healthcare Providers and Systems survey. It was developed by the Centers for Medicare and Medicaid Services in partnership with the Agency for Healthcare Research and Quality, and it is based on a standardized instrument and data collection methodology that allows for cross-hospital comparisons of patients' experiences related to different aspects of care. "Highest overall quality rating" is defined as a 9 out of 10 or 10 out of 10 rating on the survey.

Some states have added CON requirements for particular services since these analyses were conducted; the states with such new requirements are not visualized. For the latest information on which states regulate which procedures through CON, see Matthew D. Mitchell, Anne Philpot, and Jessica McBirney, "The State of Certificate-of-Need Laws in 2020," Mercatus Center at George Mason University, November 11, 2020.

Source: Thomas Stratmann and David Wille, "Certificate-of-Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).