



THE FAILURE OF WEST VIRGINIA'S CERTIFICATE-OF-NEED PROGRAM

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Chairman Takubo, Vice Chairman Maroney, and distinguished members of the Health and Human Services Committee:

My name is Christopher Koopman. I am a senior research fellow at the Mercatus Center at George Mason University, where I work on the Project for the Study of American Capitalism. In recent years, my colleagues and I have been studying certificate-of-need (CON) laws in health care. I am grateful for the opportunity to discuss our work with you, and I commend the committee for doing yeoman's work in trying to determine for yourselves what effect this program has had on health care across the state.

This year marks the 40th anniversary of West Virginia's certificate-of-need program. As it stands today, the state's program ranks as the sixth most restrictive program in the country, covering 23 different devices and procedures.

In my testimony today I outline two areas that are key to understanding certificates of need in West Virginia. First, I outline the long road that got us to the complex regulatory program today. Second, I explain the negative effect this has had on the people of West Virginia. In doing this, I hope to provide some context for understanding certificate-of-need laws and explain what this means for citizens across the state looking for high-quality, low-cost care.

THE REGULATORY PATH TO TODAY

The easy way to understand certificates of need is to see them as permission slips to compete. These laws require healthcare providers trying to open or expand healthcare facilities across West Virginia to first prove that the community needs the planned services.

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New York enacted the first CON program in 1964 as a way to centrally plan its healthcare market. Over the next decade a number of states followed. In 1974, however, Congress decided that every state ought to enact such a program. So they mandated it. If states wished to continue receiving certain federal funds, they were required to create a certificate-of-need program. In 1977, to comply with this mandate, West Virginia created its program.

Policymakers hoped these programs would restrain healthcare costs, increase healthcare quality, and improve access to care for poor and underserved communities. In 1986—as evidence mounted that programs were failing to achieve these stated goals—Congress repealed the mandate. Over the last 30 years, 15 states have repealed their CON regulations.

While West Virginia has held on to its CON program, states like Pennsylvania and Ohio have repealed or dramatically scaled back their programs. Pennsylvania no longer has a CON program, and Ohio only requires a certificate of need for long-term care beds.

THE FAILURE OF CON

While certificate-of-need programs were certainly well intentioned, the effectiveness of these programs should be measured by their outcomes. If a program is failing to achieve its goals, no amount of good intentions can redeem it.

While there are numerous claims made about CON laws, the primary goals include:

1. Ensuring an adequate supply of healthcare resources;
2. Protecting access in rural and underserved communities;
3. Promoting high-quality care;
4. Supporting charity care; and
5. Controlling cost.

My colleagues and I started a project several years ago to empirically test whether each of these goals is being achieved. Our findings are as unfortunate as they are consistent: Across the board, CON programs have failed.

In particular, here is what we have found:

1. CON programs explicitly limit the establishment and expansion of healthcare facilities and are associated with fewer hospitals, ambulatory surgical centers, and hospital beds and decreased access to medical imaging technologies.¹ Residents of CON states are more likely than residents of non-CON states to leave their states in search of medical services.²
2. CON programs are associated with fewer rural hospitals and rural hospital substitutes.³
3. Deaths from treatable complications following surgery, as well as mortality rates from heart failure, pneumonia, and heart attacks, are all significantly higher among hospitals in CON states than non-CON states.⁴ Also, patients are less likely to rate hospitals highly in states with especially restrictive CON programs.

1. Thomas Stratmann and Christopher Koopman, "Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, February 2016); Thomas Stratmann and Jacob W. Russ, "Do Certificate-of-Need Laws Increase Indigent Care?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, July 2014).

2. Thomas Stratmann and Matthew C. Baker, "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 2016).

3. Stratmann and Koopman, "Entry Regulation and Rural Health Care."

4. 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. There is no difference in the provision of charity care between states with CON programs and states without them.⁵
5. By limiting supply, CON regulations increase per-unit healthcare costs.⁶ Even though CON regulations might reduce overall healthcare spending by reducing the quantity of services that patients consume, the balance of evidence suggests that CON laws actually increase total healthcare spending.⁷

Unfortunately, by restricting supply and undermining competition, CON laws work against each of the laudable goals that policymakers set out to achieve with these programs four decades ago.

This has very real consequences for citizens across West Virginia. Our research suggests that folks in places like Charleston, Huntington, Parkersburg, Wheeling, and Martinsburg have fewer options, are forced to travel farther, and face higher costs than those living in cities across Ohio and Pennsylvania. It also means that doctors and providers may choose to open and expand their practices outside the state, rather than subject themselves to the certificate-of-need process, thereby increasing the gap between what is available here and what is available outside the state. Those looking to increase high-quality, low-cost options for patients and increase opportunity for providers within the state should look skeptically on the state's certificate of need program.

Thank you again for the opportunity to share my research with you. I look forward to answering any questions you may have.

5. Stratmann and Russ, "Do Certificate-of-Need Laws Increase Indigent Care?"

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

7. Matthew D. Mitchell, "Do Certificate-of-Need Laws Limit Spending?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016).