

Certificate of Need

Introduction

A basic principle of economics is that price responds to supply. A smaller supply translates into a higher price. More supply translates into a lower price. As with any other service or commodity, healthcare is subject to these same rules. If we want to lower prices and increase healthcare access we should focus on expanding the supply of healthcare. As with any other product, this can be done by maintaining, if not increasing, quality. That certainly is the promise of modern technology, which has increased access even as it has elevated quality. The question policymakers need to consider is whether healthcare is really that much different from any other service or good – for instance, buying a computer.

One of the things that makes the healthcare market different is byzantine regulations used to protect providers from competition. One of the most significant of these is Certificate of Need (CON) laws, which are used to protect hospital monopolies. CON laws require would-be medical providers to prove – essentially to their competitors – that their community needs a new facility or service. The equivalent in the computer business would be a law prohibiting a startup (i.e., Apple) from entering the market without permission from IBM. Such a law would have prevented Apple from ever getting off the ground, making the iPhone revolution very unlikely. Just as competition in the computer industry has helped billions of consumers worldwide, repealing CON laws will increase the quality of healthcare for millions of Mississippians.

CON laws are a relic of a short-lived federal mandate that was repealed in 1986. After an initial push in the states to roll back these laws, lawmakers have been reluctant to challenge hospital monopolies. Between 2000 and 2016 only two states eliminated their CON laws: Wisconsin and New Hampshire. Rising healthcare prices, as well as rapid advances in technology, are encouraging state lawmakers to realize that CONs are harmful. In 2019, Florida repealed its CON law for hospitals and tertiary services. Likewise, Georgia recently reformed its CON laws. Fifteen states currently have no CON laws. Both the Trump and Obama administrations have strongly urged states to repeal CON laws.

The Mississippi Department of Health is the central planner tasked with administering the state's CON program. The Department's CON Review program applies to "the establishment of new healthcare facilities, the offering of defined new institutional health services, and the acquisition of major medical equipment." Some of the covered services include: Open heart surgery, in-patient rehabilitation

services, chemical dependency services, radiation therapy services, diagnostic imaging, nursing home care, home health services, ambulatory surgical services, and long-term care hospital services. In some cases, such as for skilled nursing facilities, no CONs are being issued at all due to prohibitions enacted in the early 1980s.

Recent studies by economist Thomas Stratmann demonstrate that non-CON states have more hospital beds per capita, more rural hospitals, and more access to MRI machines. Stratmann also found that healthcare providers in CON-law states “tend to provide lower-quality services” and that “deaths from treatable complications following surgery and mortality rates from heart failure, pneumonia, and heart attacks are all significantly higher among hospitals in CON states than in non-CON states.”

Far from improving healthcare outcomes for the poor, as some claim, CON laws actually have a disproportionate impact on low-income consumers. They also correlate with negative healthcare outcomes for minorities. Researchers have found no evidence that CON laws result in more uncompensated/charity care — a supposed benefit derived from protecting hospital monopolies in low-income and rural areas.

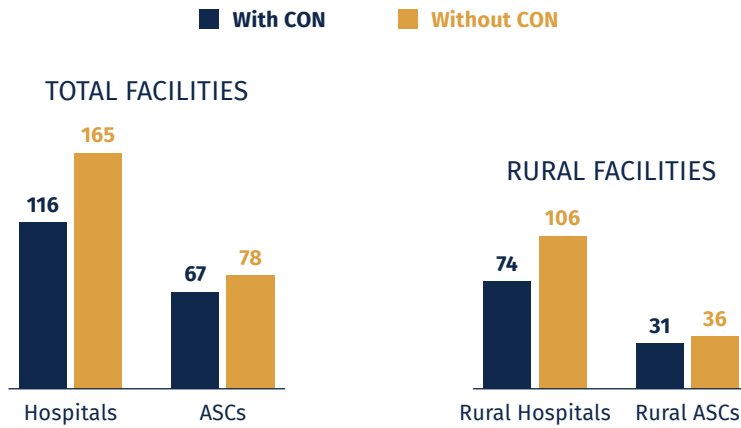
Key Facts

- CON laws were repealed at the federal level in 1986, yet CON laws remain on the books in all but 15 states today.
- In Mississippi, there are healthcare fields where no new CONs have been issued since the early 1980s due to state prohibitions.
- CON laws have a disproportionately negative impact on low-income and minority consumers.

Recommendations

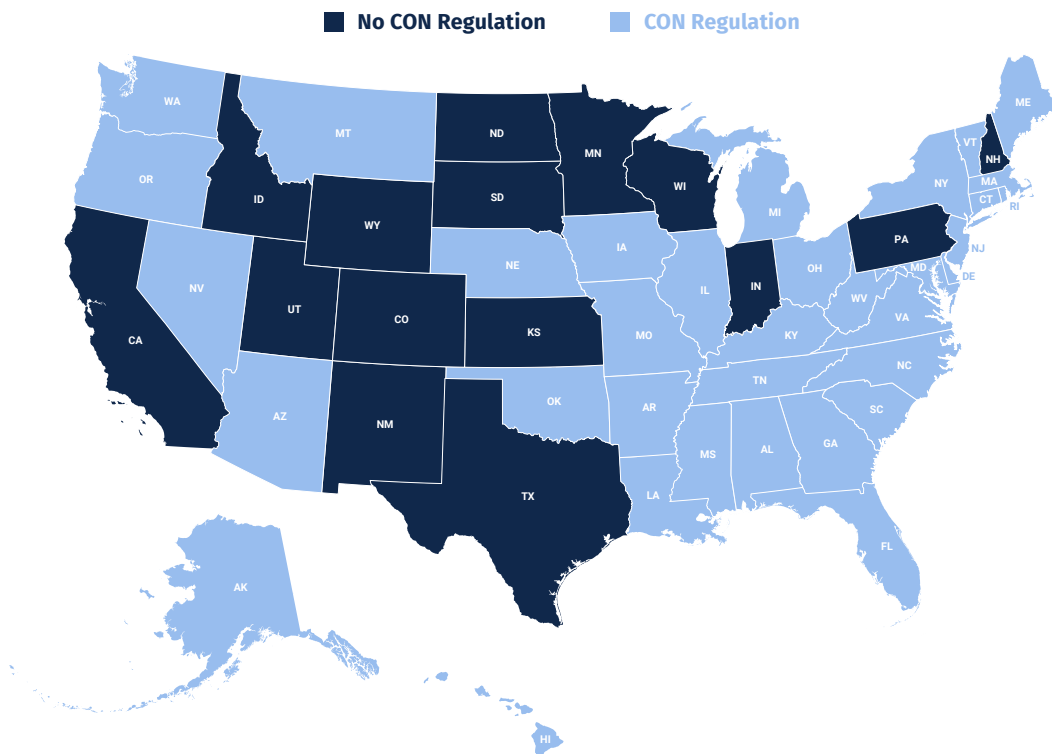
- + Make it harder to challenge a CON application by making would-be challengers of new CON applications pay any legal and administrative costs caused by frivolous delays.
- + Temporarily suspend CON requirements for five years in low-income and rural counties where healthcare access is a problem.
- + Start small by sunseting CONs for one covered area, such as ambulatory surgical care.

Estimated Changes in Access to Healthcare Facilities in Mississippi Without CON



Sources: Mercatus Center at George Mason University

CON Regulation in the United States



Sources: American Health Planning Association