

PERSPECTIVE

Promoting Health Care Transparency and Competition



Certificate of Need Unneeded

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It is not true that certificate-of-need laws, which require state approval for the construction of new health care facilities, have a long history of successfully holding down health care costs.

On the contrary, such laws have a long history of documented failure, and state and federal governments are progressively moving away from them. Many problems exist in our system, and there is not a single fix for our health care crisis. But consensus is growing that eliminating the certificate-of-need regulations and allowing competition back into the marketplace has to be one of them.

The concept of certificates of need began in many states when the 1974 National Health Planning and Resources Development Act tied state certificate-of-need legislation to participation in Medicaid and Medicare.

The federal government was reimbursing on a cost-plus basis then. But in 1987, the federal mandate was repealed, and the government switched to a system of payment based on each patient's diagnosis.

By 2005, 14 states had dropped their certificate-of-need laws, and Ohio and Nebraska regulate only long-term care and rehabilitation facilities.

The effectiveness of Kentucky's certificate-of-need law was reviewed in 1997. [Legislative Research staff notes](#)

included comments that the law "doesn't control costs or increase access." Managed care was given credit for controlling costs, and the certificate-of-need law was given credit for creating barriers.

The [final subcommittee report](#) concluded: "When Kentucky looks at its increases in the volume of outpatient services and costs, particularly outpatient surgeries, it seems evident that the (certificate-of-need) process has fallen short of its intended purpose.

"As managed care continues to develop in Kentucky and works to promote competition and cost containment, the usefulness of CON for certain services will be limited at best."

It was also mentioned that the laws have done little about quality. This is true today, since all effective quality parameters were removed from the regulations adopted in January 2006.

As pointed out in the June 1997 report, if the certificate of need was abolished, better quality could be enforced through licensure. Quality can also be promoted by market pressure in a competitive health care environment.

Also, multiple studies have shown that certificates of need do not lower hospital costs. The last one, [published in 1998, \(Conover and Sloan\)](#) found that mature certificate-of-need programs resulted in a 2 percent reduction "in hospital bed supply but higher costs

Summary

(Total Word Count 708)

The Certificate of Need does not increase quality or decrease costs. Its main effect is to reduce access.

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The certificate of need's main effect is to limit Medicaid access and increase the cost in underserved areas by creating monopolies.

—Senator Tom Buford

per day and per admission, along with higher hospital profits." There was no significant effect on total per capita spending, and it was "doubtful" that there was any effect on quality.

In July 2004, a [Federal Trade Commission and Department of Justice report](#) recommended that "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," it said. "The Agencies believe that, on balance, CON programs are not successful in containing health care costs, and that they pose serious anti-competitive risks that usually outweigh their purported economic benefits."

the law further drains health care resources. Competitors routinely and at great expense file legal actions to block the granting of a certificate of need, which further increases the cost of health care delivery.

And Kentucky's new certificate of need regulations for acute care hospitals are among the most restrictive in the United States. They not only prevent competition but also foster monopolies where competition is needed.

No better example can be found than in Jessamine County, a rapidly growing community where the building of a needed hospital has been denied. In Kentucky, before an additional acute care hospital can be built, the "need" has to be shown in all hospitals in all surrounding counties. In Jessamine's case, this includes the city of Lexington.

I agree with state Sen. Tom Buford that the certificate of need's main effect is to limit Medicaid access and increase the cost in underserved areas by creating monopolies.

Additional References

["Certificate-of-Need Laws: It's Time for Repeal"](#) by Dr. Roy Cordato, John Locke Foundation, November 2005.

[Certificate of Need, Any Willing Provider and Health Care Markets](#)

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Since 2003, Somerset city government has had a 42 percent increase in health care premiums for single coverage, even though it aggressively decreased coverage, the deductible increased five times and the maximum yearly out-of-pocket expense was increased 20 times. It is hard to make a case that the law is holding down expenses there.

The large legal industry spawned by

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