



## Michigan Should Reconsider Anticompetitive Certificate of Need Laws

By Michael Van Beek

### Summary

Through its Certificate of Need program, Michigan promotes a cartel in the medical profession and increases costs to consumers.

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Politicians have made a significant effort in the past few years to increase access to health care through insurance subsidies and expanded medical welfare benefits. It's curious then that many states, including Michigan, artificially limit the supply of medical services through "Certificate of Need" laws. If policymakers here want people to have more access to health care, legislators should repeal the Michigan law that rations the number of medical facilities.

CON laws prohibit hospitals, nursing homes and other health care providers from expanding or acquiring sophisticated diagnostic tools unless they get permission from a board of political appointees drawn from the industry — some of whom may represent a petitioner's competitors. Incumbent medical care providers who are well-connected enough to gain appointment to the state CON board have the power and incentive to use the law to limit competition in their own industry.

Indeed, the law is intended to do just that — limit competition — thereby removing one of the few methods capable of reducing health care prices and improving quality. (Various government price controls and mandates have failed spectacularly at both of these goals.)

Data collected by the Kaiser Family Foundation suggest that higher costs are exactly what CON laws deliver, as measured by per capita health care spending, both public and private, in different states. In CON states, health care spending per person was \$7,143 in 2009 (the most recent data available), while in the 14 states without such laws the figure was \$6,526, or 9 percent less. Other factors likely contribute to the variation, but it's certainly plausible that CON rationing plays a role.

New research from the Mercatus Center at George Mason University analyzes some of CON's unseen costs. Economists Thomas Stratmann and Christopher Koopman estimate that in Michigan, the artificial restrictions on competition are responsible for almost 13,000 fewer hospital beds statewide, between 20 and 40 fewer MRI machines and 68 and 85 fewer CT scanners. They conclude, "40 years of evidence demonstrate that [CON laws] ... decrease the supply and availability of health care services by limiting entry and competition."

New York experimented with the first CON rationing program in 1964, and 23 states followed over the next 10 years, including Michigan in 1972. In 1974



Certificate of Need Laws enable cartels in the health care industry.

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the federal government aggravated the problem by making some health care funding contingent on states adopting CON laws. By 1982, every state but Louisiana had them.

But remarkably, in 1987 Congress repealed the requirement. Many states eliminated their CON programs, but 36 states still have them.

Supporters often argue that the health care industry isn't like a regular market where consumers benefit from firms competing to provide better and more cost-effective services. They claim that because most medical costs are paid by third parties (insurance companies or the government), consumers cannot use prices to guide their purchasing decisions, and therefore, the usual laws of supply and demand do not apply.

But given the rapid expansion of high-deductible insurance plans (not least of which are many policies sold through the federal health care law's exchanges) a growing number of health care consumers are paying attention to prices. Not surprisingly, when people must pay more out of their own pocket (or out of a health savings account they own), they tend to notice who's charging more and who's charging less, and respond accordingly.

Additionally, medical care is not the only industry where third-party payment systems are common, and the laws of economics seem to work just fine there. No one is arguing for CON laws for auto body shops, to cite just one example.

In addition to failing at their supposed purpose, CON laws may soon come under fire on legal grounds. The U.S. Supreme Court recently ruled that a dental licensing board in North Carolina was not immune from antitrust laws. Licensing boards are similar to CON commissions in that they limit competition by making it harder for aspiring practitioners to enter the market. This is just another reason for Michigan to reconsider its CON laws.

Without meaningful competition, health care providers have little incentive to lower prices and improve quality. Granting a select group of industry "experts" the power to artificially limit supply and freeze out potential competitors helps no one but the incumbent providers they represent. Since the health care industry is already heavily regulated, states should at least let consumers benefit from some competition among medical providers.

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