

From the Desk of Thomas Stratmann

February 28, 2019

Chairman Lamar Alexander
United States Senate
455 Dirksen Office Building
Washington, DC 20510

Chairman Alexander,

Thank you for the opportunity to respond to your call for ideas on rising healthcare costs and to discuss certificate-of-need (CON) laws with you. States have many policy tools at their disposal to rein in the cost of healthcare. However, cost-cutting should not come at the expense of the health of patients who are in dire need of medical aid. In this context, I wish to bring to your attention the damage caused by CON laws to healthcare quality and access. In addition to the adverse effects on healthcare costs detailed in Matt Mitchell and Anne Philpot's letter, further negative consequences are caused by CON laws in 35 states and the District of Columbia in terms of healthcare quality and access. The original intention for CON laws was to avoid a hike in healthcare prices owing to overcapacity and, instead, to ensure that the services needed by the community were provided at an affordable price. However, not only have the prices risen as a result of CON regulation, but healthcare quality and access has suffered as well.

CON Laws Are Associated with Restricted Access to Healthcare Services

By design, CON laws aim to control the supply of healthcare services. Researchers find that rather than providing the community with the services it needs, CON laws effectively restrict access to healthcare services that residents of non-CON states residents enjoy:

- *Restricted access to imaging services.* Data suggest that CON laws have a strong negative impact on new hospital and nonhospital providers' ability to provide MRI, CT, and PET scans, with patients having to drive longer distances to get access to imaging services.¹
- *Fewer hospitals, including rural hospitals, and ambulatory surgery centers.* There are 30 percent fewer hospitals and 14 percent fewer ambulatory surgery centers in CON states as a proportion of the number of residents in CON states.²

¹ Thomas Stratmann and Matthew C. Baker, "Barriers to Entry in the Healthcare Markets: Winners and Losers from Certificate-of-Need Laws" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2017).

² Janelle Sagness, *Certificate of Need Laws: Analysis and Recommendations for the Commission on Rationalizing New Jersey's Health Care Resources* (Trenton, NJ: New Jersey Department of Health, 2007); Thomas Stratmann and Christopher Koopman, "The Impact of Certificate-of-Need Laws on Community Hospitals and Ambulatory Surgery Centers," Mercatus Center at George Mason University, March 15, 2016.

CON Laws Are Associated with Lower Quality of Medical Services

Not only are healthcare facilities scarcer in CON states, but the overall quality of the services they provide is lower, thereby undermining the argument put forward by advocates of CON laws about the anticipated enhancements in quality arising from the implementation of such regulations:

- *No evidence on improvements in the quality of care.* Data offer no support for the claim that CON laws result in higher healthcare quality in CON states than in non-CON states.³
- *Lower quality of medical services among incumbents.* Researchers find that incumbent hospitals provide lower-quality care in CON states than in non-CON states.⁴
- *Higher death rates.* Mortality rates resulting from pneumonia, heart failure, heart attacks, and postsurgery complications are significantly higher in CON than in non-CON states.⁵

Not only have CON laws failed to achieve their goals, but they have actually backfired, leaving CON states with inflated costs, restrictions on healthcare access, and substandard quality. In light of these outcomes, legislators should no longer see them as useful tools of healthcare policy. Therefore, I recommend that states take steps to cut back on those laws, or for maximal improvements, repeal them entirely.

Please contact me if you would like further information on the effects of CON laws on healthcare access and quality.

Sincerely,

Thomas Stratmann,
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³ Martin Gaynor, Farzad Mostashari, and Paul B. Ginsburg, *Making Health Care Markets Work: Competition Policy for Health Care* (Washington, DC: Brookings Institute, April 2017); Thomas Stratmann and David Wille, "Certificate-of-Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016).

⁴ Stratmann and Wille, "Certificate-of-Need Laws and Hospital Quality."

⁵ Stratmann and Wille.