

URGENT CARE CENTERS: THE CASE AGAINST CERTIFICATE OF NEED

Urgent care centers fulfill an important health care need in communities across America, including for patients who have a primary care provider. Primary care physicians are not always available, especially after hours, weekends, and holidays and most do not take walk-in patients. This was evident throughout the COVID-19 pandemic when many primary care offices closed their doors entirely for weeks or months and urgent care filled the patient need.

If urgent care centers are not available, and primary care is not accessible, patients will seek care for non-emergent conditions in the more costly hospital emergency department.

Encumbering urgent care centers with Certificate of Need (CON) regulations inhibits access, threatens a community's ability to respond to emergency needs, and drives up, rather than lowers, the cost of care.

The use of CON programs dates back to 1974 when the federal government offered incentives to enact state laws implementing CON programs as a way to contain hospital spending. Many states implemented CON programs because of the incentives, but Congress repealed the federal law in 1987. However, 36 states still maintain some level of CON requirements.¹

While lowering health care costs was the principal and intended goal of CON regulation in the 1970s, the reality has been that CON regulations result in anticompetitive behavior and more costly care.

In 2004, the Department of Justice and Federal Trade Commission issued a report on competition in the health care marketplace that recommended that states with CON programs *"reconsider whether these programs best serve their citizens' health care needs."*⁴ The agencies concluded that CON programs are generally not successful in containing health care costs and can pose anticompetitive risks.

The report further states CON programs *"...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... Indeed, there is considerable evidence that CON programs can actually increase prices by fostering anticompetitive barriers to entry."*

It has been estimated that shifting non-emergency cases from the emergency department to alternative sites, such as urgent care centers, could yield savings of \$4.4 billion annually to the health care system.³ CON's for urgent care centers presents a barrier to reaching these savings, and there is no evidence that CON laws achieve their stated aims. In fact, requiring CON for urgent care centers inhibits market entry and forces consumers toward more expensive, and often less-desirable, sites of care. The result is increased patient and third-party payer costs, and increased burdens on emergency departments.

¹National Conference of State Legislatures. Information accessed online Dec. 16, 2014.
<http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

²Agency for Healthcare Research and Quality 2012 Medical Expenditure Panel Survey, Table 6.
http://meps.ahrq.gov/mepsweb/data_stats/quick_tables_results.jsp?component=1&subcomponent=0&year=-1&tableSeries=1&searchText=&searchMethod=1&Action=Search

³Many Emergency Department Visits Could be Managed at Urgent Care Centers and Retail Clinics. Weinick, R., Burns, R., and Mehrotra, A. Health Aff September 2010 vol. 29 no. 9 1630-1636.

⁴Improving Health Care: A Dose of Competition. A Report by the Federal Trade Commission and Department of Justice. July 2004 http://www.justice.gov/atr/public/health_care/204694.pdf