

President Donald Trump's Secretaries Urge States to REPAL Certificate of Need Laws

As we discuss the merits of Certificate of Need laws, it is vital to share [Reforming America's Healthcare System Through Choice and Competition](#). This report was authored by President Donald Trump's Secretary of the U.S. Department of Health and Human Services, U.S. Department of the Treasury, and U.S. Department of Labor during his first term.

- “States should consider repeal of Certificate of Need (CON) statutes or, at a minimum, significantly scale back the scope of their CON regimes...” (Page 109)
- “Based on that evidence and their enforcement experience, the two federal antitrust agencies—the FTC and the Antitrust Division of the Justice Department—have long suggested that states should repeal or retrench their CON laws.” (Page 50)
- “CON proponents continue to raise cost control as a justification for CON programs; they also argue that CON laws improve the quality of healthcare services and assure access to healthcare services by disadvantaged citizens. However, available evidence suggests that CON laws have failed to produce cost savings, higher quality healthcare, or greater access to care, whether in underserved communities or in underserved areas.” (Page 51)
- “Empirical evidence on competition in healthcare markets generally demonstrates that consumers benefit from lower prices when provider markets are more competitive.” (Page 51)
- “The best empirical evidence suggests that greater competition incentivizes providers to become more efficient. Recent work shows that hospitals faced with a more competitive environment have better management practices. Consistent with this is evidence suggesting that repealing or narrowing CON laws can reduce the per-patient cost of healthcare. Studies have found no empirical evidence that CON laws have restricted ‘over-investment.’” (Page 53)
- “CON laws can restrict investments that would benefit consumers and lower costs in the long term and are likely to increase, rather than constrain, healthcare costs. This is because CON regimes impose the legal and regulatory costs of preparing an application, then seeing that application through an often-lengthy approval process and potential third-party challenges. As a result, healthcare providers must spend resources on administrative processes rather than on constructing healthcare facilities or delivering healthcare services. In addition, those regulatory costs can be a barrier to entry, discouraging some would-be providers from entering certain healthcare markets, and discouraging some incumbent providers from expanding or innovating in ways that would make business sense but for the costs of the CON system.” (Page 53)

- “CON proponents have argued that CON laws support policy goals relating to healthcare quality and access. However, CON laws would be an indirect—and likely inefficient— way to achieve these goals. Moreover, the evidence suggests CON laws are ineffective. There is no compelling evidence suggesting that CON laws improve quality or access, inefficiently or otherwise.” (Page 54)
- “Evidence also fails to support the claim that CON programs would increase access to care for the indigent, or in medically underserved areas. The general argument has been that CON laws, by limiting competition, allow incumbent healthcare providers to earn greater profits—by charging higher prices and preserving their volume of lucrative procedures— than they would earn in a competitive environment. It is posited that those extra profits will be used to cross-subsidize care for the underserved.
- There are inherent weaknesses in this supposition. First, the charity-care rationale is at odds with the cost-control rationale. The notion that CON-protected incumbents would use their market power and profits to crosssubsidize charity care presumes that those providers will charge supra-competitive prices for non-charity care. Such supra-competitive pricing might harm many healthcare consumers, including low-income or under-insured patients who are ineligible for charity care.
- Second, because CON programs impede entry, expansion, and innovation, they can impede access to care for all patients, including low-income patients. Finally, the evidence does not show that CON laws promote charity care. Research suggests that safety-net hospitals are no stronger financially in CON states than in non-CON states. There is also empirical evidence contradicting the notion that dominant providers use their market power to cross-subsidize charity care, including an empirical study of the relationship between competition and charity care that found a ‘complete lack of support for the ‘crosssubsidization hypothesis.’” (Page 55)