



# GUIDE TO THE ISSUES

## 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).<sup>1</sup>

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.<sup>2</sup> 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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Because CON regulations restrict the supply of medical facilities and equipment, making them more expensive, they should be abolished.

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."