



Tennessee Should Fully Repeal Burdensome Certificate of Need Laws

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Currently, Tennessee is one of 35 states that enforce antiquated certificate of need (CON) laws, which arbitrarily limit health care services, thereby decreasing access and increasing costs. CON programs require a state-granted certificate of need for any new health care facility, or expansion of an existing facility. These laws force providers to apply for a CON, which is expensive and extremely time-consuming. Then the state CON board determines if there is “need” in the market for the new facility or expansion of an existing facility. These laws are intrusive, arbitrary, and deter new hospitals, medical innovations, and even the number of in-patient care beds a facility is allowed to have.

Because these laws are so obstructive, during the height of the COVID-19 pandemic 20 states, including Tennessee, temporarily suspended CON practices to allow health care facilities to meet the needs of patients. This begs the question: If CON was hindering the health care market during the worst pandemic of our lifetime and caused states to temporarily suspend the policy, why are these laws ever necessary? And why aren’t these states permanently repealing CON?

Under a CON law regime, states require a certificate of need for a wide variety of expenditures, resulting in fewer options and higher costs for patients. If the Volunteer State repealed its CON laws entirely, total health care costs could drop by \$223 per person in Tennessee. If CON was repealed in full, Tennessee could have an additional 63 hospitals and 26 more ambulatory surgery centers.

These disruptive laws hamper innovation and limit options for patients. CON Laws also breed cronyism by creating an unfair advantage for industry leaders. A study from the National Institute for Health Care Reform found, “in five of six states studied, the CON approval process can be highly subjective and tends to be influenced heavily by political relationships rather than policy objectives.”

The Tennessee General Assembly has taken steps to reform CON laws within the state by passing HB948. The bill would reform many aspects of CON by rolling back regulations for certain mental health facilities, reducing application processing time from 135 to 60 days, and removing barriers for health care facilities in economically distressed areas. These are all positive steps toward comprehensive reform or repeal in the future. However, the bill would also

increase existing fees and establish new fees for health care providers. The fees are expected to generate \$1.3 million in state revenue over the next year.

Of course, the most favorable policy solution would be full repeal. If that is not possible, reducing exorbitant fees and other arbitrary barriers to entry would be a good step. Writing for the Beacon Center, Lindsay Boyd Killen explains why certificate of need laws in Tennessee should be reformed. “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.”

The COVID-19 pandemic has brought into question many aspects of our health care system, including government overreach. The research shows that CON laws hinder competition, decrease health care quality, and increase costs. According to the Kaiser Family Foundation, health care costs are 11 percent higher in states operating with CON laws than those without. Make no mistake, CON laws are negatively impacting patients and cause unquantifiable issues within the Tennessee health care system. Repealing CON is in the best interest of patients and is the ideal policy solution to this long-simmering problem.

The following articles examine certificate-of-need laws from multiple perspectives.

The Great Healthcare CON

http://fee.org/the_freeman/detail/the-great-healthcare-con

Jordan Bruneau of the Foundation for Economic Education says CON laws powerfully distort the health care market. He advises, “Rather than pinning our hopes on grand plans to overhaul the system, we should first look at where we can make changes on the margin that would move us in the right direction. Abolishing CON laws—a barrier to entry that drives up prices, restricts access, and is maintained by cronyism—would be a great place to start.”

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 various state CON laws and the positions of CON law proponents and critics.

Ten Principles of Health Care Policy

<http://heartland.org/policy-documents/ten-principles-health-care-policy>

This pamphlet in The Heartland Institute’s *Legislative Principles* series describes the proper role of government in financing and delivering health care and provides reform suggestions to remedy current health care policy problems.

CON Job: State ‘Certificate of Necessity’ Laws Protect Firms, Not Consumers

<http://heartland.org/policy-documents/con-job-state-certificate-necessity-laws-protect-firms-not-consumers>

Writing in *Regulation* magazine, Timothy Sandefur of the Pacific Legal Foundation argues certificate-of-need laws are not intended to protect the public but instead are designed to restrict competition and boost prices existing companies can charge.

You Shouldn't Have to Ask Your Competitors for Permission to Start a Business

<http://www.cato.org/blog/you-shouldnt-have-ask-competitors-permission-start-business>

Ilya Shapiro of the Cato Institute argues CON laws make it more difficult and expensive for companies to create new jobs and innovate. Even more troubling, Shapiro says, is the use of CON laws by existing businesses to bar newcomers from competing against them.

Certified: The Need to Repeal CON: Counter to Their Intent, Certificate-of-Need Laws Raise Health Care Costs

<http://heartland.org/policy-documents/certified-need-repeal-con-counter-their-intent-certificate-need-laws-raise-health-c>

Jon Sanders of the John Locke Foundation says CON laws fail to lower health care costs and in many instances actually increase costs. Sanders says state leaders could best honor the intent behind CON programs – preventing unnecessary increases in health care costs – by repealing those laws.

The Failure of Government Central Planning: Washington's Medical Certificate of Need Program

<http://heartland.org/policy-documents/failure-government-central-planning-washingtons-medical-certificate-need-program>

John Barnes of the Washington Policy Center describes the history of the certificate-of-need concept, summarizes how the Washington State CON law works, compares its stated goals with actual performance, and offers practical policy recommendations for improving access to affordable health care for the people of Washington.

Certificate-of-Need Laws: It's Time for Repeal

<http://heartland.org/policy-documents/certificate-need-laws-its-time-repeal>

Roy Cordato of the John Locke Foundation (JLF) examines certificate-of-need regulations in the first of a series of annual research papers from JLF devoted to explaining the principles of free markets and applying them to current controversies in North Carolina.

Certificates of Need: A Bad Idea Whose Time Has Passed

<http://heartland.org/policy-documents/certificates-need-bad-idea-whose-time-has-passed>

In a policy analysis from the James Madison Institute, Peter Doherty argues federal marketplace interventions have proven disastrous and the government's increased spending on programs has not been a boon. Doherty wrote, "In the past 20 years, many of us have battled to moderate or eliminate the most egregious of these programs and the artificial controls they place on free markets, but despite our successes, vestiges of the past remain."

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