# Missouri CON: The Rest of the Story

## Testimony of the Missouri Health Facilities Review Committee to the Missouri Senate Interim Committee on Certificate of Need September 18, 2006

We believe that you should have an opportunity to see the "big picture" as it concerns health care delivery and regulation in Missouri. You've already heard a variety of perspectives during your August 1 and 30, and September 12, 2006, meetings in Jefferson City and St. Louis.

The following is a list of misconceptions, myths and distortions which we would like to address in support of the continuance of Certificate of Need. We also encourage you to examine the scope of certificate of need to assure that it is appropriate to the Missouri's serious concerns about health care cost, assess, quality, and imbalance of review among health care providers.

### Myth: The Certificate of Need process is enormously costly.

**Fact:** Actually, the CON process is very efficient and effective, having been streamlined in year 2000 through input from applicants, providers, consultants and the general public. The information required for a CON application should be readily available if a basic business plan has been developed during the applicant's feasibility phase which most would do even if they didn't have to get a CON. The "recipe" for constructing an application is simple and straightforward, with outlines provided for most project types.

### Myth: CON is a "guarantor of access" and prevents innovation.

**Fact:** A certificate of need is a declaration that an applicant has met the objective need methodologies and performance standards which have been established through extensive input from health service providers and the public rulemaking process. Innovation is not only welcome, but is encouraged by specific provisions for evolving technology and clinical trials in both statute and rule.

### Myth: Nine people know more than health care developers.

**Fact:** The public's perspective and interests are well-represented by the Missouri Health Facilities Review Committee, which is composed of four legislative and five gubernatorial appointees. These volunteers contribute their time and expertise without compensation other than travel, food and lodging. Physicians, nurses, business health care purchasers, and other knowledgeable professionals with many years of experience combine their expertise to go beyond the numbers to also analyze context, exceptions and local input.

### Myth: Michigan CON is a "bludgeon" for access with no accepted methodology.

**Fact:** The Michigan Certificate of Need Commission provides timely and objective criteria and standards for review by the CON Program, where decisions are made by the Director of the Department of Community Health. Michigan's program focuses on those health facilities, equipment and services that have the highest impact on cost, access and quality. Their actions are considered some of the most influential on health care of any state in the country.

**Myth: Decisions should be based on empirical data and methodologies.**
**Fact:** Empirical is defined as "based on, concerned with, or verifiable by observation or experience rather than theory or pure logic." The criteria and standards for Missouri CON are conducted on a foundation of clinical, educational and experience-based knowledge provided through the CON Technical Advisory Committees using the most recent health care and demographic data available. This, with the addition of public input, is a reliable decision-making tool.

**Myth: Patient choice is more important than health care cost or access.**
**Fact:** Choice cannot be limitless; it must be balanced with reasonable access, quality and cost. With the cost of health care still escalating at over 10% per year, while over 700,000 Missourians are without health insurance, the supply of health services must be preserved in rural and inner-city areas, while moderating their expansion into affluent and high-profit areas.

**Myth: CON is like a "pig pen" where many don't wish to get muddy.**
**Fact:** Accusations of politicized CON decision-making is unfounded and derogatory. The statutes provided specific prohibitive language and penalties over a dozen years ago to prevent contributions and considerations of any kind from being offered to Committee or staff members. Such rhetoric demonstrates limited knowledge of the objective regulatory system, and reveals an attempt to discredit and minimize the Committee's sincere efforts to implement the law.

**Myth: Missouri CON is a barrier to market entry.**
**Fact:** CON decision-making is based on high performance standards and a conscious effort to maximize access while ensuring improved quality and restraining cost escalation. The result is a gateway to excellence that supports the best possible provider practice and outcomes conducted in a transparent and accountable environment.

**Myth: Invest in health planning instead of CON regulation.**
**Fact:** The national model for health planning was established in 1964 through a business, insurer and provider partnership in Rochester, NY. This concept was designed to create a cooperative health care vision for a given population which would then be implemented through voluntary actions, developmental funding and regulatory compliance. Certificate of Need was product of this concept and is reliant on interdisciplinary cooperation and a clear vision for the future health of Missourians.

**Myth: There is no evidence of problems with physician self-referral.**
**Fact:** Over-utilization and unneeded expenses often result from physician's use of major medical equipment and health facilities that they own. Studies conducted through the Dartmouth Atlas and separately by Dr. Jean Mitchell have shown very significant abuses in the areas of diagnostic imaging, ambulatory surgery centers, and radiation treatment centers.

**Myth: Hospitals have abused the CON regulatory process.**
**Fact:** The most heavily-regulated health care industries are hospitals, who are also the most accountable in terms of providing performance and supply data. Hospitals also represent the entities with the greatest long-term investment in comprehensive community health care. They also pursue and maintain more community involvement in their direction and operations than virtually any other health care provider. Current CON regulation is currently out of balance because it does not review non-institutional outpatient facilities or services.

**Myth: CON is no longer effective; managed care is more influential.**
**Fact:** The scope of services which CON reviews has been significantly reduced since 2001 to create an uneven "playing field" for health care providers. As a result, CON is less effective than before, but it still provides for accountability and transparency for new hospitals, long-term care facilities and major medical equipment. In addition, statewide data is maintained by the CON program which cannot be found in any other public location. Most observers now acknowledge that managed care efforts have been good at health service consolidation, but have had little or no positive impact on cost, access or quality. Indeed, health care costs are still over three times the national inflation rate, rural and inner city areas continue to loose services, and 24 other countries in the world have higher health status indicators than the U.S. Recent studies have even shown than costs and mortality rates are going up in some areas because of too much health care!

**Myth: Market forces have more impact than government planners.**
**Fact:** Contrary to enthusiastic claims, most health care delivery do not respond to market forces due to the lack of comparative price lists, inadequacy of quality indicators, and inability of the patient to make a choice. Insurance plan bids among health care provider systems is not a substitute for personal choice and individual accountability. The public has few organized representatives to promote its interests, so state government becomes the last resort under statute to learn about the public's needs, develop an objective cooperative means to meet those needs, and implement a mechanism to continually analyze efforts to respond to these needs.

**Myth: The studies of the Big Three Automakers can't be validated.**
**Fact:** Ford, General Motors and Daimler-Chrysler conducted independent studies that were released in 2002 to illustrate how they compared health care expenses for their workers. In each state that they analyzed, their presence exceeded 10,000 workers of similar demographics doing similar kinds of work with similar types of coverage and benefits. Due to employee confidentiality concerns, the individual details could not be released. Yet, as some of the largest employers in the U.S. who have major concerns about competition domestically and in the international market, their assessments are highly defensible and of great merit.

**Myth: Hospitals vs. physicians . . . why do we care.**
**Fact:** The public has a heavy investment in both the institutions and medical professionals who are trusted to provide the best care possible. The failure of any part of this trust damages the health and pocketbook of patients, as well as the confidence necessary to healthy outcomes.

**Myth: Missouri is last in reforming health care.**
**Fact:** The Show-Me State has struggled with health care and other priorities for many years. The legislature and administration are under continual pressure by many well-funded interest groups who are seeking maximum benefit for special interests. Organized cooperative visionary efforts are slow to emerge, but still hold the greatest hope for the future.

**Myth: The CON Program has outlived its usefulness.**
**Fact:** The concept of certificate of need may be 42 years old, but the need for capacity management is more important now than ever. Many of the foundations of reimbursement are still built on cost and negotiated fees over which the patients have little control. Reliable studies have demonstrated that capacity drives utilization. Missourians have a responsibility to provide oversight of health care service development with over half of all reimbursement coming from state and federal public sources. Patient-level competition is not a reality for most health care services when compared to other consumer services in the free market, primarily due to conditions at the federal level.

**Myth: The CON Program lowers the quality of care.**
**Fact:** Claims by the Federal Trade Commission that certificate of need has an adverse impact on costs, quality of care, innovation and competition are overstated, undocumented and without clear researched justification. Recent studies have shown that higher utilization of provider services creates better outcomes, e.g., the more you do, the better your results. With higher volume and proficiency also comes improved efficiencies and effectiveness. Patient choice is most often put into the hands of the provider who directs the path of service and resources used.

**Myth: The CON Program is detrimental to Missouri's economy.**
**Fact:** Contrary to contentions of political decisions being made in place of economic choices, the certificate of need process embraces proven business planning principles and practices to assure that proposals are carefully formulated before being publicly offered. High standards of supply and performance are used to systematically judge the impact on the community and the value to the consumer. In spite of objective market knowledge and sufficient application fees, limitations over the past five years to certificate of need's scope of review and operating budget have constrained its ability to achieve maximum effectiveness.

**CONCLUSION:**
Certificate of Need is a promise, not a panacea. It is part of a publicly-accountable objectively-administered effort to cooperatively influence health care to motivate better outcomes for Missourians at a reasonable cost. It needs your knowledgeable support, and thoughtful input.