

## INTENT AND STRUCTURE OF CERTIFICATE OF NEED PROGRAMS

From the National Conference of State Legislatures (January 2016):

The basic assumption underlying CON regulation is that excess capacity (in the form of facility overbuilding) directly results in health care price inflation. When a hospital cannot fill its beds, fixed costs must be met through higher charges for the beds that are used. Bigger institutions have bigger costs, so CON supporters say it makes sense to limit facilities to building only enough capacity to meet actual needs.

CON programs originated to regulate the number of beds in hospitals and nursing homes, and to prevent overbuying of expensive equipment. Mandatory regulation through health planning agencies determined the most urgent health care needs, contributed to solutions for these needs, and attempted to manage the fluctuations in prices often caused by a competitive market. The idea was that new or improved facilities or equipment would be approved based only on a genuine need in a community. Statutory criteria often were created to help planning agencies decide what was necessary for a given location. By reviewing the activities and resources of hospitals, the agencies made judgments about what needed to be improved. Once need was established, the applicant organization (corporation, not-for-profit, partnership or public entity) was granted permission to begin a project. These approvals generally are known as "Certificates of Need."

C.O.N. SUPPORTERS' VIEWS	C.O.N. OPPONENTS' VIEWS
<p>Advocates of CON programs say that health care cannot be considered as a "typical" economic product. They argue that many "market forces" do not obey the same rules for health care services as they do for other products. In support of this argument, it is often pointed out that, since most health services (like an x-ray) are "ordered" for patients by physicians, patients do not "shop" for these services the way they do for other commodities. This makes hospital, lab and other services insensitive to market effects on price, and suggests a regulatory approach based on public interest.</p> <p>The American Health Planning Association (AHPA) is the professional group of state agencies responsible for regulation and planning. They identify three factors that suggest the need for CON programs. The primary argument is that CON programs limit health-care spending. CONs can</p>	<p>CON programs also have been subject to wide criticism. To start, opponents argue that "it is not clear that these state-sponsored programs actually controlled health care costs." For example, by restricting new construction, CON programs may reduce price competition between facilities, and may actually keep prices high. Barriers to new building are seen as unfair restrictions, sometimes by both existing facilities and their potential new competitors. There is little direct broad proof that overcapacity or duplication leads to higher charges. In 2004 the Federal Trade Commission (FTC) and the Department of Justice both claimed that CON programs actually <i>contribute</i> to rising prices because they inhibit competitive markets that should be able to control the costs of care and guarantee quality and access to treatment and services.<sup>1</sup></p>

<sup>1</sup> The Federal Trade Commission, Department of Justice, Improving Health Care: A Dose of Competition (Washington D.C.: FTC, DOJ, 2004) 361 pages PDF.

## INTENT AND STRUCTURE OF CERTIFICATE OF NEED PROGRAMS

### C.O.N. SUPPORTERS' VIEWS

promote appropriate competition while maintaining lower costs for treatment services. The AHPA argues that by controlling construction and purchasing, state governments can oversee what expenditures are necessary and where funds will be used most effectively. This helps eliminate projects that detract attention from more urgent and useful investments and reduces excessive costs. A study conducted by the "big-three" automakers claims lower health care costs in CON states than in non-CON states. AHPA also asserts that CONs have a valuable impact on the quality of care. When facilities and equipment are monitored, hospitals and other treatment centers can acknowledge what sort of services are in demand and how effectively patients are being taken care of.

Additionally, according to supporters, the programs distribute care to areas that could be ignored by new medical centers. CON programs are a resource for policymakers. CON regulations are described as a reliable way to implement basic planning policies and practices, and aid in distributing health care to all demographic areas. The CON process can call attention to areas in need because planners can track and evaluate the requests of hospitals, doctors and citizens and see which areas are underserved or need to be improved and developed.

### C.O.N. OPPONENTS' VIEWS

Some opponents felt that changes in the Medicare payment system (such as paying hospitals according to Diagnostic Related Groups - "DRGs") would make external regulatory controls unnecessary, because health care organizations would be more subject to market pressures. Some pointed out that the CON programs are not consistently administered. A 'flexible' program could allow development, to the dismay of competitors. A 'restrictive' program could limit competition, with the same effect. Many argued that health facility development should be left to the economics of each institution, in light of its own market analysis, rather than being subject to political influence. Some evidence suggests that lack of competition paradoxically *encouraged* construction and additional spending. Some opponents of CON programs believe an open health care market, based on quality rather than price, might be the best principle for containing rising costs. Proponents of CON programs disagree. This debate rests on the same arguments as many other "Regulated market" vs. "Open market" discussions.

In theory, Certificates of Need are granted based on objective analysis of community need, rather than the economic self-interest of any single facility. However, opponents of CON programs claim that the programs have not worked this way. They cite examples in which CONs were apparently granted on the basis of political influence, institutional prestige or other factors apart from the interests of the community. Furthermore, it is sometimes a matter of debate what sort of development is actually in the community's interest, with people of good will sharply divided on how to determine this.