

Does Repealing Certificate of Need Laws Affect Healthcare Spending?

Project Summary and Preliminary Results

Certificate of Need (CON) laws prohibit hospitals and certain other healthcare providers from building new facilities, substantially expanding existing facilities, or acquiring new equipment without first obtaining approval from a state regulatory board. The stated goals of these laws are to contain healthcare spending, prevent unnecessary duplication of health care facilities and services, ensure high quality service, and guide the establishment of health facilities and services to equitably serve the public need.¹ However, there is scant evidence to support these claims and, to the contrary, several studies have found lower healthcare quality and increased healthcare spending in states with CON laws.²

New York passed the first Certificate of Need law in 1964. Other states quickly followed suit, with 23 states passing CON legislation by 1974. The expansion of CON laws accelerated when Gerald Ford signed the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641). The law incentivized states to create CON programs, offering funding to those that did and threatening to withhold Medicare and Medicaid funds from those that did not. By 1980, every state except Louisiana had a CON program in place. The federal statute promoting CON was repealed in the mid-1980s (Pub. L. No. 99-660, Title VII). Since then, 15 states have repealed their CON programs.³

Estimating the effect of CON laws on healthcare capacity, costs, and quality is difficult because of variations in the breadth and stringency of CON laws, demographic differences across states, as well as other confounding economic and political factors. We employ two different empirical methods to overcome these challenges. First, using the 15 states that have repealed their Certificate of Need laws since 1983 for identification, we use a differences-in-differences model to estimate the effect of CON laws on spending and quality. Preliminary results comport with theory: reduced competition in a healthcare industry leads to higher prices and increased spending. Consistent with existing literature, our initial differences-in-differences estimates show that repealing CON laws is likely to reduce overall spending on healthcare, primarily through lower prices. Furthermore, CON repeal may improve healthcare quality as measured by declining mortality and hospital readmission rates, though our initial estimates do not appear statistically significant.

Secondly, we use synthetic control methods to more precisely account for demographic and economic differences between states that have repealed their CON laws and those which have

¹ See, for example, South Carolina Department of Health and Environmental Control: <https://scdhhec.gov/health-regulation/health-facility-regulations-licensing-con/certificate-need>. Accessed February 20, 2021.

² See Annotated Bibliography and Notes.

³ Bailey, J. (2019). Can health spending be reined in through supply restraints? An evaluation of certificate-of-need laws. *Journal of Public Health*, 27(6), 755-760.

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not. This method involves the construction of a weighted combination of control states against which the treatment group is compared. As with the differences-in-differences model, we use as the treatment group those states that originally enacted then subsequently repealed their certificate of need law. We have not fully specified this model and cannot share results at this time, but our initial findings suggest the differences-in-differences models may *underestimate* expenditure reductions from CON repeal.