

November 11, 2019

Legislators Nix Regulatory Overreach of Rural Health Care Providers

By Lindsay B. Killen

Summary

A state regulatory commission voted to deny some health care providers the chance to offer a new cancer treatment. Thankfully, legislators overruled the commission.

Main text word count: 443

In September, Michigan's Certificate of Need Commission voted to restrict access to a new, potentially lifesaving cancer treatment. Known as "CAR-T," this FDA-approved procedure programs the body's own T-cells to attack and kill cancerous cells, allowing patients to avoid invasive surgeries, chemotherapy and radiation. Michigan cancer patients, however, faced serious limitations to getting CAR-T therapy, thanks to this bureaucratic commission's action — that is, until the Mackinac Center and our allies successfully appealed to the Legislature to intervene and reverse the commission's decision.

Thirty-five states and the District of Columbia maintain certificate of need laws, which require health care providers to seek permission from the state before they can open their practice, expand it, or invest in new equipment and technologies. Before obtaining this permission slip, the provider's competitors — already operating in the same market space — can come before a state board or commission and challenge their would-be competitor's case. As a result, there is less competition for health care services, causing higher prices, reduced access and poorer patient outcomes. Research by the Mercatus Center finds that, in Michigan, CON results in:

- Approximately 12,900 fewer hospital beds across the state;
- Between 20 and 40 fewer hospitals offering MRI services;
- Between 68 and 85 fewer hospitals offering CT scans.

While the federal government told states in the 1970s to adopt these laws if they wanted to continue receiving certain federal funds, Congress repealed that mandate within 10 years because the laws were found to be ineffective at controlling costs. Since then, 15 states have repealed their requirements, but Michigan continues to impose some of the most restrictive CON laws in the country.

The latest action by the state commission should enrage us all — whether you are a strong proponent of CON laws or not. Simply put, the commission's decision reached far beyond its jurisdiction, which is supposed to be confined to regulating new major purchases by health care facilities. Given that CAR-T can be administered through a routine blood transfusion — requiring no new capital investments for providers — it should have been exempt from the CON process. Yet, thanks to the pressure from the state's largest hospitals, concentrated primarily in urban areas, the commission acted out of bounds. Without the Legislature's timely intervention, the commission's decision



Michigan cancer patients now have one less limitation to face in the search for treatment.

threatened to make it more difficult for cancer patients in rural areas of Michigan to access this treatment.

While we applaud lawmakers for reversing the commission's interference in this particular case, the broader problems caused by CON laws persist. The Mackinac Center remains committed to reforming Michigan's CON process over the coming months so that patients across our state can obtain necessary treatments and services more easily and have better long-term health outcomes.

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