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Certificate-of-Need Laws: Barriers to Lower Costs and Higher Quality

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Certificate-of-Need (CON) laws restrict competition among healthcare providers and lead to higher healthcare costs. Removing CON laws in every state will reduce federal healthcare spending and improve healthcare quality for every American.

Certificate-of-Need (CON) laws require providers to receive state approval before offering a number of healthcare services. The laws reflect a belief that limiting the number of providers reduces healthcare spending. This basic premise runs counter to the simplest principle of economic theory, which states that costs diminish when supply increases. CON laws, which limit the supply of providers, have actually raised costs nationwide and lowered healthcare quality in many states.

The federal government should provide incentive for states to repeal CON laws and restrict federal funding for states that keep them in place. To succeed in the new competitive climate, providers will be compelled to offer higher quality services at lower prices and operate more efficiently. As the government will then pay lower fees for many health services, it will incur savings that it can apply toward expanding the scope and availability of government health insurance programs.

KEY FACTS

- CON laws have been manipulated into anti-competitive measures against new, entrepreneurial providers.
- Approximately 65 percent of Americans live in states with CON laws.
- Studies indicate that CON laws raise costs by as much as 20 percent in certain states.

TALKING POINTS

- CON laws are anachronistic regulations from the era of cost-based services.
- With managed care dominating health care today, these measure fail to serve their purpose of lowering health care costs.
- CON laws have actually raised costs and lowered quality in a number of states.

than patients—to ensure improved coverage and quality. Community health boards should use this money to build facilities in areas of need. Moreover, all providers should be required to accept a pre-determined percentage of government-supported and uninsured patients.

To ensure that all Americans receive the benefit of this repeal, state governments should levy taxes on all new facilities that offer hospital-type services. State governments should require these providers to contribute a percentage of their revenue to community reinvestment and redistribution programs. In this way, the government will raise new funds from corporations—rather



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HISTORY

Policymakers designed CON laws for states to implement during the 1970s in an attempt to lower surging healthcare costs nationwide. However, the federal mandate was repealed within a few years because the measures failed to reduce aggregate spending. Since then, some state legislatures have completely lifted the laws, while others have selectively applied them in certain service areas.

ANALYSIS

The government has inadvertently provided existing hospitals with a monopoly over healthcare services through Certificate of Need laws. Hospitals and other providers can thus charge the government unnecessarily high fees for patient care. Certificate-of-Need laws also restrict innovation and disincentivize entrepreneurial efforts to improve health care quality and efficiency. Repealing CON laws will allow new facilities, like ambulatory surgery centers (ASCs), and save government funds through competition. If ASCs, which often charge lower rates for surgical procedures than hospitals, had been widely available and used in 2001, Medicare could have saved \$1 billion dollars in one year alone. Numerous studies point to the CON laws' failure to constrain costs in other health service sectors.

AUDIENCE

Existing healthcare providers may fear loss of revenue and eventual department or facility closure. However, the increased government subsidies they will receive should ease this concern. Additionally, more providers will enter the market to share the responsibility of pro bono care. Healthcare entrepreneurs, be they businesses or physician groups, can reasonably support this measure.

NEXT STEPS

As a separate measure to support struggling hospitals, the government should provide significant subsidies to both old and new providers that serve low-income populations, similar to existing disproportionate share policies.

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