



Tennessee Should Repeal Disruptive Certificate of Need Laws

Myth

Tennessee is one of 35 states that institute certificate of need (CON) laws, which arbitrarily limit health care services. CON programs require health care providers to receive state approval, generally from the state's health care agency or a designated CON commission, to expand facilities and services. Unfortunately, CON laws prevent providers from expanding or building new, often badly needed, health care facilities.

Under a CON law regime, states require a certificate of need for a wide variety of expenditures, such as facility construction and modification, new medical procedures offered, and increased inpatient care beds. States with CON programs regulate on average 14 medical services, devices, and procedures. Tennessee regulates 23, much higher than the national average.

Even worse, the Volunteer State's CON laws create a "competitor's veto" of new market entrants. A 2011 report from the [National Institute for Health Care Reform](#) confirmed the same problem exists in Connecticut, Georgia, Illinois, Michigan, South Carolina, and Washington. According to the report, "In five of the six states studied – all except Michigan – the CON approval process can be highly subjective and tends to be influenced heavily by political relationships rather than policy objectives."

Policy Message

1

CON's Mal-effects

CON laws reduce health care access and quality while increasing costs by hindering competition.

2

More Expensive

States requiring CON for 10 or more services averaged per-capita health care costs 8 percent higher than states requiring CON on fewer than 10 services.

3

Promotes Cronyism

CON laws give undue influence to certain health care providers. When a health care company applies to enter a market, existing providers often use the CON process to block potential competition.

4

Worse Outcomes

States with CON laws have a mortality rate about 5.5 percent higher than the average rate in non-CON states.

5

Bad for Rural Areas

CON laws are especially detrimental to rural areas because they have resulted in 30 percent fewer rural hospitals.

Policy Solution

Tennessee policymakers should repeal disruptive CON laws. [House Bill 1085](#) would completely repeal the Volunteer State's CON laws in five years. According to Rep. Martin Daniel (R-Knoxville), the bill's sponsor, market demand (not government bureaucrats) should govern health care supply.

"Our CON laws are some of the most rigorous and onerous in the entire nation," Daniel told WJHL. "The economic market should determine supply and demand, not the government."

A state profile of Tennessee's CON laws conducted by the Mercatus Center, which relied on existing data from

other states, estimates total health care spending could drop by \$223 per person if CON laws were repealed.

In addition to lowering health care costs, eliminating Tennessee's CON laws would improve health care quality and access.

According to the Mercatus study, if Tennessee did not have CON requirements, the Volunteer State would have

63 additional health care facilities, 26 additional ambulatory surgery centers, and 25 rural hospitals.

Contact Us

For more information, contact The Heartland Institute at 312/377-4000 or by e-mail at governmentrelations@heartland.org.

Or you can visit our website at Heartland.org

Notes

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Additional Resources

Certificate of Need Laws: Tennessee State Profile

https://www.mercatus.org/system/files/tennessee_state_profile.pdf

This state profile from the Mercatus Center examines Tennessee's CON laws and compares health care outcomes and costs in other states. The studies attempt to give some insight into what is likely to happen in Tennessee if the state were to eliminate its CON laws.

Beacon Explains: Certificate of Need Laws

<https://www.beacontn.org/beamon-explains-certificate-of-need-laws/>

Lindsay Boyd Killen writes for the Beacon Center about certificate of need laws in Tennessee and argues they should be reformed. "The time has come for Tennessee to join with states that have brought greater healthcare access to more people by repealing their CON laws. The only irrefutable achievement we can directly attribute to CON laws is their successful creation of a robust hospital cartel that restricts competition in the marketplace and decreases the supply of healthcare services. That's not something to be proud of."

Certificate of Need: State Health Laws and Programs

<http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

The National Conference of State Legislatures outlines the various state CON laws and the positions of CON law proponents and critics.

Certificate-of-Need Laws and Hospital Quality

<https://www.heartland.org/publications-resources/publications/certificate-of-need-laws-and-hospital-quality>

Thomas Stratmann and David Wille of the Mercatus Center at George Mason University challenge the claim CON laws improve hospital quality. "Using a broad dataset, the study finds no evidence that CON laws improve hospital quality. In fact, there are more deaths and serious postsurgery complications in hospitals in states with CON laws," wrote Stratmann and Wille.