



TOTAL SPECTRUM
Georgia

House Rural Development Council

Certificate of Need: The Pros and Cons of CON

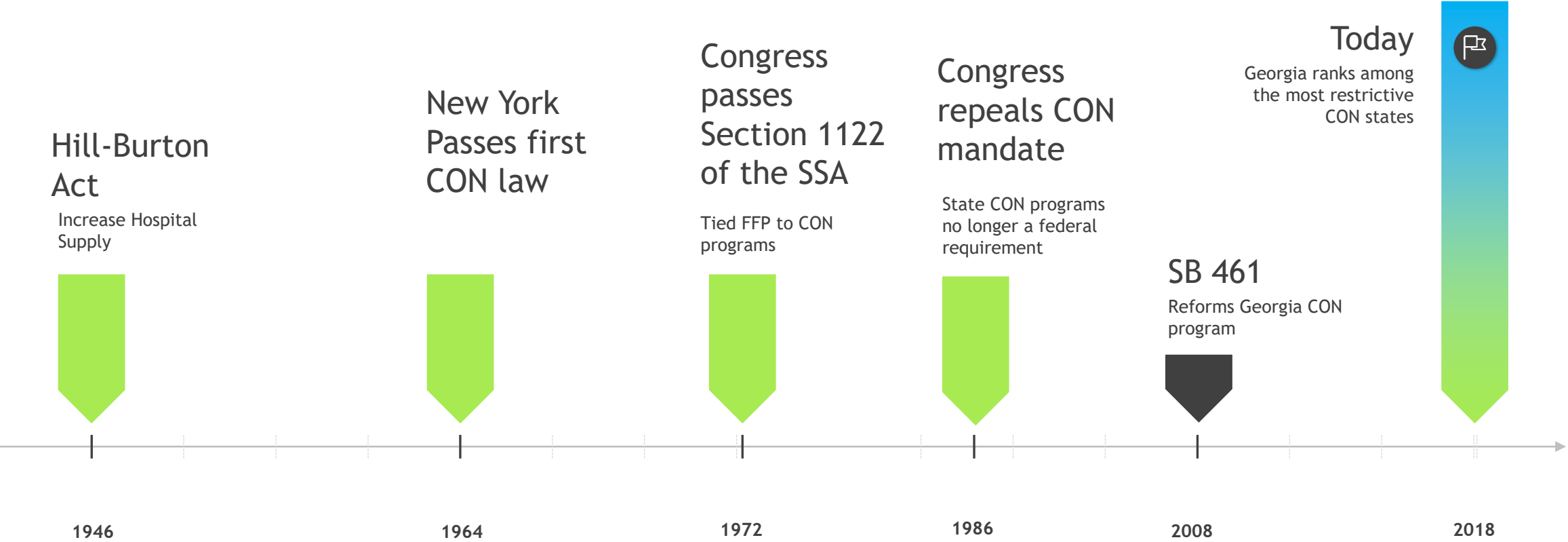
Jesse Weathington

Secretary of Health & Human Services Alex Azar, remarks to ALEC, 8/9/18, New Orleans

“This administration is deeply committed to taking on those problems where they exist in healthcare. The potential problems posed by market concentration were specifically mentioned in an executive order issued by President Trump last year regarding healthcare reform. I would urge all of you to take a look at how state and local regulations can be impeding healthcare competition, raising costs for American patients, and depriving them of choices.

- Regulations like **certificates of need** and scope of practice can have a legitimate purpose. But too often, these rules can be a significant barrier to new competition and lower-cost market disruptors.
- Fundamentally, when we wonder why American healthcare costs so much, why patients feel so disempowered, so often the answer is that government rules are standing in the way of necessary innovation. As we undertake our efforts to free up competition from the federal level, we hope all of you will examine what can be done in the states.”

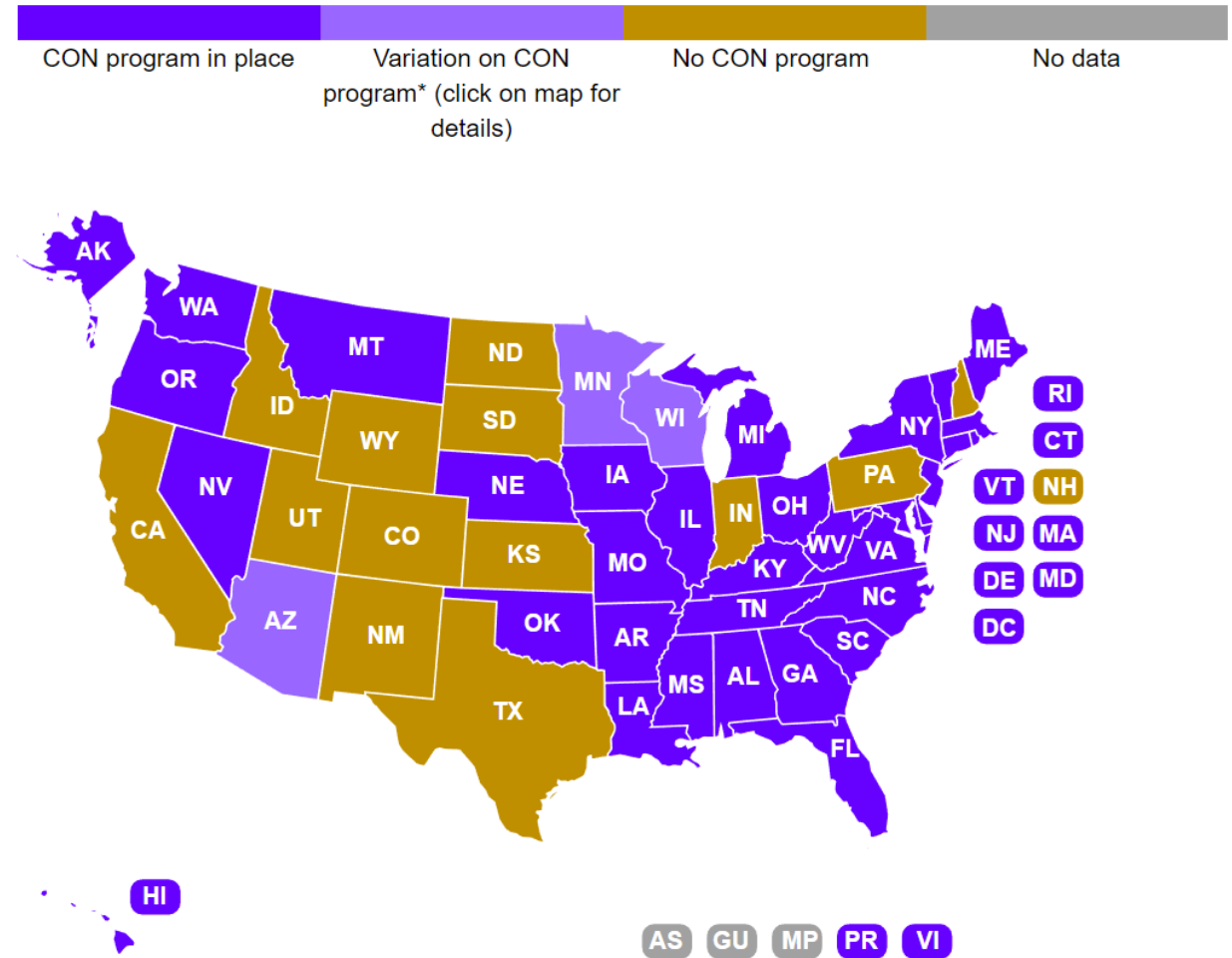
CON Timeline



CON Today

- 35 States have CON Programs
- 15 States have repealed CON
- Wide variation between state program need criteria.

CERTIFICATE OF NEED STATE LAWS



Source: NCSL, August 2016

State	Residential	Industrial	Commercial	Healthcare	Education	Government	Public Works	Energy	Manufacturing	Transportation	Food & Beverage	Chemical	Pharmaceutical	Biotechnology	Information Technology	Telecommunications	Financial Services	Insurance	Professional Services	Other	Facility	Equipment	Other Services
Alabama	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	100,000	2,000,000	Any amount
Alaska	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	1,000,000
Arizona	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000 (Masonry & Steel)	NA	NA
Connecticut	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA	NA	Any amount
Delaware	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	NA
District of Columbia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000,000	Any amount
Florida	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA	NA	* Not for Public
Georgia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Hawaii	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA	NA	Any amount
Illinois	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA	NA	Any amount
Indiana	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	1,000,000
Iowa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	NA
Kansas	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	NA
Kentucky	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Louisiana	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	NA	NA	NA (Not for Public)
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Massachusetts	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	NA
Michigan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Minnesota	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Mississippi	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Missouri	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Montana	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Nebraska	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Nevada	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
New Hampshire	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
New Jersey	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
New York	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
North Carolina	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Ohio	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Oklahoma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Oregon	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Rhode Island	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
South Carolina	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Tennessee	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Vermont	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Virginia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Washington	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
West Virginia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount
Wisconsin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000,000	1,000,000	Any amount

Source: AIAA, 2010.

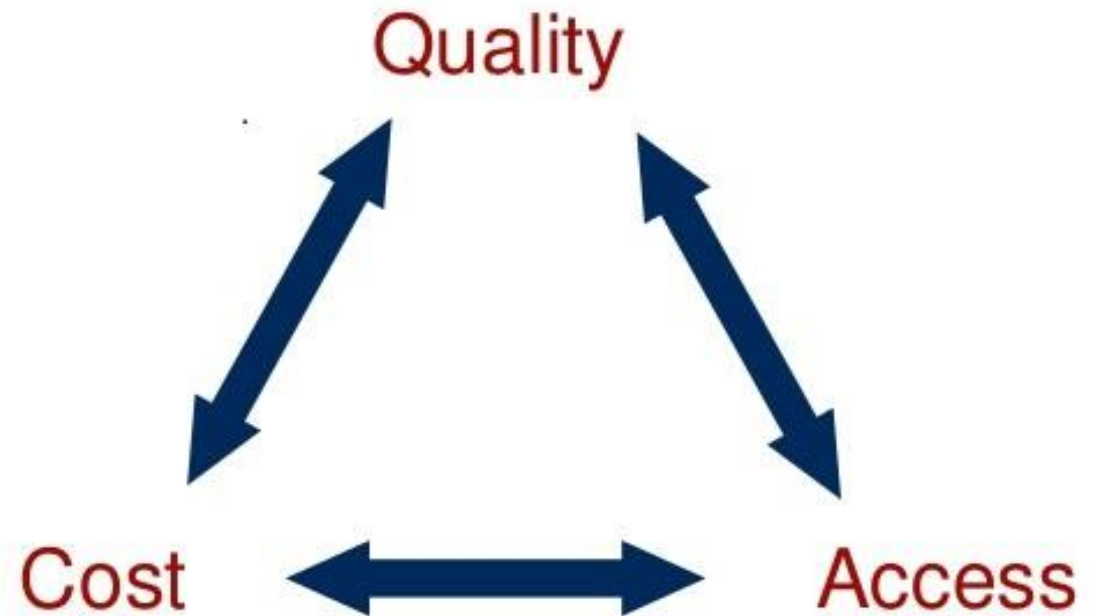
* This chart detailed information refer to the information on the individual state's page Section 1 as well as the state's website.

** Many office buildings and IT hardware may be subject to CCR regulation in some specific circumstances.

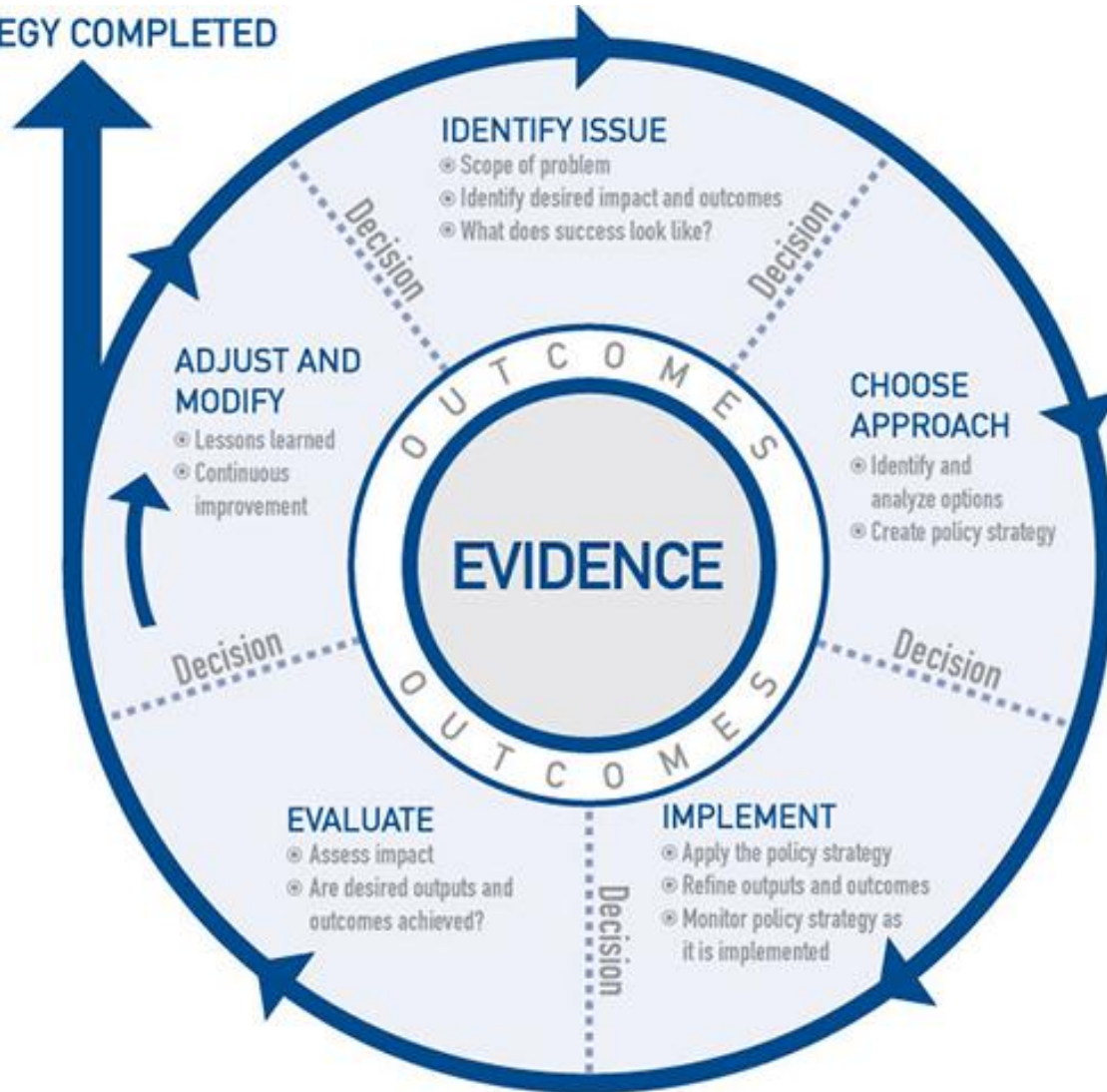
Health Care Triple Aim – The Iron Triangle

- Moving towards one goal involves trade-offs with other competing goals.

Health Care's Iron Triangle



STRATEGY COMPLETED



Policy Evaluation Process

- Would we pass this law today?
- Does the policy serve the purposes it was intended to serve?
- Is the policy the least distortionary, least restrictive means to accomplish the public policy goal?

The Pros of CON

- *“The fundamental premise of the CON law is that increasing health care costs may be controlled by governmental restrictions on the unnecessary duplication of medical facilities.”*
-NC Division of Health Service Regulation website.
- *Roemer Effect* - Healthcare does not, and cannot, exist in a free market. CON is necessary to prevent hospitals or other providers of regulated services from over expanding and passing these capital costs on to healthcare consumers.

Cost

- CON's cost control effectiveness is verifiable. The overwhelming conclusion by healthcare researchers, the FTC and DOJ, and comparative analyses of state programs is that Certificate of Need has been ineffective at best in controlling costs.
- Admirably, CON proponents in Georgia are not really claiming it controls costs.
- By keeping competition at a minimum or only between incumbent firms, the incentive to control costs is reduced. Market concentration results in higher costs to insurers, the government, and consumers.

Quality

- There is mixed evidence that CON supports higher quality services..
 - For example, patient outcomes from complex surgeries benefit from repetition. The focused factory model of health care delivery supports this contention (do one thing exceptionally well many times).
 - Some new research challenges this contention and argues that CON has no positive or negative on quality.
 - Having high quality services is of questionable benefit if many citizens cannot access them due to distance, quotas, or lack of availability.
- Capital expenditure thresholds mean that some equipment purchases are determined based on getting under the cap rather than purchasing state-of-the-art equipment – ex “CON Buster” scanners, harming quality.

Access

- CON serves as a barrier to entry for non-incumbent firms, removing of the key elements of market competition – market entry for new competitors.
- Access for rural patients has been impaired even with CON in place.
- Innovation, disruption, and capital investment are impaired by CON regulations.

FTC Commissioner Maureen Olhausen

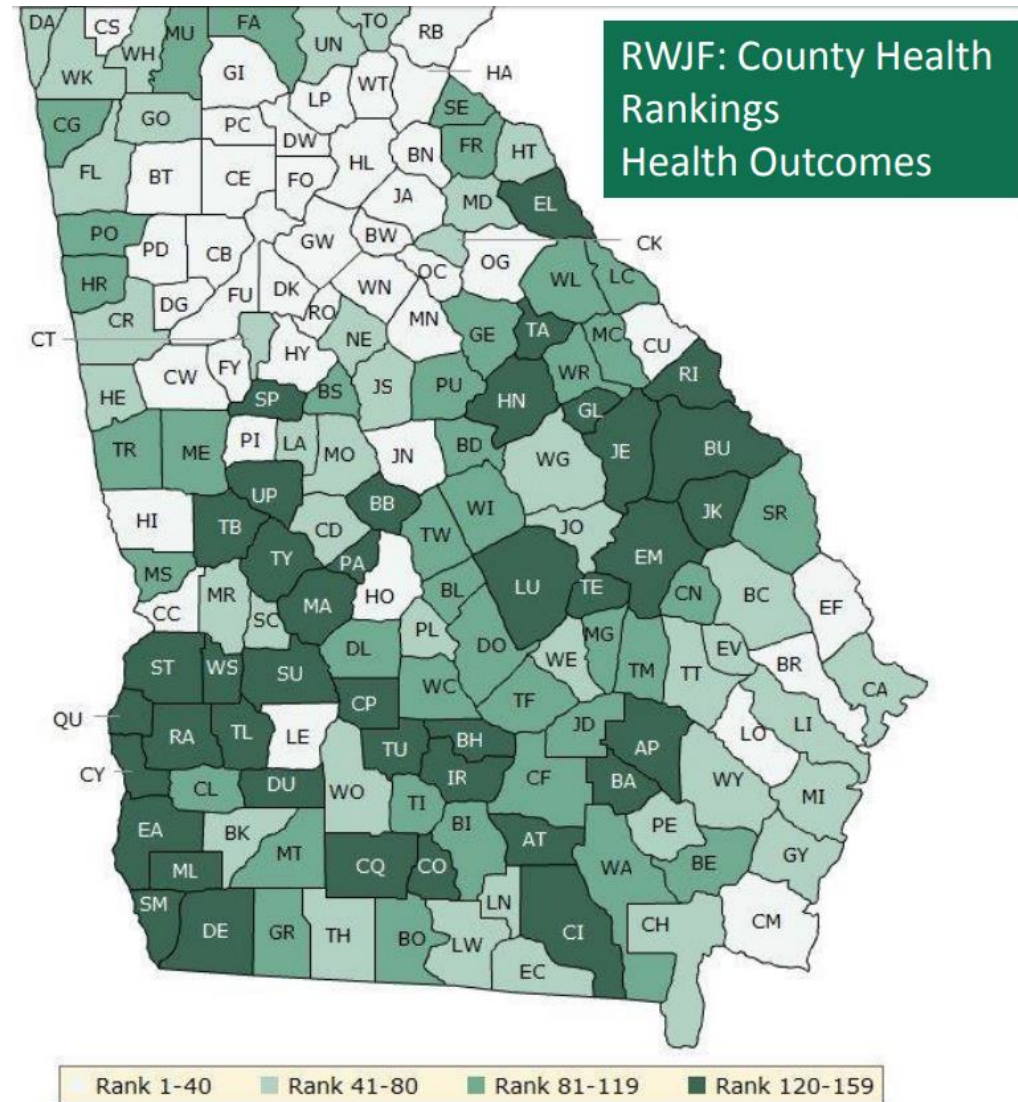
- “State certificate of need (CON) laws—which require state approval for new entry and expansions by health care providers—stand out as **an example of regulation that squelches the beneficial effects of competition in health care markets without delivering valuable public benefits in return.**”
- “In practice, CON laws funnel benefits of indeterminate size to some incumbent health care providers, often without any meaningful political oversight or public transparency. The **quality of the provider or the magnitude of the social benefits they provide to the community will not determine the size of this windfall.** In fact, there are good reasons to suspect that some of the least deserving providers may be benefiting the most from these laws.”

Costs of Rent Seeking

- Economic rents are an attempt to quantify the profit-taking in excess of what a producer would be able to generate above what a competitive market would allow them to capture.
- Another definition is when a third-party deprives one party access to transactional opportunities, allowing for the extraction of rent in excess of what the original parties would have been able to agree upon.
- Georgia was the only state with 2 of the Top 10 most expensive Insurance Exchange regions nationally. SW and South Georgia.
 - Due to health status & market concentration
 - In SOWEGA one system has 86% of the market share. 85% market share is considered by the FTC as a “merger to monopoly” and detrimental to consumers. This is why the FTC/DOJ Antitrust action was initiated.
 - By giving providers even greater market power than high capital costs and information asymmetry would naturally afford them by requiring CON, the ability of insurance carriers to negotiate group discounts is impaired.
- CON serves as an expensive delaying tactic, not a incentive to improve quality or innovate.

Two Georgias

- The fundamental conflict is that CON regulates a dynamic urban market and an ossified rural market simultaneously.
- The effect is to deny care options to the populated areas to prop up the rural provider base. This protects incumbent providers in the urban areas.
- What is the real risk of an ASC being built across the street from a dying hospital?
- The arguments for CON are really about protecting incumbents in wealthier areas from competition, using the threat to rural providers to prevent reform or repeal.



Options for CON Reform

- Maintain the Status Quo
 - Do Nothing, or
 - Evaluate other policy options
- Repeal OCGA 31-6
 - Enforce standards, quality through licensure & accreditation
 - Compensate incumbent providers
- Reform CON – similar approach to 2008 bill
 - Uncheck boxes on matrix
 - Raise capex/LNR thresholds



Political Considerations

- “Finance is a gun, politics is knowing when to pull the trigger.”
 - Mario Puzo
- Do we have to tolerate CON as a historical relic in the absence of political will?
- Move to issue Bonds to finance operations or non-clinical capital improvements.
 - Concern that this will drive municipal bankruptcies when bonds mature.
- Will more hospitals close if we repeal CON?
 - Yes, they will close anyway because there are not enough people to support them.
 - Rural hospitals are the “canary in the coalmine” of the rural economy.
 - While ACA Medicare Readmission penalties resulted in chronic financial distress, local factors are the acute cause of hospital closure.
- How can policymakers get better data to make decisions?
 - Increase transparency in health care services.
 - Harmonize reporting requires by adopting federal standards.
 - Adopt stringent community benefit standards and tie them to local needs assessed with other community stakeholders.