

How Alabama's Certificate-of-Need Laws Increase Costs and Reduce Access to Healthcare

Background

Certificate-of-need (CON) laws are regulations that require any new or expanded healthcare service or facility to be approved by Alabama's state government. In essence, a healthcare provider must prove to the Alabama Certificate of Need Review Board that the new or expanded service is needed. This is often a costly and time consuming process that increases the healthcare costs for all patients and can delay access to essential care.ⁱ Alabama is currently one of 35 states operating a CON program.ⁱⁱ The maximum Certificate of Need filing fee is currently \$24,684, though costs can quickly increase depending on whether an application is approved or denied.ⁱⁱⁱ

Because existing hospitals and healthcare providers have the power to oppose attempts to provide additional medical services, CON laws serve to limit competition and promote an anti-free-market environment in the healthcare space.^{iv}

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 claim it makes sense to limit facilities to keep existing facilities at capacity to meet actual needs.^v

In reality, CON regulations restrict the supply of medical facilities and equipment, making them more expensive. To increase competition and lower the overall costs of healthcare for Alabamians, CON regulations should be repealed.^{vi}

History

The origins of CON laws date back to 1974 when Congress passed the National Health Planning and Resource Development Act.

As a way to control rising healthcare costs, the act required that in order to receive federal healthcare funding, construction of new healthcare facilities and the expansion of existing facilities had to be approved by a state agency established to issue certificates of need. All 50 states had established such agencies by 1980, with Alabama's beginning in 1979. The expansion of services would only be allowed if providers could demonstrate that the costs would be offset by actual demand. The federal government initially subsidized state governments for CON related expenses.^{vii}

During the 1980s, the federal government stopped its Medicare cost-based reimbursement system and instead began paying a predetermined fixed cost based on the type of treatment. At that point states were no longer federally required to have CON regulations.^{viii} Since 1987, 15 states have dropped CON requirements.^{ix}

Why should the Alabama Legislature repeal CON regulations?

CON regulations have failed to slow the growth of healthcare costs.^x By repealing CON requirements, Alabama's state government could reduce the costs of healthcare for all patients as well as improve access to care, without spending more taxpayer dollars.

Alabama has one of the most restrictive CON requirements in the nation, with 17 services falling under the CON umbrella as of January 2020. The Mercatus Center at George Mason University found that states with four or more CON laws "have systematically lower-quality hospitals than non-CON states."^{xi}

According to research from the Mercatus Center, per capita patient spending in Alabama could be reduced by \$203 annually if CON requirements were repealed. Mercatus also found that removing CON requirements could improve overall access to healthcare, increasing the total number of hospitals by 53 and adding 6 additional ambulatory surgical centers. Rural Alabamians specifically, would gain access to an estimated 18 new hospitals and an additional ambulatory service center^{xii}.

Aside from access to care, the quality of care received by patients could also improve if CON regulations were repealed. The Mercatus Center found that post-surgery complications and mortality rates for heart attacks, heart failure, and pneumonia would all be reduced in Alabama if healthcare providers were not regulated by CON. It is also estimated that readmission rates will decrease while overall patient satisfaction of the healthcare they receive will increase^{xiii}.

Removing CON regulations and encouraging a free-market healthcare system is the key to lowering costs and improving outcomes for Alabamians. Economists widely recognize that competition in the healthcare sphere is the most effective tool for driving down overall costs^{xiv}.

Alabama's current CON structure allows the state government to choose winners and losers and favors long-established healthcare providers over new companies and innovations looking to enter the state's market. Competitiveness provides incentives to discover new technologies and new efficiencies to delivering those technologies to patients in an ever-changing healthcare environment.

There is no evidence that free-market competition cannot work to control rising healthcare costs. CON laws have had the opposite effect of this intent. In areas where providers have been allowed to flourish, customers have been rewarded with an increase in healthcare options and more competitive pricing^{xv}. It is time for the Alabama Legislature to repeal CON regulations and unleash the power of the free market.

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- ⁱ State Policy Network, “Certificate-of-Need Laws: Why They Exist and Who They Hurt”, April 1, 2021, <https://spn.org/articles/certificate-of-need-laws/>, (accessed March 1, 2023).
- ⁱⁱ National Conference of State Legislatures, “Certificate of Need State Laws”, Updated December 20, 2021, <https://www.ncsl.org/health/certificate-of-need-state-laws#:~:text=Currently%2C%2035%20states%20and%20Washington,of%20December%202021%20are%20listed.> (accessed March 1, 2023).
- ⁱⁱⁱ Alabama State Health Planning and Development Agency, Memorandum, New Certificate of Need Application Fee and Monetary Threshold for Review, September 23, 2022, <http://www.shpda.alabama.gov/documents/conforms/confee/FY2023%20CON%20Thresholds.pdf>.
- ^{iv} State Policy Network, “Certificate-of-Need Laws: Why They Exist and Who They Hurt”, April 1, 2021, <https://spn.org/articles/certificate-of-need-laws/>, (accessed March 1, 2023).
- ^v Alabama Policy Institute, Guide to the Issues: Certificate of Need (CON) Laws, <https://alabamapolicy.org/wp-content/uploads/2020/11/Certificate-of-Need-CON-Laws.pdf>, (accessed March 2, 2023).
- ^{vi} Ibid.
- ^{vii} Alabama Policy Institute, Certificate of Need Laws: Why It’s Time for Repeal, 2007, https://alabamapolicy.org/wp-content/uploads/2020/11/API-Research-Certificate-of-Need_new.pdf, (accessed March 2, 2023).
- ^{viii} Ibid.
- ^{ix} National Conference of State Legislatures, “Certificate of Need State Laws”, Updated December 20, 2021, <https://www.ncsl.org/health/certificate-of-need-state-laws#:~:text=Currently%2C%2035%20states%20and%20Washington,of%20December%202021%20are%20listed.>
- ^x Ibid.
- ^{xi} Mercatus Center George Mason University, “Alabama and Certificate-of-Need Programs 2020: How CON Laws Affect Healthcare Access, Quality, and Cost in Alabama, March 18, 2021, <https://www.mercatus.org/publication/alabama-and-certificate-need-programs-2020>, (accessed March 3, 2023).
- ^{xii} Ibid.
- ^{xiii} Ibid.
- ^{xiv} Alabama Policy Institute, Certificate of Need Laws: Why It’s Time for Repeal, 2007, https://alabamapolicy.org/wp-content/uploads/2020/11/API-Research-Certificate-of-Need_new.pdf, (accessed March 2, 2023).
- ^{xv} Ibid.