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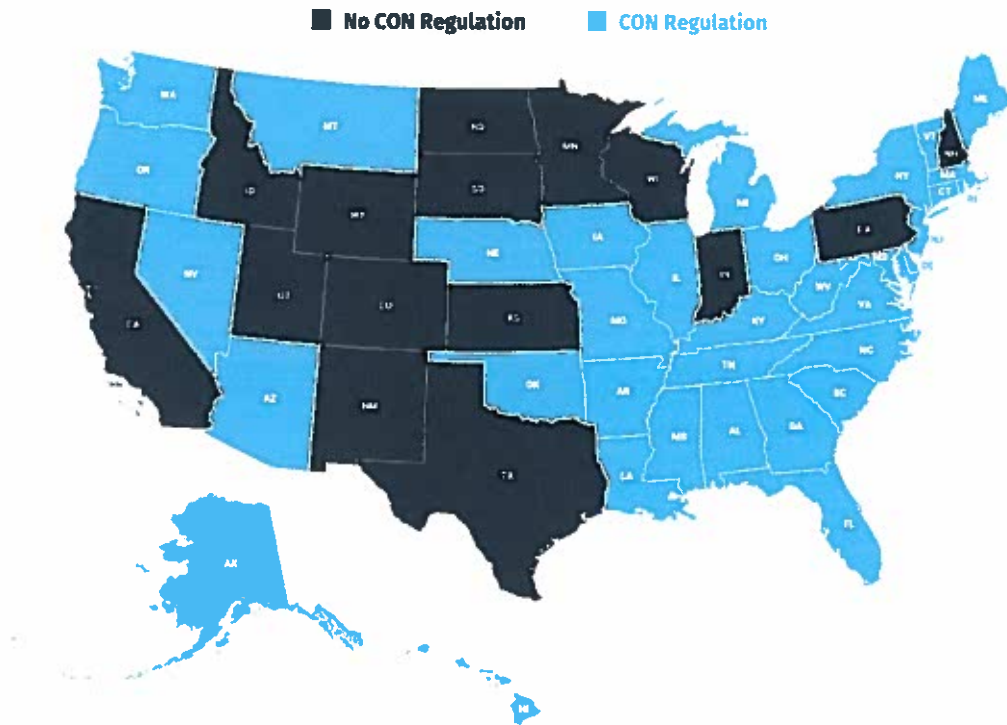


by Brett Kittredge | Friday October 23, 2020 | Free Market

During an election season, you are bound to hear politicians make a lot of promises. One of the most common – largely because it polls very well – is free, or at least cheaper, health insurance. Regardless of the costs and practicality of such claims, there are reforms that would accomplish what we all want: lower costs and greater access.

Mississippi is one of 35 states that prohibit entry or expansion of healthcare facilities in the state without permission from the government and your competition through what is known as Certificate of Need laws. Meaning, you can't just open a new business, or expand your current operation; you need the government's blessing.

CON Regulation in the United States



Mississippi requires CONs within five broad categories: hospital beds, beds outside hospitals, equipment, facilities, and services. Mississippi has 80 CON requirements, 41 of which apply to facilities and buildings. And applications range from \$500 to \$25,000, to start or grow a business.

If this happened in any other area of our economy, you would say that is ridiculous. And you'd be right.

CONs are a product of the 1970s. At the time, the federal government began requiring states to adopt CONs in exchange for federal funds. Some things never change. But the federal government soon learned they didn't work, and it backtracked, repealing the federal mandate. Thirty-five years later, though, most states are still addicted to this failed government planning.



Which is unfortunate because we have plenty of research showing CONs don't do what was initially sold. In fact, they actually hurt healthcare outcomes. Let's look at three claims according to a gathering of research from the Mercatus Center at George Mason University:

- CONs were created to ensure an adequate supply of healthcare resources. That hasn't happened. Instead, the regulations limit the establishment and expansion of healthcare facilities. CONs are associated with fewer hospitals, ambulatory surgical centers, dialysis clinics, hospice care facilities, and fewer hospital beds.
- CONs were also supposed to ensure access to healthcare in rural communities. We've heard plenty of rural hospitals closing in Mississippi, before and after Obamacare. But we know CON programs are associated with fewer rural hospitals, rural hospital substitutes, rural hospice care, and residents in CON states have to drive farther to obtain care than residents in non-CON states.
- And they were supposed to lead to a lower cost for healthcare services. They might reduce overall spending by reducing the quantity of service that patients consume, but the evidence shows that overall CON laws actually increase total healthcare spending.

That is part of the reason we have seen bipartisan opposition from both Republican and Democratic administrations.

In 2004, under President George W. Bush, the Federal Trade Commission and Department of Justice, issued a report saying, "States with Certificate of Need programs should reconsider whether these programs best serve their citizens' health care needs. The [agencies] believe that, on balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits. Market incumbents can too easily use CON procedures to forestall competitors from entering an incumbent's market."

In 2016, under President Barack Obama, the same two agencies issued a joint opinion, saying, "After considerable experience, it is now apparent that CON laws can prevent the efficient functioning of health care markets in several ways that may undermine those goals."



Only two states have repealed their CON laws in the past two decades. The proponents of such laws are loud and powerful and are clearly able to garner support from both Republicans and Democrats at the state level.

Then the coronavirus pandemic hit.

Think back to March, and even today in Mississippi. We are worried about hospital beds. We have a new executive order from Gov. Tate Reeves holding hospital bed space. The first reaction from numerous states was to temporarily suspend all or at least parts of CON laws because of the demand caused by COVID-19. This happened in 24 states, but not Mississippi.

So during a health pandemic, what did most states do? Repealed CON laws. Which leads to the next question: why do we have CON laws to begin with? If these regulations, which are promoted as being necessary for our "health and safety," are not good or helpful during a real emergency, we should agree they are not beneficial for us at any time.

By repealing CON laws, we will help improve healthcare access and help ensure we are ready for the next pandemic. It's the right policy. It just isn't as sexy as Medicare for All.

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Mississippi Center for Public Policy

520 George Street | Jackson, MS 39202

t 601.969.1300 • mail@mspolicy.org

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