

CERTIFICATE-OF-NEED LAWS AND HOSPITAL QUALITY

Healthcare quality can be measured in many different ways, but until now, there hasn't been a comprehensive measure of the impact of states' certificate-of-need (CON) laws on hospital quality. As of 2015, 36 states and the District of Columbia had these laws, which give government regulators final approval over new or expanded healthcare services, facilities, and equipment. Proponents of CON laws say these requirements improve hospital quality by allowing existing providers to improve their skills in treating the greater number of patients who necessarily seek care in the limited number of hospitals.

A new study for the Mercatus Center at George Mason University challenges this notion. 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.

To read the study in its entirety and learn more about the authors, [Thomas Stratmann](#) and [David Wille](#), see "[Certificate-of-Need Laws and Hospital Quality](#)."

KEY FINDINGS

CON Laws Do Not Raise the Quality of Care

There is no evidence that the quality of care at hospitals in states with CON regulations is better than the quality of care in non-CON states.

CON Laws Lower the Quality of Medical Services

Hospitals in CON states perform worse than those in non-CON states on eight of the nine indicators in the study. For four of these indicators, the difference in performance is statistically significant. The only indicator for which CON states did better than non-CON states is postsurgery development of pulmonary embolism, by about four cases per 1,000 patient discharges.

CON Laws Are Associated with Higher Death Rates

The average 30-day mortality rate for patients with pneumonia, heart failure, and heart attack who were discharged from hospitals in CON states was 2.5–5 percent higher than that of their

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non-CON-state counterparts. The largest difference is in deaths following a serious postsurgery complication, with an average of six more deaths per 1,000 patient discharges in CON states.

Age, Income, Education, and Ethnicity Do Not Change the Results

The study focuses on specific Hospital Referral Regions where the demographic factors of age, income, education, and ethnicity are not systematically different on the CON versus the non-CON side of the border. Therefore, the difference in hospital quality between CON and non-CON states cannot be explained by demographic variations.

RECOMMENDATIONS

States with CON laws should consider the evidence that their regulations restricting healthcare supply may lower, rather than improve or even maintain, hospital quality. These states should also consider that repealing CON laws could save lives.

HISTORICAL INFORMATION

CON laws restrict entry into healthcare markets by requiring state regulators to vet the “community need” for new or expanded medical services. The National Health Planning and Resources Development Act of 1974 tied some federal healthcare funding to CON programs. At one point, 49 states had such laws on the books. But since the act’s repeal in 1986, several states have dropped their CON laws. In states that retain CON, regulators not only manage and monitor applications, they often set standards for the use of healthcare facilities and the number of permitted procedures. There is no scholarly consensus that CON laws improve hospital quality. Previous attempts to measure CON’s effect on hospital quality focused on single procedures rather than a broad scope on overall hospital quality. There is no existing estimate of CON laws’ causal effect on the quality of hospital services.

A NOTE ON METHODOLOGY

This study is the first known to use data from Hospital Compare to evaluate CON effectiveness. Hospital Compare is a database of more than 100 quality indicators from more than 4,000 Medicare-certified hospitals and is maintained by the Centers for Medicare and Medicaid Services (CMS).

- The study also factors in patient surveys from the CMS Hospital Consumer Assessment of Healthcare Providers. Specifically included is the percentage of survey respondents who gave an overall 9 or 10 (out of 10) rating of their last hospital stay.
- To ensure apples-to-apples comparisons, the study narrows the geographic areas to Hospital Referral Regions that straddle both CON and non-CON states—that is, specific hospital “markets” in which health systems may cross state lines and share service reach. The study includes 900 hospitals in these markets from 2011 to 2015, along with eight conditions that have high rates of death and complications, where outcomes vary markedly from hospital to hospital.