

Certificate of Need (CON) Laws

Background

Alabama State government has the power to determine whether a need exists for new medical facilities prior to construction. Once need is determined, the applicant organization is granted permission to begin a project. This approval is known as a "Certificate of Need" (CON).ⁱ

At present, 36 states—including Alabama—have some form of CON program. The program, which first appeared in 1964 in New York, was originally designed to help control the price of medical care.

The assumption with CON regulation is that excess capacity (in the form of overbuilding) directly results in health care price inflation. When a hospital cannot fill its beds, fixed costs must be met through higher charges for the beds that are used. Larger institutions have greater costs, so CON supporters say it makes sense to limit facilities to keep facilities at capacity to meet actual needs.

Little or no money saved: Since 1987, when states were set free from the federal requirement to have CON laws, numerous studies have examined the change in health care costs as states eliminated their laws.ⁱⁱ If CON truly controls prices, health care costs would rise when the laws are eliminated. However, this is not the case:

- In 1998, Duke University professors Christopher Conover and Frank Sloan found that CON restrictions led to higher costs and higher profits for existing providers. While CON laws led to a small reduction in acute care spending, they also led to a reduction in hospital bed supply and “higher costs per day and per admission, along with higher profits.” Overall, the study found no decrease in

ISSUE SNAPSHOT

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- per-capita health care spending that could be attributed to CON.
- An earlier study by Joyce Lanning and her associates found even more dramatic results. After studying years of data, Lanning found that CON were associated with a 20 percent increase in hospital spending and a nine percent increase in spending on other health care, for an overall per-capita spending increase of about 13 percent on personal health care services.
- The Federal Trade Commission (FTC) has conducted several studies on the effects of CON laws. According to one study, released jointly with the Department of Justice in 2004: “The Agencies believe that CON programs can pose serious competitive concerns that generally outweigh CON programs’ purported economic benefits. Where CON programs are intended to control health care costs, there is considerable evidence that they can actually drive up prices by fostering anti-competitive barriers to entry.”

GUIDE TO THE ISSUES

Some supporters of CON believe the laws are necessary in order for hospitals to make enough in profits to provide adequate levels of indigent care. This, however, is simply a hidden tax. Health care consumers are forced to pay the premium created by CON laws and the proceeds from this premium are used to pay for indigent care. If nothing else, this is dishonest.ⁱⁱⁱ

Another way in which CON imposes a hidden tax on the health care system relates to the resources hospitals and other health care entrepreneurs must use to obtain the certificate. The process of obtaining a CON is time-consuming and expensive. In North Carolina, for example, a group of neurologists spent more than \$250,000 just to receive a CON for MRI equipment. The request, which ultimately failed, was an additional cost of doing business that ultimately raises health care expenses across the board.^{iv}

Less choice and less innovation: According to the American Hospital Association, there are about 1.7 outpatient surgeries performed in U.S. hospitals for every surgery that requires an overnight stay.^v In some states like Alabama, Georgia, and North Carolina, a CON is needed to open a freestanding outpatient surgery center, which means that existing hospitals have a tremendous influence over whether such centers can open, even in areas where they are needed.^{vi}

Limits choices for existing providers: Along Highway 280 in Birmingham and in Madison County near Huntsville, rapid growth has translated into longer travel times to the nearest hospital. In both locales, existing providers have expressed interest in building hospitals to serve increasing populations in growth areas. The CON process has hindered their plans to expand because other health care providers consider them a disruption of their established patient flow.^{vii}

Policy Consideration

The accepted proposition in economics is the idea that if you want to reduce the cost of something, you foster an environment that encourages open competition and

entrepreneurship and discourages monopoly. However, the role of competition goes well beyond this. Rivalry among businesses—health care providers are no exception—stimulates new technologies and innovative and more efficient ways of delivering goods and services to customers. Existing providers continuously have to keep their costs low and their products desirable in order to fend off potential competitors looking for an opportunity to earn profits.^{viii}

Recommendation

Because CON regulations restrict the supply of medical facilities and equipment, making them more expensive, they should be abolished.

Further Reading

- Roy Cordato, “Certificate-of-Need Laws: It’s Time for Repeal.” Alabama Policy Institute, 2007. Available at <http://tinyurl.com/5usdp3x>. Access verified February 9, 2011.
- “Certificate of Need: State Health Laws and Programs.” National Conference of State Legislatures, January 20, 2010. Available at <http://tinyurl.com/3xear7q>. Access verified December 28, 2010.

ⁱ “Certificate of Need: State Health Laws and Programs.” National Conference of State Legislatures, January 20, 2010. Available at <http://tinyurl.com/3xear7q>. Access verified December 28, 2010.

ⁱⁱ Roy Cordato, “Certificate-of-Need Laws: It’s Time for Repeal.” Alabama Policy Institute, 2007. Available at <http://tinyurl.com/5usdp3x>. Access verified February 9, 2011.

ⁱⁱⁱ *Ibid.*

^{iv} *Ibid.*

^v American Hospital Association, *AHA Hospital Statistics* (Chicago: Health Forum, LLC: 2006), p. 11.

^{vi} Roy Cordato, “Certificate-of-Need Laws: It’s Time for Repeal.”

^{vii} *Ibid.*

^{viii} *Ibid.*