FLORIDA’S CON LAW
LESSONS FROM THREE DECADES OF RESEARCH

Florida House of Representative
Health Market Reform Subcommittee

February 6, 2019
WHAT IS A CON LAW?

A permission slip to compete
Not a quality gate
Designed to assess “need”
Unusual in a market economy
A barrier to entry that restricts supply
Anticompetitive
A SHORT HISTORY OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC
Promote high quality HC
Promote charity care
Encourage hospital substitutes
Restrain the cost of care

1974
National Health Planning and Resources Development Act
A SHORT HISTORY OF CON LAWS

1974

No CON Regulation
CON Regulation


MERCATUS CENTER
George Mason University
A SHORT HISTORY OF CON LAWS

1980

No CON Regulation
CON Regulation

Produced by Matthew Mitchell and Christopher Koopman, September 2016.
A SHORT HISTORY OF CON LAWS

2000

No CON Regulation
CON Regulation

Produced by Matthew Mitchell and Christopher Koopman, September 2016.
A SHORT HISTORY OF CON LAWS

No CON Regulation
CON Regulation

Produced by Matthew Mitchell and Christopher Koopman, September 2016.
A SHORT HISTORY OF CON LAWS

2019

No CON Regulation
CON Regulation

Produced by Matthew Mitchell and Christopher Koopman, September 2016.
THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC
Promote high quality HC
Promote charity care
Encourage hospital substitutes
Restrain the cost of care
THE REALITY OF CON LAWS

Ensure an adequate supply of HC?
THE REALITY OF CON LAWS

Ensure an adequate supply of HC?
THE REALITY OF CON LAWS

Ensure an adequate supply of HC?

Limited supply of dialysis clinics (Ford and Kaserman, 1993)
Limited supply of hospice care (Carlson et al., 2010)
Fewer hospitals per capita (Stratmann and Russ, 2014)
Fewer hospital beds per capita (Stratmann and Russ, 2014)
Fewer hospitals with MRIs (Stratmann and Russ, 2014)
Fewer CT, MRI, PET scans (Stratmann and Baker, 2017)
More out-of-county CT, MRI, PET scans (Stratmann and Baker, 2017)
THE REALITY OF CON LAWS

Ensure an adequate supply of HC?

Estimated number of Florida hospitals without CON

- With CON: 248
- Without CON: 352
THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC

1974
National Health Planning and Resources Development Act

MERCATUS CENTER
George Mason University
THE REALITY OF CON LAWS

Ensure rural access to HC?

Diagram:
- Demand
- Supply with CON
- Supply

Quantity of Rural Care

$/Q
THE REALITY OF CON LAWS

Ensure rural access to HC?

30% fewer rural hospitals (Stratmann and Koopman, 2016)

Less access to rural hospice (Carlson et al., 2010)

Longer travel distance to care (Cutler et al., 2010)

More out-of-county CT, MRI, PET scans (Stratmann and Baker, 2017)
THE REALITY OF CON LAWS
Ensure an adequate supply of HC?

Estimated number of rural Florida hospitals without CON

<table>
<thead>
<tr>
<th>With CON</th>
<th>Without CON</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>30</td>
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</table>
THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC
Promote high quality HC
THE REALITY OF CON LAWS

Promote high quality HC?

scale competence vs. less competition

Mixed early research on particular conditions

No effect on all-cause mortality (Bailey, 2016)

Higher mortality rates following heart failure, pneumonia, heart attacks (Stratmann and Wille, 2016)

Higher rates of post-surgery complications (Stratmann and Wille, 2016)

Lower levels of patient satisfaction (Stratmann and Wille, 2016)
THE REALITY OF CON LAWS
Promote high quality HC?

Estimated mortality rates in Florida

<table>
<thead>
<tr>
<th>Condition</th>
<th>With CON</th>
<th>Without CON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heart Attack</td>
<td>15</td>
<td>14.7</td>
</tr>
<tr>
<td>Heart Failure</td>
<td>11.3</td>
<td>11</td>
</tr>
<tr>
<td>Pneumonia</td>
<td>11.6</td>
<td>11.1</td>
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</tbody>
</table>

CON = Certificate of Need
Estimated readmission rates in Florida

THE REALITY OF CON LAWS
Promote high quality HC?
THE REALITY OF CON LAWS

Promote high quality HC?

Estimated Change in Patient Satisfaction in Florida without CON

4.9%

Estimated Change in Post-Surgery Complications in Florida without CON

6.1%
THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC
Promote high quality HC
Promote charity care

1974 National Health Planning and Resources Development Act
THE REALITY OF CON LAWS
Promote charity care?

No evidence of higher rates of charity care (Stratmann and Russ, 2014)

Greater racial disparity in the provision of services (DeLia et al., 2009)
1974 National Health Planning and Resources Development Act

THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
Ensure rural access to HC
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Encourage hospital substitutes
ENCOURAGE HOSPITAL SUBSTITUTES?

ASC-specific CON states have 14% fewer ASCs per capita (Stratmann and Koopman, 2016)

ASC-specific CON states have 13% fewer rural ASCs per capita (Stratmann and Koopman, 2016)

CON limits use of new hospitals and non-hospital providers, but not existing hospitals (Stratmann and Baker, 2017)
THE STATED GOALS OF CON LAWS

Ensure an adequate supply of HC
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Restrain the cost of care
THE REALITY OF CON LAWS

Restrain the cost of care?
THE REALITY OF CON LAWS

Restrain the cost of care?

[Diagram showing supply and demand curves with and without CON laws, indicating how CON laws can restrain the cost of care.]
THE REALITY OF CON LAWS

Restrain the cost of care?
Do Certificate-of-Need Laws Limit Spending?

Matthew D. Mitchell

September 2016

MERCATUS WORKING PAPER
A review of 20 peer-reviewed academic studies finds that CON laws have worked largely as economic theory predicts and that they have failed to achieve their stated goal of cost reduction. The overwhelming weight of evidence suggests that CON laws are associated with both higher per unit costs and higher total expenditures.
Appendix
WHY WOULD ANYONE THINK CON LAWS

Restrain the cost of care?
THE REALITY OF CON LAWS
Restrain the cost of care?

4 decades of research
20 studies
only peer reviewed
THE REALITY OF CON LAWS

Restrain the cost of care?
THE REALITY OF CON LAWS

Per unit cost

3 studies: CON associated with higher cost

1 study: No detected effect on Medicaid costs
THE REALITY OF CON LAWS

Restrain the cost of care?
THE REALITY OF CON LAWS

Per patient expenditure

7 studies: CON increases expenditures
2 studies: No statistically significant effect
2 studies: Increases some expenditures and reduces others
1 study: Reduces the number of beds
THE REALITY OF CON LAWS
Restrain the cost of care?
THE REALITY OF CON LAWS

Hospital Efficiency

2 studies: CON increases some measures of efficiency
1 study: CON has no effect on efficiency
1 study: CON reduces efficiency
THE REALITY OF CON LAWS

Restrain the cost of care?
The reality of CON laws

Investment

1 study: CON fails to reduce investment but changes its composition

1 study: CON backfires, increasing investment
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