

Washington State's Psychiatric Care Certificate of Need Requirement

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Chair Cleveland, Vice Chair Robinson, and Distinguished Members of the Senate Health and Long Term Care Committee:

My name is Matthew Mitchell. I am an economist at the Knee Regulatory Research Center at WVU and for a decade I have been studying Certificate of Need (CON) Laws in health care. I was pleased to see that you are considering lifting the CON requirement for psychiatric care and I thought it might be helpful to share some of the research on this regulation. I will focus on 3 considerations: 1) the goals of CON, 2) the scientific study of CON, and 3) the particulars of psychiatric CON laws.

1. The Goals of CON Regulation

As you know, CON regulation in health care was intended to rein in health care spending. Lawmakers hoped that by requiring providers to prove a need before offering new or expanded services, they might limit the provision of expensive, duplicative, or unnecessary care. At the same time, they hoped that planners might be able to divert the provision of care to relatively underserved communities. And though the CON process does not typically include an assessment of a provider's quality or qualifications, advocates they hoped the regulations might increase quality by encouraging more high-volume providers.

2. The Scientific Study of CON Laws

Neither economic theory nor decades of empirical research suggest that CON laws achieve any of these goals. In fact, the balance of evidence suggests that the regulatory regime undermines competition, driving up costs, limiting access, and diminishing the quality of care. The case against CON is especially strong when it limits care for vulnerable populations such as those seeking psychiatric care.

Standard economic theory tells us that a supply restriction such as CON will tend to shift the supply curve back, raising the costs per unit and limiting the quantity and quality of care. These effects are exacerbated by the fact that CON laws have several anticompetitive features. In most CON states—including Washington—the process empowers incumbent providers to challenge the applications of their would-be competitors. And since statutory and regulatory language often compels regulators to deny applications if a new service will “duplicate” (i.e., compete with) an existing service, the process encourages the local monopolization of care.

But we don't have to rely on theory alone. We can look to the real-world experience of Americans. About a 1-in-3 live in a state with either limited or no CON regulation in health care. Many more live in states that have reformed or pared their CON programs back. Relying on this variation across time and across geography, researchers have spent decades comparing outcomes in CON and non-CON markets.

Few regulations have been as well studied as CON laws. To date, there have been 114 peer-reviewed empirical assessments of CON laws and together these papers contain 413 separate tests (Mitchell forthcoming). Most find that CON laws *undermine* their stated goals. By a margin of nearly 5 to 1, tests find that the regulation is associated with higher spending, less access, and diminished quality of care.

3. Psychiatric Care CON Laws

While the case for CON is weak, the case for psychiatric CONs is weaker still. Psychiatric services are not capital intensive. Psychiatric services are not over-supplied. And there is no evidence that high-volume psychiatric providers offer any better care.

To date, not a single study has found that CON laws enhance care for vulnerable or underserved populations such as psychiatric patients. In fact, one recent study found that in states like Washington that require a CON for psychiatric care, there are 20 percent fewer psychiatric hospitals and 56 percent fewer psychiatric patients per capita (Bailey and Lewin 2021).

4. Conclusion

We need not speculate about what would happen in a Washington state without this regulation. Decades of evidence drawn from hundreds of sophisticated empirical investigations makes it clear that Washingtonians can expect greater access to lower cost and higher quality care without CON. Vulnerable and underserved populations such as those in need of psychiatric care are especially likely to benefit from repeal.

Thank you for the opportunity to offer my testimony today. I am happy to discuss my research in further detail with you or your staffs.

Sincerely,

Matthew D. Mitchell, Ph.D.

Works cited:

Bailey, James, and Eleanor Lewin. 2021. "Certificate of Need and Inpatient Psychiatric Services." *The Journal of Mental Health Policy and Economics* 24 (4): 117–24.

Mitchell, Matthew D. Forthcoming. "Certificate of Need Laws in Health Care: A Comprehensive Review of the Literature." *Southern Economic Journal*.