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## Effects of Certificate of Need and Its Possible Repeal Report 99-1

*The state's Certificate of Need (CON) program regulates the development and expansion of certain acute and long-term health care services. The Joint Legislative Audit and Review Committee (JLARC) contracted with the Health Policy Analysis Program (HPAP) of the University of Washington's School of Public Health and Community Medicine to conduct a legislatively mandated study of the CON program. The study examined the effects of CON and its possible repeal on the cost, quality, and availability of five health services – hospitals, ambulatory surgery, kidney treatment, home health, and hospice – as well as on charity care and health services in rural areas. Nursing homes were excluded from the study.*

*The study found that CON has not controlled overall health care spending or hospital costs. The study generally found either conflicting or limited evidence about the effects of CON on the cost of non-hospital services, and on the quality and availability of the various health care services. The available evidence also does not provide a basis for estimating or predicting the effects of repealing CON on health care services in Washington State. Finally, the study identified strengths and weaknesses of the state's CON program.*

*The study presents three policy options for consideration: (1) reform CON to address its current weaknesses, (2) repeal parts or all of the program while taking steps to increase monitoring and ensure that relevant goals are being met, and (3) conduct an economic study of how repealing CON would affect local health care markets and providers. A proposal for the additional study, which can be conducted in tandem with either of the first two options, is presented with alternative levels of comprehensiveness and cost. The legislature may also wish to leave the Certificate of Need program unchanged.*

### **BACKGROUND**

The purpose of Washington's CON program is to restrain health care costs by regulating the supply of services and facilities, guide the development of health services to avoid undue duplication or fragmentation, promote quality of care and access, and provide adequate information about the health care system. The program controls the creation or expansion of certain health care facilities and services. For a CON to be granted, applicants must show that the current or projected need cannot be met by existing providers and that the proposals will not adversely affect access or charity care.

HPAP studied the CON program to examine the effects of CON and its possible repeal on the cost, quality, and availability of five health services –

hospitals, ambulatory surgery, kidney treatment, home health, and hospice – as well as on charity care and health services in rural areas. The study's results were based on a broad literature review of related research, information gathered from service providers and other experts in Washington, and analyses of selected states where CON has been repealed. The findings may not reflect the actual experience or changes to CON within this state.

### **FINDINGS**

**COST** The study found strong evidence that CON is not an effective mechanism for controlling overall health care spending. While CON programs may be effective in slowing the expansion of some services, other factors affect health care costs that CON laws do not control. In addition, CON has not been effective

in controlling hospital costs, because not all hospital services are covered by CON, and the program is not always effective in controlling supply. The study found that CON has restricted the supply of some non-hospital services and that CON repeal has been associated with large surges in service supply in some states.

**QUALITY** Evidence about the effect of CON or its repeal on quality is inconclusive. The evidence is weak regarding the ability of CON to improve quality by concentrating volume of specialized services (e.g., transplants) in a certain facilities. Indirect evidence suggests that CON may protect quality in home health and hospice by keeping out unprepared or unqualified providers. Weak, conflicting evidence exists regarding the effect of CON on the market share of for-profit providers and any resulting impacts on quality. CON does not provide an ongoing mechanism to monitor quality.

**ACCESS** Conflicting evidence was found regarding the effect of CON or its repeal on access to health services. In some cases, CON has been used to protect existing facilities in inner city areas or to prompt providers to locate in those areas. In other cases, CON appears to restrict access by hindering the development of new facilities. Evidence nationally shows that the relationship between CON and access varies state by state and service by service. CON does not provide an ongoing mechanism to monitor access.

**CHARITY CARE** CON provides some initial screening regarding a facility's likelihood of providing charity care, but the program in Washington does not include monitoring for compliance. Some states are more likely to grant a CON to facilities offering more charity care, and CON can improve the operating margins of existing providers. These factors *may* increase the likelihood that the providers will offer more charity care, but the evidence to support this conclusion is weak. However, increasing financial and market pressures make it increasingly difficult for all types of providers to offer charity care.

**RURAL CARE** Weak and conflicting evidence was also found regarding the effect of CON on access to services in rural areas. One analysis showed that CON did not affect the development of rural networks. Repeal of CON appears to have had no effect in some states, while at least one state has experienced some disruption of rural health services after repeal.

The study also identified various strengths and weaknesses of Washington's current CON program.

## **POLICY OPTIONS**

The study makes no recommendation about whether to retain or repeal CON, because the available evidence does not support such a recommendation. Whichever choice is made, the experiences of other states and the perspectives of local experts suggest specific policy options:

1. **REFORM THE PROGRAM** If policy makers choose to retain CON review for some or all services, weaknesses of the current program should be addressed by: (a) reassessing its goals in light of the current health care system, (b) establishing a means for CON to be more responsive to changes in the health care system, such as an advisory board, and (c) strengthening state monitoring of quality, overall and rural access, and community benefits (such as charity care and unreimbursed community services).
2. **REPEAL THE PROGRAM** If policy makers choose to repeal CON review for some or all services, two actions should also take place: (a) reevaluate state health policy goals and identify alternative methods of attaining those goals; and (b) strengthen data collection and monitoring programs to improve oversight of costs, quality, access, and community benefits.
3. **CONDUCT ADDITIONAL ECONOMIC ANALYSES** An economic study would provide a better understanding of the effects that various changes in the CON program would have on health services and providers in Washington. Such a study could model the simulated impacts should the state decide to repeal or reform the program. The scope of the study could be limited or comprehensive, depending on the resources available. Estimated study costs range from \$200,000 to \$300,000.

The above options are not mutually exclusive. For example, the legislature may choose to repeal certain portions of the program while reforming others, or may choose to reform the program while also conducting a study of the economic effects of repeal. The legislature may also choose to make no change in the program; although the study found little support for the "no change" option.