

# PERSPECTIVE

Public Policy Sense from the Bluegrass Institute

No. 2007-4



## CON law shrinks health-care's 'Iron Triangle'

Kentucky law states that the purpose of the state's [Certificate of Need](#) policy is "to improve quality and increase access to health-care facilities, services and providers, and to create a cost-efficient health-care delivery system."

The goals are clear: cost, quality and access – often referred to as the "Iron Triangle" of health care. The theory goes that increasing emphasis on one of the three might decrease the outcome of the other two. But Kentucky's CON policy actually reduces the size of the entire triangle.

As a result, none of these elements get properly addressed some even are hurt.

### • Cost

Multiple studies fail to show that CON regulations result in any significant cost savings for acute hospital care.

One study of longstanding CON programs in other states ([Conover and Sloan](#)) found only a 2-percent reduction in hospital beds, yet rising admission costs, higher daily costs for beds used and increased hospital profits. In states with longstanding CON laws, such policies may actually increase the price tag of health care – particularly in rural markets where state-sanctioned, for-profit monopolies exist.

Likewise, a massive [study](#) by the Federal Trade Commission and Department of Justice compiled after 27 days

of testimony from 250 panelists, coupled with independent research, reached this conclusion:

"States should decrease barriers to entry into provider markets. States with Certificate of Need programs should reconsider whether these programs best serve their citizens' health care needs. The Agencies believe that, on balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits."

In fact, what the CON does is pour health-care money into the bank accounts of a legion of lawyers who fight over the certification process. Hundreds of thousands of dollars often are spent to defend and attack applications aimed at bringing new providers into a market. These legal costs eventually get passed on to consumers, who also suffer from the ensuing lack of competition.

### • Quality

Recognizing that CON regulations do not address quality, the Fletcher administration offered a [proposed revision](#) to the law in 2005 that would allow a certificate for a new acute-care hospital if applicants could show a "history of uncorrected quality control problems, which threaten the life, health and safety of the hospital's patients" at an existing facility in the same locale.

By Dr. Kevin T. Kavanagh

### Summary

(Total Word Count 790)

**CON laws shrink health-care's 'Iron Triangle' by failing to address quality, increasing barriers to needed services and failing to reduce costs.**

BLUEGRASS  
INSTITUTE  
FOR PUBLIC POLICY  
SOLUTIONS

Continued on Reverse

**“In fact, what the CON does is pour health-care money into the bank accounts of a legion of lawyers who fight over the certification process.”**

This proposal listed “higher-than-normal rates of preventable hospitalization, medication errors or hospital acquired infections” as examples of problems at existing facilities that could result in certificates being granted for new hospitals.

However, this criterion was gutted from the [final regulation](#) in January 2006 and replaced with an embarrassing set of requirements, resulting in the

CON law addressing quality on a regional basis only when an existing facility suffered the final loss of its licensure, accreditation or Medicaid/Medicare certification.

All hospitals in every adjacent county have to meet one of the criteria – a virtual impossibility – before competi-

tion can come into that market. It’s exceedingly rare for a single hospital to have a final termination of accreditation or licensure, let alone this happening to two or three hospitals in the same region.

Eliminating CON restrictions would not diminish the quality of health care in Kentucky because it clearly doesn’t promote such quality in the first place.

It’s not impossible to achieve quality through licensing. But for that to effectively happen, revisions to existing state policy would be needed that include both rewards for quality care and penalties for poor health-care service.

#### • Access

A growing body of evidence suggests that the state’s CON policy has become a tool used by government to control Medicaid spending by erecting barriers or even reducing access to health care. Sen. Tom Buford stated that the Kentucky CON’s main effect is to limit Medicaid access and increase costs in underserved areas by creating monopolies.

While such activity does reduce health care, it does not lower prices. A past legislative review of the effectiveness of Kentucky’s CON policy concluded it “doesn’t control costs or increase access.” Rather, managed care got the credit for controlling costs, and the CON was recognized for creating barriers to access.

Indeed, one could strongly argue that using the CON to create delivery barriers to prevent access for Medicaid recipients would not comply with the law, since the statute specifically mandates that the CON should “increase access to health-care facilities.”

It’s time for Kentucky to reconsider using the flawed CON to address its long-term care dilemma.

– Dr. Kevin T. Kavanagh is an ear, nose and throat doctor in Somerset, Ky., and board chairman of Health Watch USA ([www.healthwatchusa.org](http://www.healthwatchusa.org)).

---

#### Contact Information:

Jim Waters  
Director of Policy and  
Communications  
P.O. Box 51147  
Bowling Green, KY 42102  
Phone: 270-782-2140  
Fax: 305-675-0220  
[www.bipps.org](http://www.bipps.org)  
[jwaters@bipps.org](mailto:jwaters@bipps.org)

Permission to reprint  
*Perspective* commentaries,  
in whole or in part, is hereby  
granted, provided the author  
and his affiliations are cited.

Authors are available for  
interviews by contacting the  
Institute.

---

*The Bluegrass Institute is an independent, nonpartisan association of writers, speakers and thinkers from across Kentucky committed to analyzing state and local public policy, and conveying alternatives that are more in concert with the founding ideas of America: individual liberty, economic freedom, personal responsibility and a respect for others.*