

WHITE PAPER

CERTIFICATE OF NEED (CON): THE EVOLVING LANDSCAPE

IS YOUR HEALTH SYSTEM PREPARED?



Aligning Strategy, Driving Growth
Through Healthcare Real Estate



RealtyTrustGroup.com

CERTIFICATE OF NEED (CON): THE EVOLVING LANDSCAPE

IS YOUR HEALTH SYSTEM PREPARED?

Table of Contents

1. Brief History of CON Legislation
2. Current State of CON Laws
3. Arguments For and Against Repeal
4. Impact of Recent CON Reform
5. Preparing for the Future

The healthcare industry is undergoing significant changes, with Certificate of Need (CON) laws at the center of a heated debate in states across the map. As states reconsider the necessity and impact of these regulations, healthcare executives must prepare for potential shifts that could drastically alter the competitive environment. This white paper explores the history and purpose of CON legislation, the current state of CON laws across the United States, arguments for and against their repeal, and a brief analysis of the effects of CON legislation changes in recent years. Finally, we provide strategic guidance for health systems navigating this shifting environment.

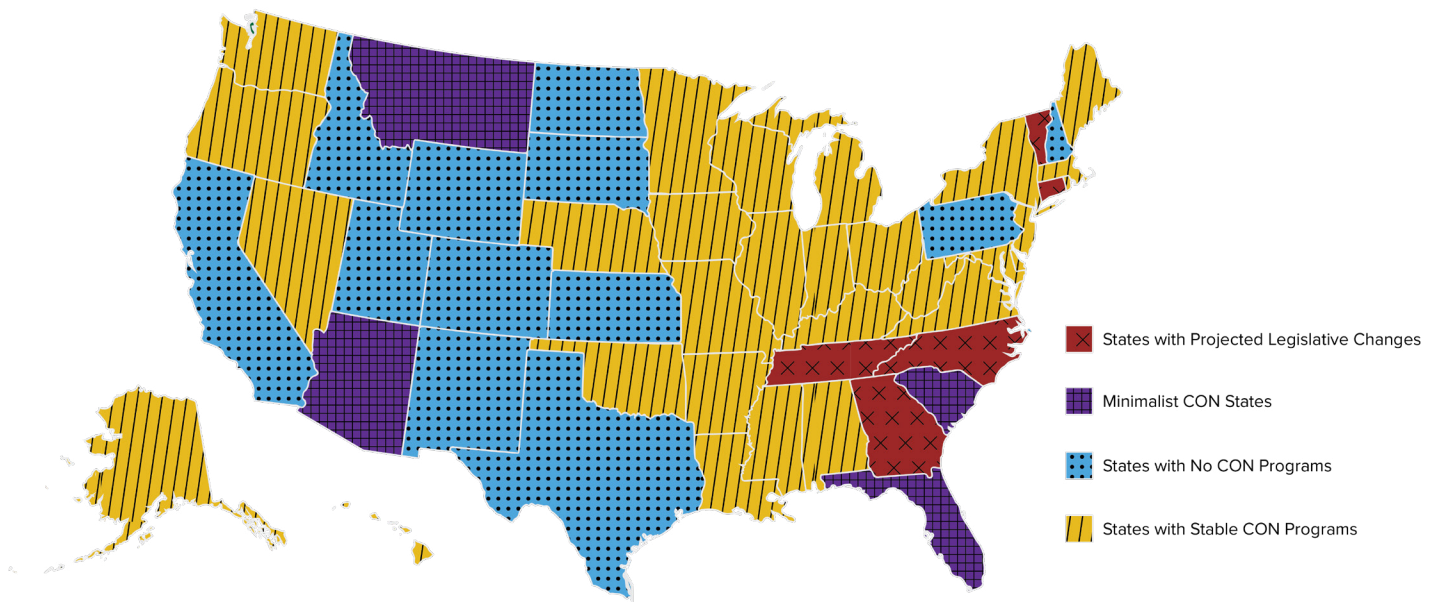
Brief History of CON Legislation

Why Does CON Exist?

Certificate of Need (CON) laws were introduced to control healthcare costs, prevent the unnecessary duplication of healthcare facilities and services, and ensure equitable access to care. The first CON law was enacted in New York in 1964, inspired by similar regulations in the transportation sector. The federal government encouraged the adoption of CON laws through the National Health Planning and Resources Development Act of 1974, which tied federal funding to the implementation of state-level CON programs. By the early 1980's, nearly all states had adopted some form of CON regulation.

Current State of CON Laws

Status of Certificate of Need Programs by State (2025)



States with Projected Legislative Changes

Across the United States, several states are on the brink of significant shifts in their CON programs. North Carolina, Connecticut, Tennessee, Vermont, and Georgia are among the states where upcoming legislative changes could dramatically alter their CON oversight. These impending adjustments reflect a broader trend towards reevaluating the necessity and impact of CON regulations, signaling potential upheavals in how healthcare facilities are planned and developed in these regions.

Minimalist CON States

In addition to those states poised for change, some states have already significantly scaled back their CON programs. Montana, Florida, South Carolina, and Arizona have reduced their regulatory oversight to a minimal level, focusing on three or less critical healthcare service categories. These reductions represent a move towards deregulation while retaining some degree of state control over essential services.

States with No CON Programs

Further illustrating the shift away from stringent CON oversight, twelve states – including Texas, California, Colorado, Kansas - have completely repealed their CON programs.

States with Stable CON Programs

In contrast to the widespread changes, a number of states continue to uphold comprehensive and stable CON programs. These states, including New York, Illinois, and Virginia, maintain rigorous regulatory frameworks covering various healthcare services and facilities. However, as more states reevaluate and adjust their CON laws, the stability in these regions may be increasingly seen as the exception rather than the rule.

Arguments For and Against CON Repeal

ARGUMENTS FOR REPEAL

Increased Competition

Proponents argue that repealing CON laws fosters competition, leading to lower healthcare costs and improved quality of care.

Enhanced Access

Supporters of the repeal believe that it will lead to the establishment of more healthcare facilities, improving access to care.

Innovation

Advocates for such reform argue that reduced regulatory barriers encourage innovation in healthcare delivery and services.

ARGUMENTS AGAINST REPEAL

Market Stability

Opponents argue that CON laws help maintain stability in the healthcare market by preventing overbuilding and ensuring that resources are allocated based on community needs.

Protection of Vulnerable Facilities

Critics argue that CON laws protect small, community-based, and not-for-profit hospitals from being outcompeted by larger, well-capitalized, for-profit health systems.

Quality Control

Those against the repeal believe that CON laws can help maintain high standards of care in specialized services by limiting the number of providers.

Impact of Recent CON Reform

Rapid Facility Expansion and Increased Market Competition

The repeal or easing of CON regulations has led to significant hospital-building booms in several states. States like Florida and South Carolina have seen rapid expansion in healthcare facilities, particularly in urban areas where the demand for services is highest. Larger health systems, particularly for-profit corporations, have expanded their portfolios, investing in ambulatory facilities such as freestanding emergency departments (FSEDs), ambulatory surgical centers (ASCs), urgent care centers, and imaging centers.



Preparing for the Future

Building on the experiences of states that have significantly repealed their CON programs, it is clear that the effects of these regulatory changes are profound and far-reaching. As healthcare systems anticipate and adapt to such shifts, strategic market, facility, and capital planning become essential. Here are four real estate and growth related strategies healthcare providers to consider:

1

Emphasis on Market Planning and Gap / Opportunity Analysis

As CON regulations are relaxed or repealed, healthcare systems must prioritize market planning by identifying market gaps and potential high-growth areas. Identifying strategic locations through market and demographic analysis allows systems to proactively identify and evaluate key locations for future facility and service expansion.

2

Proactive Real Estate Acquisition and Adaptive Real Estate Controls

In a competitive and deregulated market, healthcare systems must adopt a comprehensive “land banking” and facility acquisition strategy to secure long-term control over key properties in strategic market locations. In addition to traditional space leases and outright acquisitions, providers may leverage other tools like ground leases, purchase options and rights of first refusal to provide additional control and flexibility, allowing systems to secure future expansion opportunities without immediate financial commitments. Additionally, incorporating clauses in real estate contracts that permit additions or expansions of existing facilities can ensure that healthcare providers can quickly respond to regulatory changes and market demands. Implementing restrictive covenants can further protect strategic locations by preventing competitors from establishing nearby facilities, thereby preserving market share and investment value.

3

Prototype Facility Development for Rapid Deployment

Speed to market is essential in a deregulated environment. Developing standardized facility prototypes—such as “doc in a box” retail strategies, urgent care centers, ambulatory surgical centers, and freestanding emergency departments—enables healthcare systems to quickly deploy new facilities across various locations. These prototypes should be adaptable to different site conditions and local jurisdictions, reducing the time and costs associated with planning, approvals, and construction. Standardized medical equipment packages and staffing models further accelerate the timeline to facility opening and first patient day.

4

Strategic Capital Planning and Development Partnerships

To support rapid expansion and secure prime real estate, healthcare systems should proactively develop strategic capital plans and evaluate partnerships with third-party capital providers, developers, project managers, and related vendors / resources. These partnerships provide the financial and resource capacity and industry expertise needed for accelerated property acquisition, due diligence, planning, and development. Collaborations with third-party partners ensure systems can act swiftly in response to emerging opportunities, while joint ventures with third-party capital partners and developers can leverage external capital to facilitate service expansions.

Conclusion

The changes to CON legislation present challenges and opportunities for healthcare systems. By understanding the potential impacts of CON repeal and preparing for future changes, healthcare executives can navigate this complex environment and ensure their organizations remain competitive and financially viable. Proactive planning, strategic investments, and a focus on maintaining high-quality care will be essential for success in this dynamic landscape.

About Realty Trust Group

Realty Trust Group, LLC (RTG) is a national leader in providing comprehensive real estate solutions for the healthcare industry. Since 1998, we have worked alongside healthcare leaders to leverage real estate as a strategic asset helping to save money, manage risks, create physician alignment, and increase market share.

At RTG we lead with an advisory-first approach, delivering innovative strategies and operational best practices that help healthcare leaders optimize their real estate portfolios. Our services span advisory, development, transactions, operations, and regulatory compliance, allowing us to tailor solutions for specific projects or provide long-term portfolio management.

What sets us apart is our ability to combine objective advice with scalable implementation capabilities. We don't offer one-size-fits-all solutions—instead, we provide customized, data-driven strategies that address the unique challenges and goals of each client. Fostering collaboration, our team of best-in-class professionals, creates exceptional client experiences that propel healthcare missions forward.

For more information about RTG, visit www.realtytrustgroup.com, [Facebook](#), [LinkedIn](#), [YouTube](#) or call 865.521.0630.

Writers and Contributors

Michael Honeycutt, CCIM, CRE, *Executive Vice President* and **Emily Trosclair**, *Legal Assistant*

For More Information:

Michael Honeycutt, CCIM, CRE, *Executive Vice President*
mhoneycutt@realtytrustgroup.com

Adam Luttrell, *Senior Vice President*
aluttrell@realtytrustgroup.com

865.521.0630
RealtyTrustGroup.com

Copyright Statement

No part of this document may be distributed, reproduced, or posted without express written permission of Realty Trust Group, other than for the following uses:

You may copy this document and its contents for personal use only. You may distribute quotes or content from this document to third parties in news articles, blogs, forums, or educational resources, provided you acknowledge Realty Trust Group as the source of the material. If distributed online or electronically, you must provide a working hyperlink to: <https://www.realtytrustgroup.com>.