Problem

Tennessee is one of 35 states that institute certificate of need (CON) laws, which arbitrarily limit health care services. CON programs require health care providers to receive state approval, generally from the state’s health care agency or a designated CON commission, to expand facilities and services. Unfortunately, CON laws prevent providers from expanding or building new and much-needed health care facilities.

Under a CON law regime, states require a certificate of need for a wide variety of expenditures, such as facility construction and modification, new medical procedures offered, and increased inpatient care beds. States with CON programs regulate on average 14 medical services, devices, and procedures. Tennessee regulates 23, much higher than the national average.

Even worse, the Volunteer State’s CON laws create a “competitor’s veto” of new market entrants. A 2011 report from the National Institute for Health Care Reform confirmed the same problem exists in Connecticut, Georgia, Illinois, Michigan, South Carolina, and Washington. According to the report, “In five of the six states studied—all except Michigan—the CON approval process can be highly subjective and tends to be influenced heavily by political relationships rather than policy objectives.”

Policy Solution

Tennessee policymakers should repeal disruptive CON laws. One bill introduced in 2019 in the Tennessee General Assembly would accomplish this goal. House Bill 1085 would completely repeal the Volunteer State’s CON laws in five years. According to Rep. Martin Daniel (R-Knoxville), who sponsored the bill, market demand (not government bureaucrats) should govern health care supply.

“Our CON laws are some of the most rigorous and onerous in the entire nation,” Daniel told WJHL. “The economic market should determine supply and demand, not the government.”

A state profile of Tennessee’s CON laws conducted by the Mercatus Center, which relied on existing data from other states, estimates total health care spending could drop by $223 per person if CON laws were repealed.

In addition to lowering health care costs, eliminating Tennessee’s CON laws would improve health care quality and access.

According to the Mercatus study, if Tennessee did not have CON requirements, the Volunteer State would have 63 additional health care facilities, 26 additional ambulatory surgery centers, and 25 additional rural hospitals.

Although full repeal remains the ideal reform, there are other bills that also take a step in the right direction. One bill, House Bill 541, would remove the requirement to obtain a certificate of need for “the establishment of a satellite emergency department facility by a hospital at a location other than the hospital’s main campus.” It would also remove cardiac catheterization as a health care service requiring a certificate of need.

Another bill addresses home care organizations. House Bill 672 removes requirements for any home care organization and satellite emergency department to apply for and receive a certificate of need.

Writing for the Beacon Center, Lindsay Boyd Killen explains why certificate of need laws in Tennessee should be reformed. “The only irrefutable achievement we can directly attribute to CON laws is their successful creation of a robust hospital cartel that restricts competition in the marketplace and decreases the supply of healthcare services. That’s not something to be proud of.”

Policy Message

Point 1: CON laws reduce health care access and quality while increasing costs by hindering competition.

Point 2: States requiring CON for 10 or more services averaged per-capita health care costs 8 percent higher than states requiring CON on fewer than 10 services.

Point 3: CON laws give undue influence to certain health care providers. When a health care company applies to enter a market, existing providers often use the CON process to block potential competition.

Point 4: States with CON laws have a mortality rate about 5.5 percent higher than the average rate in non-CON states.

Point 5: CON laws are especially detrimental to rural areas because they have resulted in 30 percent fewer rural hospitals.