

CERTIFICATE-OF-NEED LAWS



DISTRICT OF COLUMBIA STATE PROFILE

Certificate-of-need (CON) laws require healthcare providers to obtain permission before they open or expand their practices or purchase certain devices or new technologies. Applicants must prove that the community “needs” the new or expanded service, and existing providers are invited to challenge would-be competitors’ applications. CON laws have persisted in spite of mounting evidence from health economists, regulatory economists, and antitrust lawyers showing that these laws fail to achieve their intended goals. The following charts are based on studies comparing outcomes in states that have CON laws with outcomes in those that do not. These comparisons account for socioeconomic differences and differences in the underlying health of the populations across states. The studies give some insight into what is likely to happen in a District of Columbia without CON laws.



HEALTHCARE SERVICES THAT REQUIRE A CON IN THE DISTRICT OF COLUMBIA AS OF JANUARY 2020

- Ambulatory Surgical Centers (ASCs)
- Burn Care
- Cardiac Catheterization
- Computed Tomography (CT) Scanners
- Home Health
- Hospice

- Hospital Beds (Acute, General Licensed, Med-Surg, etc.)
- Intermediate Care Facilities (ICFs) for Individuals with Intellectual Disabilities
- Linear Accelerator Radiology
- Long-Term Acute Care (LTAC)
- Magnetic Resonance Imaging (MRI) Scanners

- Neonatal Intensive Care
- New Hospitals or Hospital-Sized Investments
- Nursing Home Beds/ Long-Term Care Beds
- Obstetrics Services
- Open-Heart Surgery
- Organ Transplants

- Positron Emission Tomography (PET) Scanners
- Psychiatric Services
- Radiation Therapy
- Rehabilitation
- Renal Failure/Dialysis
- Substance/Drug Abuse
- Swing Beds
- Ultrasound

SPENDING

Research finds that CON laws are associated with higher healthcare spending per capita and higher physician spending per capita.

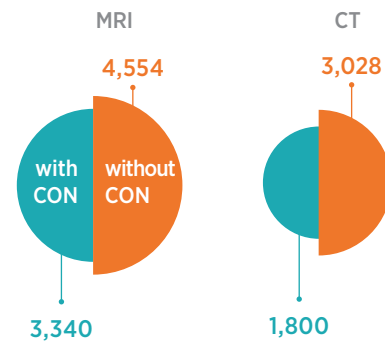
Estimated changes in annual per capita healthcare spending patterns in the District of Columbia without CON



MEDICAL IMAGING SERVICES

CON programs are associated with lower utilization rates for medical imaging technologies through non-hospital providers.

Estimated effect on medical imaging by nonhospital providers without CON



CON laws are also associated with more out-of-county travel for imaging services. Research finds that the presence of a CON program is associated with 5.5 percent more MRI scans, 3.6 percent more CT scans, and 3.7 percent more PET scans occurring out of county.

Estimated percentage point reduction in out-of-county scans without CON



At the time it was studied, District of Columbia medical facilities provided no PET scans to Medicare beneficiaries, although the District regulated the use of PET machines. We therefore cannot estimate the number of scans that would likely take place in the event that the District had no CON law. Research suggests, however, that—in general—states without CON laws provide 45% more scans than CON states.

Thomas Stratmann and Matthew C. Baker look at the relationship between CON and the imaging claims of Medicare beneficiaries, which constitute only a portion of the total market for medical imaging services. However, CON laws limit the supply of imaging technologies to all consumers, meaning the results here underestimate the total effect of CON regulation on the utilization of medical imaging services.

While CON programs are associated with reduced use of imaging services by nonhospital providers, they were found to have no statistically significant effect on the use of imaging services provided by hospitals. This suggests that CON laws protect hospitals from nonhospital competition. The net effect is to lower the overall use of imaging services.

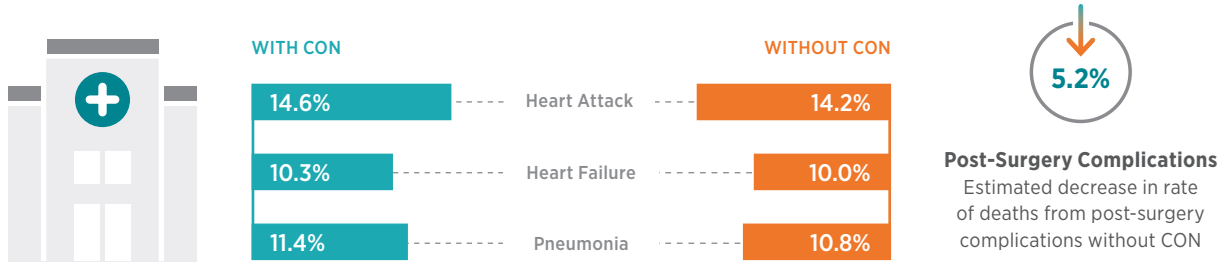
The effect of CON on MRI and CT scans per 1,000 Medicare beneficiaries was statistically significant at the 15% level. The effect of CON on a patient's probability of traveling outside the patient's county of residence for PET services was also statistically significant at the 15% level. All other variables were statistically significant at levels ranging from 1% to 5%.

Sources: James Bailey, "Can Health Spending Be Reined In through Supply Constraints? An Evaluation of Certificate-of-Need Laws" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); 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).

QUALITY

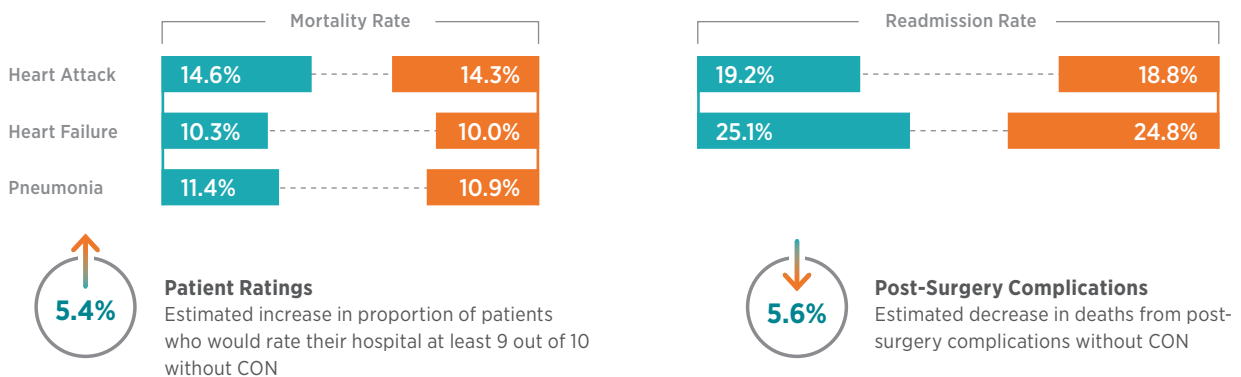
Supporters of CON suggest that these regulations positively impact healthcare quality, but research finds that the quality of hospital care in CON states is not systematically higher than the quality in non-CON states. In fact, mortality rates for pneumonia, heart failure, and heart attacks, as well as patient deaths from serious complications after surgery, are statistically significantly higher in hospitals in states with at least one CON regulation.

Estimated changes in District of Columbia healthcare quality indicators



35 states and the District of Columbia have four or more CON restrictions. The effects of CON regulations may be cumulative, meaning states with more entry restrictions may experience larger quality differences than states with fewer restrictions. Research finds that states with four or more CON laws have systematically lower-quality hospitals than non-CON states. The effect is evident across other quality indicators, including the share of patients surveyed giving their hospital the highest overall quality rating, heart failure readmission rate, and heart attack readmission rate.

Estimated changes in District of Columbia healthcare quality indicators



Findings on heart failure readmission rates, heart attack readmission rates, and the percentage of patients giving their hospital a 9 out of 10 or 10 out of 10 overall rating were statistically significant only in the restricted sample of states that regulate four or more services with certificate of need.

This study uses an identification strategy that exploits the fact that, on occasion, a local healthcare market is divided between two states, one with a CON law and the other without. Four is the median number of CON laws for CON states in this subsample.

The survey referred to is the Hospital Consumer Assessment of Healthcare Providers and Systems survey. It was developed by the Centers for Medicare and Medicaid Services in partnership with the Agency for Healthcare Research and Quality, and it is based on a standardized instrument and data collection methodology that allows for cross-hospital comparisons of patients' experiences related to different aspects of care. "Highest overall quality rating" is defined as a 9 out of 10 or 10 out of 10 rating on the survey.

Some states have added CON requirements for particular services since these analyses were conducted; the states with such new requirements are not visualized. For the latest information on which states regulate which procedures through CON, see Matthew D. Mitchell, Anne Philpot, and Jessica McBirney, "The State of Certificate-of-Need Laws in 2020," Mercatus Center at George Mason University, November 11, 2020.

Source: Thomas Stratmann and David Wille, "Certificate-of-Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).