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Summary:

Certificate of Need laws allow unelected officials and competitors to stop the construction or expansion of health care facilities and services in Oregon. The estimated results of these laws are fewer hospitals, lower-quality health care, and higher costs.

Word Count: 716

“In the best of times, stifling the supply of health care facilities can be life threatening. During a pandemic, it can be catastrophic.”

Oregon Is Stopping Hospital Construction for Your Own Good

Eliminating Oregon’s Certificate of Need laws would significantly improve health care

By Vlad Yurlov

COVID-19 cases are spiking in Oregon and hospitals across the state are struggling to keep up. The [Oregon Health Authority](#) (OHA) reports that over 80% of Oregon’s adult Intensive Care Unit beds are full. But the OHA has continued to suppress health care facilities and services, by using Certificate of Need (CON) laws. For more than 50 years, Oregon has required health care facilities to demonstrate a “need” for any new or expanded facilities. Throughout the lengthy certificate of need process, competing providers are permitted to provide evidence showing that current and future demand for services can be satisfied by existing facilities. In this way, existing providers can block the entry of newcomers. In the best of times, stifling the supply of health care facilities can be life threatening. During a pandemic, it can be catastrophic.

In 1974, the National Health Planning and Resources Development Act established CON laws at a federal level. The Act stated “[t]he achievement of equal access to quality health care at a reasonable cost is a priority of the Federal Government.”¹ But CON laws create a series of unintended consequences that reduce health care accessibility and quality, while increasing costs. In 1986, the United States Congress recognized the damage that CON laws inflict and repealed the 1974 act.

As part of Oregon’s CON process, the OHA regularly uses the analysis and opinions of incumbent service providers to judge the “need” for new facilities. This creates a conflict between the new entrant and existing providers. Competing health care providers have a direct motive to impede the availability of new services. Just like every other market, competition forces incumbent businesses to either improve services or cut costs to retain customers and profits. Instead, the [American Medical Association](#) says “CON programs tend to be influenced heavily by political relationships, such as a provider’s clout, organizational size, or overall wealth and resources, rather than policy objectives.”

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¹ <https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg2225.pdf#page=512226>



CON laws have serious consequences for the delivery and quality of health care. In research published by the [Mercatus Center](#) at George Mason University, Thomas Stratmann and David Wille found that limiting entry into the hospital market is associated with the quality of the hospitals in the area. For example, mortality rates are statistically higher in areas that have such laws.² Competition forces hospitals to provide the best possible care to their patients. With CON laws, hospitals don't have to compete with as many other providers, which harms patient outcomes.

In response to the COVID-19 pandemic, [20 states have loosened CON laws](#) in order to boost the supply of hospital beds and treatments.³ Meanwhile, Oregon has made no moves to reduce the state's burdensome rules.

[Mercatus recently published](#) the estimated effects of Oregon's CON laws on health care costs and outcomes.⁴ They found that 19 health care services are subject to a CON or a cap, which may produce similar effects. The average Oregonian is estimated to save \$220 in annual health care spending if CON laws are abolished in the state. Furthermore, deaths resulting from post-surgery complications are estimated to decrease by nearly six percent. Access to health care could also improve, because total facilities are estimated to increase from just 63 to 89. The research suggests that without CON laws, Oregon would have better health outcomes at a lower cost to consumers.

Supporters of CON laws argue that suppressing "excess" services reduces the incentive for hospitals to charge high prices to cover their costs. But even the federal government has conceded that this has not been the result. [A joint statement](#) published by the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice stated "CON laws raise considerable competitive concerns and generally do not appear to have achieved their intended benefits for health care consumers."⁵ Despite this, Oregon has kept its practice of government insiders picking and choosing how many services its residents "need."

Each year shows more harmful effects of CON laws' unintended consequences. They degrade the incentive and results that competition provides. It is clear that CON laws restrict health care supply, reduce quality, and increase costs of services, which are directly opposite to the laws' intention. Oregon should repeal Certificate of Need laws and allow equal access to health care for Oregonians.

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²<https://www.mercatus.org/system/files/mercatus-stratmann-wille-con-hospital-quality-v1.pdf> 46-47

³<https://pacificlegal.org/certificate-of-need-laws-covid-19/>

⁴<https://www.mercatus.org/system/files/oregon.pdf>

⁵https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-antitrust-division-us-department-justice-regarding/v170006_ftc-doj_comment_on_alaska_senate_bill_re_state_con_law.pdf 15

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