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Certificate of Need Regulations: Mixed Evidence for Cost Containment

Certificate of need (CON) laws—also known as determination of need (DON)—have a long history as a potential cost control solution. CON requires health care providers—primarily hospitals—to demonstrate to a public body the clinical need for a capital expense, for example, a new building or major piece of equipment, prior to making these investments. CON began as a state-driven, cost-control strategy that led to eventual federal adoption. The federal policy was allowed to expire in the mid 1980s and today 36 states have CON policies in place.

Evidence of the effects of certificate of need on the allocation of hospital capital resources are mixed. One approach that seems to lead to better outcomes are use-review boards that include a variety of stakeholders, including consumer representation. However, the evidence suggests that there may be even more beneficial ways to address the policy problems targeted by CON.

What is Certificate of Need?

CON regulations aim to control health care providers' capital expenditures by limiting facility construction and acquisition of major medical equipment. CON requires health care providers to demonstrate the clinical need for the capital expense (e.g., new building or equipment), along with the qualifications the hospital has for the operation and use of the capital equipment.

What Value Problem Does this Strategy Address?

The primary goals of CON is to address rising costs and oversupply problems in the health care system. When CON laws were first implemented in the 1970s health care per capita spending had tripled due to three main factors: implementation of Medicare, adoption of fee-for-service payment and the expansion of new medical technologies. CON was introduced to combat the medical "arms race" that was occurring as providers sought to profit from new technologies and stay competitive with other local providers.

This medical arms race led to popular, sophisticated and expensive medical technologies to be purchased by nearly every hospital, as well as the expansion of hospital capacity. According to "Roemer's Law," new hospital beds and equipment will tend to be used – perhaps over and above what the population needs. Studies confirm this "law," proving a relationship between available beds and increasing inpatient hospitalization rates.[1,2]

In an effort to halt this rapid expansion of technology, federal and state governments created panels to judge the services that were needed and not needed within a community. Many state CON laws were initially passed as part of the federal "Health Planning Resources Development Act" of 1974.

These efforts tried to balance patient needs against a desire to provide services without unnecessarily duplicating services already provided in the community. In other words, the efforts attempted to increase the efficiency of care delivery.

What Does the Evidence Say?

There are many studies that show that CON regulations have had a positive impact on efficiency compared to a strictly free-market system. While CON does not always lower costs, these studies show CON policies can reduce the cost of delivering health care if they are effectively structured.[3,4] The root of an effective CON policy is that it focuses on community-wide cost containment, rather than focusing on costs on a hospital-by-hospital basis.[5]

On the other hand, other studies show that CON policies may not be the most effective method of curtailing a medical arms race. This is because it is difficult to disentangle the impact of CON laws on important areas of health care provision, including cost, price, access and quality. One study found that CON policies possibly facilitate efficient production of health care, but there are other policy interventions that could be more effective.[6]

One such example of the inefficiencies of CON programs is that a majority of states use an approval process that is often politically influenced by a variety of factors, including the provider's clout, size and overall resources. To counter this, for example, the state of Michigan uses a diverse commission of stakeholders to establish standards to evaluate CON applications. This commission includes representatives from the employer, consumer and provider sectors, along with other interested parties appointed by the state's governor.

Conclusion

The available evidence gives the impact of CON regulations on the allocation of hospital resources a mixed review. The evidence suggests that there may be other policies, such as health maintenance organizations (HMOs), bundled payments, global budgeting, and other payment reforms, which may better address the problems CON aims to address. It will be important to continue to watch the CON program in Michigan and possibly other states, as the inclusion of consumer representation on the state's commission is a unique development that may greatly benefit consumers by giving them a voice in the decision making process.

Notes

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About This Series

The Healthcare Value Hub takes a careful look at the evidence and consults with experts in order to clarify for advocates, media and policymakers the important cost drivers and the promising policy solutions. Hub Easy Explainers, Research Briefs, infographics and other products are available at our website. Note: This publication was produced when the Healthcare Value Hub was affiliated with Consumer Reports. As of July 1, 2017, the Hub is part of Altarum Institute.

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