

# Rhode Island's Certificate of Need Program: Lessons from Research

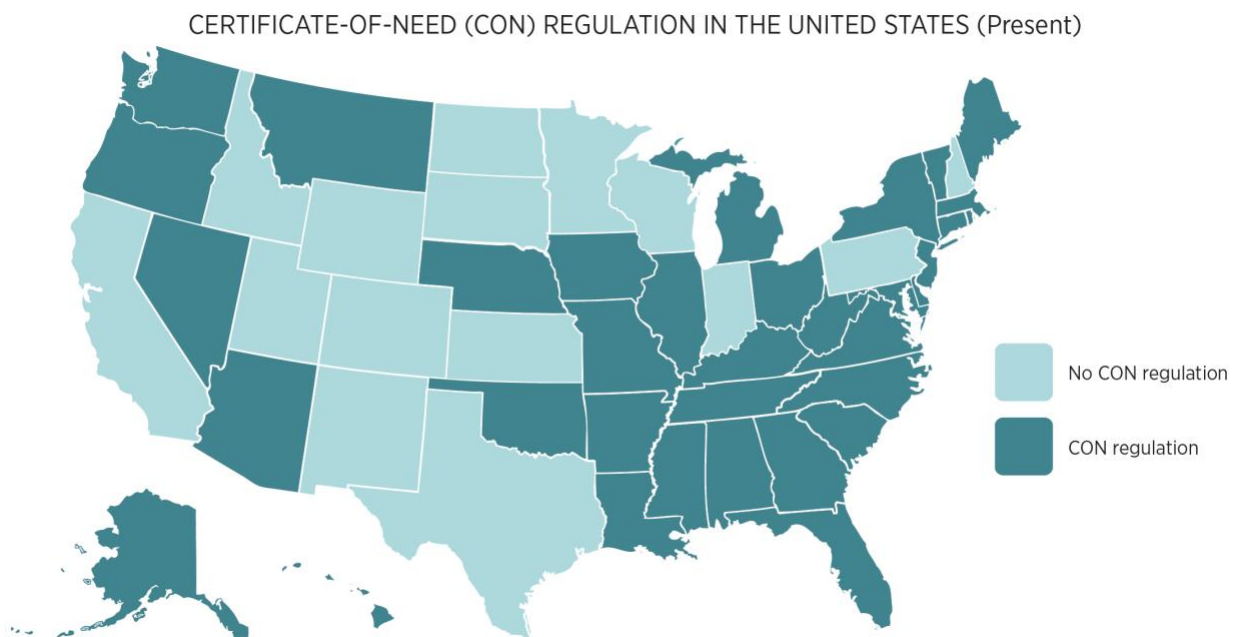
James Bailey, Ph.D.

Dear committee members:

My name is James Bailey. I am an Associate Professor of Economics at Providence College, though I am testifying only on my own behalf. I have spent much of the last decade studying Certificate of Need laws, and I have published 8 articles on the subject in peer-reviewed journals. I appreciate the opportunity to share my findings with you.

## Certificate of Need Repeal Is Common

Most states passed their Certificate of Need (CON) law in response to a 1974 federal mandate<sup>1</sup>, but that federal requirement was dropped in the 1980s when the federal government determined CON to be ineffective and anticompetitive. Since then 15 states representing about 40% of the US population have repealed their CON programs.<sup>2</sup>



<sup>1</sup> The National Health Planning and Resource Development Act of 1974; see Conover and Bailey (2020) for a more detailed history

<sup>2</sup> Source for the map depicting CON repeal states is here: <https://www.mercatus.org/research/data-visualizations/40-years-certificate-need-laws-across-america>

## Rhode Island Has One Of The Strictest CON Programs

The American Health Planning Association [tracked](#) which of 28 different types of health services, facilities, and equipment were covered by various states. Their most recent data show that Rhode Island required CON for 17 separate types of medical care, making it the 6<sup>th</sup> strictest state.<sup>3</sup>

The stated mission of Rhode Island's Certificate of Need program is "To prevent unnecessary duplication of medical services, facilities, and equipment; and promote access, safe and adequate treatment, and quality improvement in healthcare facilities."<sup>4</sup> Academic research on CON, however, shows that if anything CON has led to higher costs and less access to care.

## CON Decreases Access to Care and Increases Health Care Costs

With Dr. Christopher Conover of Duke University, I conducted a [systematic review](#) of the literature on CON laws<sup>5</sup>. Surveying the articles that provided original empirical estimates, we found that most research found that CON led to higher spending and worse access to care.

The most straightforward and direct effect of CON is that it makes it more expensive, time-consuming, and difficult to open or expand a health care facility and to acquire health care equipment. The academic literature confirms that this generally results in fewer facilities and less equipment in CON states. CON is associated with:

13 percent fewer hospital beds<sup>6</sup>

26 percent fewer hospitals offering MRI scans and CT scans<sup>7</sup>

30 percent fewer hospitals per capita<sup>8</sup>

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<sup>3</sup> Vermont, Hawaii, North Carolina, Maine, and Tennessee were the 5 stricter states

<sup>4</sup> From the front page of the website of Rhode Island Office of Health Systems Development <https://health.ri.gov/health-systems/ridoh-programs/health-systems-development-office>

<sup>5</sup> Conover, C.J., Bailey, J. Certificate of need laws: a systematic review and cost-effectiveness analysis. *BMC Health Serv Res* 20, 748 (2020). <https://doi.org/10.1186/s12913-020-05563-1>

<sup>6</sup> Stratmann T, Russ J. Do Certificate-of-Need Laws Increase Indigent Care?. Mercatus Center working paper <https://www.mercatus.org/system/files/Stratmann-Certificate-Need.pdf>

<sup>7</sup> Stratmann T, Russ J. Do Certificate-of-Need Laws Increase Indigent Care?. Mercatus Center working paper <https://www.mercatus.org/system/files/Stratmann-Certificate-Need.pdf>

<sup>8</sup> Stratmann T, Koopman C. Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals. Mercatus Center working paper <https://www.mercatus.org/publications/regulation/entry-regulation-and-rural-health-care-certificate-need-laws-ambulatory> (an older article finds a 48 percent decrease- see Eichmann TL, Santerre RE. Do hospital chief executive officers extract rents from Certificate of Need laws?. *Journal of health care finance*. 2011;37(4):1-4.)

14 percent fewer ambulatory surgery centers<sup>9</sup>

49 percent fewer neonatal intensive care beds<sup>10</sup>

A more recent comprehensive review<sup>11</sup> of the academic literature on CON concluded “The accumulated evidence is overwhelming that CON laws do not achieve their purpose. Instead, the balance of evidence suggests that these regulations increase spending, reduce access to care, undermine quality, and fail to ensure care for underserved populations.” My own research on how CON affects health care spending found that it leads to 3.1% higher spending overall<sup>12</sup> and 13.1% higher spending by patients in less-than-good health<sup>13</sup>. This higher spending seems to be driven by higher prices more than higher utilization - health care prices are on average 13.8% higher in CON states<sup>14</sup>.

### **CON Laws Decrease Access to Psychiatric Care**

I also published what I believe is the only study to evaluate the effect of CON on access to psychiatric care. The study was co-authored with Dr. Eleanor Lewin of the Providence Veterans Affairs Hospital, and was published in the *Journal of Mental Health Policy and Economics*<sup>15</sup>. Controlling for a variety of factors, we find that CON is associated with a state having 20% fewer psychiatric hospitals, and those hospitals being 5.3 percentage points less likely to accept Medicare.

### **Substance Use Treatment Centers are Less Likely to Accept Private Insurance in States with CON Laws**

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<sup>9</sup> Stratmann T, Koopman C. Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals. Mercatus Center working paper <https://www.mercatus.org/publications/regulation/entry-regulation-and-rural-health-care-certificate-need-laws-ambulatory>

<sup>10</sup> Lorch SA, Maheshwari P, Even-Shoshan O. The impact of certificate of need programs on neonatal intensive care units. *Journal of Perinatology*. 2012 Jan;32(1):39-44.

<sup>11</sup> Mitchell, M. D. (2024). Certificate-of-Need laws in healthcare: A comprehensive review of the literature. *Southern Economic Journal*, 1–38. <https://doi.org/10.1002/soej.12698>

<sup>12</sup> Bailey J. Can health spending be reined in through supply restraints? An evaluation of certificate-of-need laws. *Journal of Public Health*. 2019 Dec 1;27(6):755-60. <https://link.springer.com/article/10.1007/s10389-018-0998-1>

<sup>13</sup> Bailey J, Hamami T. Competition and Health-Care Spending: Theory and Application to Certificate of Need Laws. Federal Reserve Bank of Philadelphia working paper 19-38 <https://www.philadelphiafed.org/the-economy/competition-and-health-care-spending-theory-and-application-to-certificate-of-need-laws>

<sup>14</sup> Bailey J, Hamami T, McCorry D. Certificate of need laws and health care prices. *Journal of Health Care Finance*. 2016 Jul 17;43(4). <https://journalofhealthcarefinance.com/index.php/johcf/article/view/128>

<sup>15</sup> Bailey, James, and Eleanor Lewin. "Certificate of Need and Inpatient Psychiatric Services." *The Journal of Mental Health Policy and Economics* 24, no. 4 (2021): 117-124. <https://pubmed.ncbi.nlm.nih.gov/34907901/>

I have also evaluated the effect of CON on access to substance use treatment. The [study](#)<sup>16</sup> was co-authored with Dr. Thanh Lu of Weill Cornell Medical College and Patrick Vogt of Providence College, and was published in *Substance Abuse Treatment, Prevention, and Policy*. We found that substance use CON has no statistically significant effect on the number of substance use treatment facilities, beds, or clients, and no significant effect on the acceptance of Medicare. However, it reduces the acceptance of private insurance by a statistically significant 6%.

### **The Federal Government Has Disavowed CON Laws for Decades**

Research like this, along with changes to Medicare, led to a dramatic change in the federal government's approach. It went from threatening to withhold federal funds to states without CON in the 1970s to asking states to repeal CON today. The Federal Trade Commission and the Department of Justice have released joint statements supporting the repeal of CON laws in several states, including Virginia, Tennessee, and South Carolina<sup>17</sup>, arguing that CON laws "create barriers to entry and expansion, limit consumer choice, and stifle innovation." FTC Commissioner Maureen Olhausen went further, calling CON "A Prescription for Higher Costs" in a [2015 article](#). The White House Council of Economic Advisors questioned the value of CON during the both the Obama<sup>18</sup> and Trump<sup>19</sup> administrations, as did the US Department of Justice during the Biden administration.<sup>20</sup>

The American Medical Association has also [argued](#) for repeal, saying that "Certificate of Need (CON) laws have failed to achieve their intended goal of containing costs," "There is little evidence that CON laws improve access to care," and "CON programs can impede patient choice," concluding that "CON laws represent a failed public policy."

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<sup>16</sup> Bailey J, Lu T, and Vogt P. Certificate of Need and Substance Use Treatment. *Substance Abuse Treatment, Prevention, and Policy* (2022) 17:38 <https://doi.org/10.1186/s13011-022-00469-z>

<sup>17</sup> See here for the statements: <https://www.justice.gov/atr/page/file/1146241/download>

<sup>18</sup> Benefits of Competition and Indicators of Market Power

[https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414\\_cea\\_competition\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf)

<sup>19</sup> "state-specific certificate-of-need laws could reduce provider access and create unnecessary monopoly pricing" p178, Economic Report of the President 2020 <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-Economic-Report-of-the-President-WHCEA.pdf?mod=article> inline

<sup>20</sup> <https://www.justice.gov/atr/file/1302691/dl?inline>

Reform is possible. New Hampshire repealed its entire CON program in 2016; we have also seen major reforms without full repeal in Florida in 2019, Montana in 2021, and South Carolina in 2023. COVID and concern about full hospitals led many states<sup>21</sup>, including Rhode Island<sup>22</sup>, to temporarily waive CON requirements and save lives as a result.<sup>23</sup>

Thank you again for the opportunity to share my research, and please feel free to contact me if you would like more details on what academic research on Certificate of Need has found.

Sincerely,

James Bailey, PhD

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<sup>21</sup>[https://www.ftc.gov/system/files/documents/public\\_statements/1579079/summer\\_2020\\_wilson\\_deregulating\\_health\\_care\\_in\\_a\\_pandemic- and\\_beyond.pdf](https://www.ftc.gov/system/files/documents/public_statements/1579079/summer_2020_wilson_deregulating_health_care_in_a_pandemic-_and_beyond.pdf)

<sup>22</sup><https://www.rilegislature.gov/housefiscalreport/Briefings%20and%20Presentations/2020%20Session/COVID%2019%20Reports/Governor%27s%20COVID-19%20%20Executive%20Orders%20Updated.pdf>

<sup>23</sup> Ghosh S, Roy Choudhury A, Plemmons A. Certificate-of-Need Laws and Healthcare Utilization During COVID-19 Pandemic. <https://www.mdpi.com/1911-8074/15/2/76>