What Is Certificate of Need?

Certificate of Need ("CON") laws are a healthcare planning and regulatory mechanism used by many states to balance healthcare access and cost. Because healthcare does not operate like a free market, regulatory constraints are deemed necessary to ensure that expensive, unneeded services and facilities are not developed and that underserved populations have sufficient access to care. Further, many studies that attempt to examine the impact of CON laws are designed with faulty methods and assumptions and thus produce misleading conclusions.

Introduction

Alaska, like many other states that have CON laws, is routinely lobbied by those who argue against the effectiveness of these regulatory controls. For decades, proponents for and against CON laws have disagreed over whose arguments and analyses are right and whether CON laws are good or bad, with neither side able to definitively prove their position. It is difficult to draw conclusions about the benefits, or lack thereof, of CON laws because there are so many complex variables associated with healthcare services, and it is impossible to isolate the statistical impact of CON from other variables. In this report, Ascendient Healthcare Advisors ("Ascendient") examines the risks of CON repeal, data pertaining to Alaska that contradict arguments promoting CON repeal, the CON debate, and the methods and assumptions underlying many anti-CON papers.

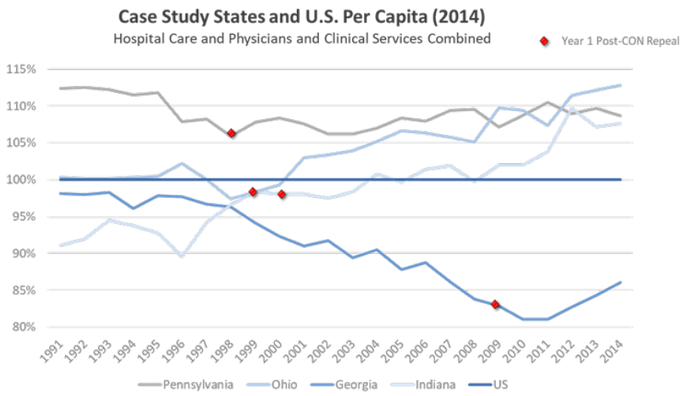
Critical to evaluating the CON debate is understanding that any analysis that considers CON status as a binary choice—and most do—is grossly oversimplified. Among the 35 states with CON laws, there are huge variations in services covered, enforcement, administrative policies, and threshold levels. The differences in timing of repeal among states, coupled with the differences in which services were regulated when, makes it virtually impossible to know what facilities and services existed or were developed with or without CON regulation and what impact that has on the variables typically analyzed in CON studies, such as utilization, cost and spending.

Based on the analysis and findings in this report, **Alaska should maintain Certificate of Need laws** as CON repeal would *irreparably* harm access to healthcare for Alaskans.

Risks of CON Repeal

There are real risks to CON repeal. Despite the limitations,[1] this study has obtained sufficient data to examine the impact of CON repeal in three states: Georgia, Pennsylvania, and Ohio. **Georgia** repealed CON for single-specialty ASCs in 2008. The impact was immediate and significant. Georgia added more than 180 single-specialty ASCs in the first year of repeal, in addition to the 49 CON-approved ASCs that existed in 2007 (54 CON-approved ASCs when including GI/Endo). Within five years of repeal, the number of ASCs in Georgia had grown by nearly 500 percent, while the volume of cases per facility declined for both the CON-approved ASCs and the single-specialty ASCs.

Although it is difficult to isolate the impact of the single-specialty ASC CON repeal on hospital closures in Georgia, there is some indication that it was likely a factor. According to the Sheps Center for Health Services Research, no Georgia hospitals closed in the three-year period leading up to CON repeal, 2005 to 2007. However, nine Georgia hospitals are reported as closed since repeal in 2008. All but two of those hospitals were adjacent to a county—often more than one county—with multiple single-specialty ASC development after repeal. The least impact was near North Georgia Medical Center in Ellijay, where adjacent counties went from zero CON-approved ASCs to four single-specialty ASCs. The greatest impact was near Northridge Medical Center in Commerce, Georgia, where 40 single-specialty ASCs were developed in adjacent counties, in addition to an inventory of four CON-approved ASCs.



After **Pennsylvania** CON laws were sunset, the number of ambulatory surgery centers increased by almost 200 percent over the next decade. **Ohio** repealed CON with a phased approach from 1995 to 1997. In the first three years following repeal, the number of ambulatory surgery centers increased by more than 500 percent. During the same three years, Ohio lost 14 of its 94 hospitals or 15 percent of the supply of hospitals in the state.

In each of these states, plus Indiana that has repealed and reenacted CON more than once, per capita health expenditures for hospital and physician services grew at a higher rate in the years following CON repeal than the US average growth rate over the same period of time. Prior to repeal, three of the states' expenditures had been growing at a lower rate than the US average, shown by the downward trendlines in the chart above.[2] Indiana's growth rate was higher than the US average before CON repeal, shown by the upward trendline, and it remained higher than the US after repeal to such a level that the state's per capita cost rose above the US average a few years later.

[1] Limitations in these case studies include limited analysis due to lack of available information both prior to repeal and after CON repeal as well as reliance on third party sources for some information.

[2] The chart shows each state's actual per capita cost for these services as a percentage of the US cost in the years pre- and post-repeal. Upward trendlines indicate a growth rate in per capita costs that is higher than the US average growth rate and downward trendlines indicate a growth rate that is lower than the US average growth rate.

Mercatus

Most notable among anti-CON proponents is the Mercatus Center at George Mason University. Mercatus has authored many papers that are often released as "provisional findings" and "likely to be republished in an academic journal," but it is important to note that these papers are not published and do not undergo a traditional, rigorous peer review as would most academic and scientific papers. The most common pitfalls of the methods and assumptions from these studies are summarized here.

Response to Mercatus' Alaska Findings

Despite the limitations discussed herein, this study highlights the findings and conclusions resulting from an analysis of various healthcare related data for all 50 states and the District of Columbia. More often than not, these data directly contradict the findings of Mercatus regarding the impact of CON in Alaska. As evidenced by the analysis, Mercatus appears to have applied aggregate data regarding No-CON states to Alaska, without ever examining the actual status of healthcare services, facilities, and quality in the state.

- **Alaska has 3 hospitals for every 100,000 residents**, a rate that is 50 percent higher than the No-CON state median.

- The distribution of Alaska's hospitals is **disproportionately higher in rural areas** compared to the population, ensuring access to residents in more distant communities.

- **Alaska provides 203 acute care hospital beds per 100,000, virtually the same as in No-CON states** and does so efficiently. Alaska hospitals average 66 percent inpatient occupancy, compared with 60 percent among hospitals in No-CON states.

- Alaska's access to Medicare-certified **ambulatory surgery centers ("ASCs") is also better than No-CON states**. Mercatus argues that Alaska would have 15.2 ASCs without a CON program, yet Alaska already has 17 ASCs.

- Although Alaska reports the second highest per capita healthcare spending in the US, other goods and services in Alaska are more costly compared to the US as well. The Missouri Economic Research and Information Center's ("MERIC") shows that Alaska's cost of living is almost 30 percent higher than No-CON states and all US states combined, a very similar differential to per capita healthcare costs. The factors contributing to the cost of healthcare in Alaska—access, terrain, small population, higher staffing costs and higher costs of living in the state—are not going to change as a result of CON laws. The average experience of case study states that have more recently fully or partially repealed CON strongly suggests that Alaska's per capita costs would increase at a rate ~20 percent above the national growth rate with the repeal of CON.

- **Alaska outperforms both its High/Moderate-CON peers and No-CON states**. Using the hospital metrics examined by Mercatus, Alaska outperforms No-CON states. Alaska's nursing home quality is even more stellar. A comparison of several metrics shows that Alaska's scores are significantly better than the other comparative groups, including the No-CON states.

Conclusions Are Often Misleading

For example, in Mercatus' 2016 study on imaging,[3] the authors refer to differences in "utilization" between CON and non-CON states, with the clear implication that residents in the CON states are not getting the vital imaging services that they need. However, data in Mercatus' own report do not show that CON status results in "less imaging care," nor does Mercatus show fewer total scans for CON states. They show only that fewer services are delivered in a non-hospital setting in CON states.

[3] Stratmann, T. and Baker, Matthew C., "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans." Mercatus Working Paper, Mercatus Center, George Mason University, January 2016.

Assumptions Are Often Faulty

Using the Mercatus imaging study as an example, the authors appear to assume that fewer providers of imaging services (in CON states) means that there is less access. The problem with this argument is that the sheer number of providers may be irrelevant when it comes to measuring access. Mercatus' own report data show that hospital providers offer greater access to imaging services, because their output is roughly 10 times greater than non-hospital providers. Health economist Mark Holmes, PhD, Director of the Cecil G. Sheps Center for Health Services Research and Professor and Associate Chair at UNC Gillings School of Public Health, indicates that the economic argument is actually the opposite of what Mercatus cites, because it is more economically productive to have more high-producing providers.[4] Further, hospital imaging providers offer services 24/7 and are critical for emergent needs.

Study Design Is Often Faulty

At best, the design of these studies is often faulty; at worst, the studies are deliberately designed to achieve the desired results. For example, the previously cited Mercatus imaging report aggregated data, rather than using individual data, which eliminated the ability to control for factors other than CON. Instead of using information on each individual patient – information like age, race, and co-morbidities – Mercatus made multiple adjustments to get to state-level averages. In other words, Mercatus chose not to control for individual variables that may have affected utilization and cost despite having the information available in its Medicare claims dataset.

Arguments are Often Faulty

Like study design, these papers often present data analysis centered around speculative or faulty arguments. Using the Mercatus imaging paper again as an example, the study finds that residents of CON states are more likely than residents of non-CON states to travel across state lines for an MRI, CT or PET scan. The authors explain the finding as follows: "The propensity for residents of CON states to travel out of state to obtain medical services can be attributed to any of several factors: higher costs, a smaller selection of services, or lower access to care." [5]

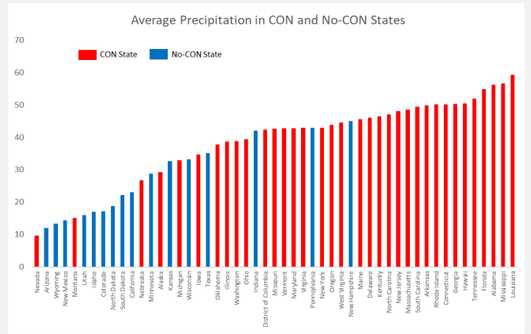
There is another explanation than that offered by Mercatus: geography. 5.2 percent of residents in states with PET CON work out of state, while only 3.2 percent of residents do in states without PET CON. On the East Coast, where CON predominates, states are more densely populated and more "connected" in terms of commuting patterns. Those who reside in a state where CON is required for PET services are more likely to work outside their home state. The CON law isn't *causative* here—regulations are not forcing residents out of state for work, nor are they forcing residents out of state for medical care. Instead, CON laws correlate strongly with denser populations and more fluid commuting patterns, but CON laws do not cause those patterns.

[4] Ibid, page 9.

[5] Stratmann and Baker, page 20

Correlation Does Not Imply Causation

Anti-CON proponents engage in one of the most critical errors in statistical analysis: assuming causation based on mere correlation. To illustrate these flawed analyses, Ascendient evaluated the average precipitation of each state and the state's CON classification as a CON state or No-CON state, as illustrated in the bar chart.



The analysis shows that CON states average 43 inches of precipitation each year, while No-CON states average only 26. The difference between the two groups is highly statistically significant. A false conclusion of this very strong correlation would be that CON increases the amount of precipitation in a state. Clearly, CON is not a causal factor for precipitation.