

**Yankee Institute Policy Brief**

# **Does Connecticut Have Enough Healthcare?**

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## Permission Slips for Hospitals

Every day, thousands of people in Connecticut put their lives in the hands of doctors and nurses at our hospitals. However, Connecticut's regulations don't let hospitals make basic decisions about how to run their own affairs. If a hospital wants to make changes like adding beds, or buying a CT scanner, or opening an obstetrics unit, first it has to get a permission slip from the state. State regulations require that hospitals get this permission slip – called a “certificate of need” (CON) – before a hospital can grow, shrink or make investments in certain equipment.

The Office of Health Care Access (OHCA) has to sign these permission slips. In 2014, this office cost taxpayers \$1.7 million, mostly for personnel.<sup>1</sup> Adding in the cost of employee benefits would likely bring the cost over \$2 million.

Last year, Tenet Healthcare asked OHCA for permission to invest in a hospital in Connecticut – it was meant to be the first of many investments in other hospitals. The company filed an application in May 2013 that eventually grew to more than 2,000 pages.<sup>2</sup> Finally, in December 2014 – 19 months later – OHCA granted permission, but with 47 conditions.<sup>3</sup> But by then Tenet had already had enough – the company took its planned investment of nearly \$500 million and left Connecticut.

A taxpayer-funded agency gets millions of dollars to keep healthcare investment out of Connecticut – so much for healthcare “access.”

## A Better Way

The people of Connecticut don't need state officials to control hospitals and their investments. In many other states hospitals successfully treat patients without this kind of oversight. Connecticut should follow their lead and eliminate certificates of need.

The idea behind certificates of need first took root in the 1960s; then, in the 1970s, Congress mandated the practice, and even provided funding for its implementation in the states. The belief was that by limiting the supply of healthcare, the growth of spending could be controlled. Large corporations and insurers concerned about the cost of providing healthcare encouraged the spread of certificate of need policies because they believed more hospital beds caused more healthcare spending. Similarly, they believed more expensive MRI and CT scanners would lead to more patients getting expensive scans.

Certificate of need policies restrict the supply of healthcare and reduce investment in the sector. Just as in other sectors of the economy, it is also true in healthcare that lower supply

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<sup>1</sup> Search of Department of Public Health, OHCA, <http://transparency.ct.gov/>.

<sup>2</sup> [http://www.ct.gov/dph/lib/dph/ohca/conapplications/2014/13\\_31838\\_486.pdf](http://www.ct.gov/dph/lib/dph/ohca/conapplications/2014/13_31838_486.pdf).

<sup>3</sup> *Ibid.*, p. 3,571 and following.

leads to higher prices. The good intentions of CON advocates have backfired, as any reductions in spending due to lower usage are more than offset by higher prices.<sup>4</sup>

Without certificates of need, doctors and nurses would still need licenses and hospitals would still have to meet other standards. If Connecticut eliminates certificates of need, it keeps these other rules. The CON permission slip is a form of economic regulation that has nothing to do with the quality of healthcare – instead it limits the quantity of healthcare, which makes healthcare more expensive.

In 2013, there were 8,711 hospital beds in Connecticut.<sup>5</sup> A Mercatus Center working paper suggests the CON permission slip reduces the number of hospital beds available in Connecticut. The state has a third fewer beds per capita compared to the national average and the paper suggests this difference can largely be attributed to the CON requirement.<sup>6</sup>

That's not to say that upon elimination of CON the number of hospital beds would – or should – increase that much. Our state's declining population would likely prevent anything like that from happening. The point is that our government has set the supply of hospital beds at an artificially low level. No one knows the right number of hospital beds for our state, so no one should try to dictate the number of hospital beds for our state – including the state government.<sup>7</sup> That's a decision that should be made by hospitals, based on the actual number of patients and their needs.

Connecticut requires a certificate of need for 17 different services: acute hospital beds, ambulatory surgical centers, cardiac catheterization, computerized tomography (CT) scanners, hospice, long-term acute care, nursing home beds, mobile imaging technology, magnetic resonance imaging (MRI) scanners, neo-natal intensive care, obstetrics services, open-heart surgery, organ transplants, positron emission tomography (PET) scanners, psychiatric services, radiation therapy and substance-abuse treatment.

Thirty-two states have fewer CON regulations, including 14 states with none altogether. Last year, Connecticut added a new category under CON regulation – now OHCA must issue a CON permission slip any time a hospital buys a physician practice with eight or more doctors.

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<sup>4</sup> Pope, Christopher. "How the Affordable Care Act Fuels Health Care Market Consolidation," Heritage Foundation Backgrounder #2928 on Health Care, <http://www.heritage.org/research/reports/2014/08/how-the-affordable-care-act-fuels-health-care-market-consolidation>.

<sup>5</sup> [http://www.ct.gov/dph/lib/dph/ohca/hospitalfillings/2013/fsreport\\_fy2013\\_final.pdf](http://www.ct.gov/dph/lib/dph/ohca/hospitalfillings/2013/fsreport_fy2013_final.pdf), p. 14.

<sup>6</sup> Mercatus Center Working Paper, "Do Certificate-of-Need Laws Increase Indigent Care?" Thomas Stratmann and Jake Russ, Jul 15, 2014, <http://mercatus.org/sites/default/files/Stratmann-Certificate-of-Need.pdf>.

<sup>7</sup> See, for example, the Nobel lecture of F.A. Hayek, "The Pretence of Knowledge." "Into the determination of these prices and wages there will enter the effects of particular information possessed by every one of the participants in the market process - a sum of facts which in their totality cannot be known to the scientific observer, or to any other single brain." [http://www.nobelprize.org/nobel\\_prizes/economic-sciences/laureates/1974/hayek-lecture.html](http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1974/hayek-lecture.html).

This new regulation appears to be aimed at countering the trend of hospital and healthcare consolidation; the Affordable Care Act, also known as Obamacare, has only added more pressure for healthcare providers to consolidate.<sup>8</sup> But there are existing state and federal regulations that can be used to combat anti-competitive practices. Rather than being a tool to ensure competition, the CON permission slip is actually a weapon some providers use to maintain the status quo, and actually prevent competition.

Hospitals and other providers can intervene in the CON process to advocate against their competitors' efforts to get permission from the state to make investments in healthcare. Even without intervention from direct competitors, the obstacle of getting a CON creates a barrier to entry that protects existing providers from new – and often innovative – competitors.

### **Sweating the Small Stuff**

When OHCA isn't creating obstacles to large investments in Connecticut, it is micromanaging medical practices. Take, for example, what's been happening in Norwich over the past decade.

In May 2006, Neurology Associates applied for permission to buy a \$1.5 million MRI scanner.<sup>9</sup> OHCA granted permission but prohibited the practice from allowing any non-neurology patients to use the device. This prohibition even applied to patients of the radiologist on staff at the practice.

Neurology Associates applied for a change to this condition in October 2007, but was denied six months later in April 2008.<sup>10</sup>

Eighteen months later, in October 2009, Neurology Associates applied for a new certificate of need that would allow the staff radiologist to use the practice's MRI on non-neurological cases. In January 2010, OHCA finally allowed Neurology Associates to do what it wanted to do all along.<sup>11</sup>

If Neurology Associates had received this permission in 2006 – four years earlier – what would have happened? Would any patients have been injured or harmed? No. In fact, the quality of care could have been higher since the doctor of their choosing could have used the equipment he or she chose. Instead of focusing solely on treating patients for the previous four years, doctors at the practice had the added distraction of complying with and struggling to modify these regulations.

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<sup>8</sup> Pope, "How the Affordable Care Act Fuels Health Care Market Consolidation."

<sup>9</sup> Office of Health Care Access Certificate of Need Application, Final Decision, Neurology Associates, LLC, 06-30674-CON, <http://www.ct.gov/dph/lib/dph/ohca/condecisions/06-30674-con.pdf>.

<sup>10</sup> Office of Health Care Access Request for Modification of a Previously Authorized Certificate of Need, Neurology Associates, LLC, 07-30674-MDF, [http://www.ct.gov/dph/lib/dph/ohca/condecisions/decisions\\_2008/07\\_30674\\_mdf.pdf](http://www.ct.gov/dph/lib/dph/ohca/condecisions/decisions_2008/07_30674_mdf.pdf).

<sup>11</sup> Department of Public Health, Office of Health care Access, Agreed Settlement, 09-31347-CON, [http://www.ct.gov/dph/lib/dph/ohca/condecisions/decisions\\_2010/09\\_31347\\_con.pdf](http://www.ct.gov/dph/lib/dph/ohca/condecisions/decisions_2010/09_31347_con.pdf).

In a separate case, OHCA told Norwich Hospital it could buy the assets of a radiology practice, including a CT scanner, for \$2.1 million, but denied permission to include in the purchase a \$56,064 MRI scanner. OHCA ordered the practice to continue using the MRI scanner at its current location or dispose of it.<sup>12</sup>

More recently Milford Hospital, where maternity cases have declined 75 percent in just four years, announced plans to close its maternity ward, but the process to stop delivering babies will “take several months.”<sup>13</sup> Because of the low number of births, the hospital is losing money offering this service. Regulatory delays only add to the losses.

## What’s the Point?

Certificate of need policies arose out of the well-intentioned belief that more hospitals meant more healthcare spending – but economic theory applies to healthcare just as well as it applies to other aspects of the economy. While there are some healthcare decisions that are made under unique circumstances – like emergencies – most healthcare decisions are made like any other purchasing decision. We take the information we have, talk to people we trust and look for recommendations, reviews and other markers of quality. If we are paying all or part of the cost, we consider price, too. Based on our preferences, we make a decision. Would we rather see a doctor affiliated with the closest hospital or one who has extra experience in a particular area of concern?

At the margins, extra capacity may indeed mean some extra demand. If a patient in the emergency room is on the borderline between being sent home and being admitted, empty hospital beds could indeed make the difference. However, these marginal cases are unlikely to be significant compared to the whole of healthcare spending.

The concern about extra supply causing more demand ignores the normal outcome of interactions between supply and demand: price. More supply will keep prices down or, at the very least, prevent providers from exerting market power – driving up prices because they can.

Market power is the term economists use for the extra income you get from owning Park Place and Boardwalk together. Hospitals can – and do – use and abuse market power. This has become a concern in Connecticut recently.

State Sen. Len Fasano, R-North Haven, alluded to this very problem in an op-ed, saying hospitals “also use their increased market power to demand higher rates from insurers, employers and

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<sup>12</sup> <http://www.ct.gov/dph/lib/dph/ohca/condecisions/06-30766-con.pdf>, p. 10.

<sup>13</sup> “Milford Hospital to stop delivering babies, halts obstetrical services after 90 years,” New Haven Register, Feb. 27, 2015, <http://www.nhregister.com/general-news/20150227/milford-hospital-to-stop-delivering-babies-halts-obstetrical-services-after-90-years>.

other payers, driving up the cost of healthcare for everybody and increasing consumers' out-of-pocket costs."<sup>14</sup>

States that have eliminated CON requirements bear out the prediction that hospitals lose some pricing power without government restricting the supply of healthcare. "States that have removed CON regulations have not experienced healthcare cost increases. Rather, in states that repealed CON laws, the cost of cardiac surgery fell so much that total spending fell even as volume increased."<sup>15</sup>

The certificate of need regulation helps hospitals exert market power by restricting the number of alternatives. As hospital systems grow in size and reach, insurers face more pressure to include them in their provider networks. Hospitals recognize their position and demand large price increases from insurers. In turn, insurers pass these prices on to employers and individuals.

## **Opportunity for Reform**

The Commissioner of Public Health, who oversees OHCA, recently testified before the General Assembly in favor of a bill to define certain terms used in the CON process to avoid confusion and eliminate ambiguities.<sup>16</sup>

The Connecticut Hospital Association testified for another set of improvements, including shorter timelines for decisions and expedited approval for certain applications.<sup>17</sup>

The regulator and regulated both agree the system needs improvement. The best improvement would be getting rid of CON permission slips altogether. It's time for the state to repeal certificate of need.

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<sup>14</sup> "Connecticut Needs Diversified Health care Options," New Haven Register, Feb. 19, 2015, <http://www.nhregister.com//opinion/20150219/state-senate-minority-leader-len-fasano-connecticut-needs-diversified-health-care-options>.

<sup>15</sup> Pope, "How the Affordable Care Act Fuels Health Care Market Consolidation."

<sup>16</sup> Testimony before Public Health Committee on H.B. 6987 by Dr. Jewel Mullen, March 18, 2015,

<http://www.cga.ct.gov/2015/PHdata/Tmy/2015HB-06987-R000318-Jewel%20Mullen,%20Commissioner,%20Connecticut%20Department%20of%20Public%20Health-TMY.PDF>.

<sup>17</sup> Testimony before Public Health Committee on S.B. 916 by CHA, March 11, 2015,

<http://cga.ct.gov/2015/PHdata/Tmy/2015SB-00916-R000311-Connecticut%20Hospital%20Association-TMY.PDF>.