**Policy Tip Sheet**

**Palmetto State Should Repeal Disruptive Certificate of Need Laws**

**Problem**

South Carolina is one of 35 states that institute certificate of need (CON) laws, which arbitrarily limit health care services. CON programs require health care providers to receive state approval, generally from the state’s health care agency or a designated CON commission, to expand facilities and services. Unfortunately, CON laws prevent providers from expanding or building new, often badly needed, health care facilities.

Under a CON law regime, states require a certificate of need for a wide variety of expenditures, such as facility construction and modification, new medical procedures offered, and increased inpatient care beds. South Carolina’s CON laws are particularly draconian. Although states with CON programs regulate on average 14 medical services, devices, and procedures, the Palmetto State regulates 22. Competition is a crucial component in the growth and development of all industries. Competition improves services and lowers costs, because the presence of additional product or service providers gives consumers additional choices and drives innovation.

Even worse, the Palmetto State’s CON laws create a “competitor’s veto” of new market entrants. A 2011 report from the National Institute for Health Care Reform confirmed the same problem exists in Connecticut, Georgia, Illinois, Michigan, Tennessee, and Washington. According to the report, “In five of the six states studied – all except Michigan – the CON approval process can be highly subjective and tends to be influenced heavily by political relationships rather than policy objectives.”

**Policy Message**

1. **CON’s Mal-effects**
   - CON laws reduce health care access and quality while increasing costs by hindering competition.

2. **More Expensive**
   - States requiring CON for 10 or more services averaged per-capita health care costs 8 percent higher than states requiring CON on fewer than 10 services.

3. **Promotes Cronyism**
   - CON laws give undue influence to certain health care providers. When a health care company applies to enter a market, existing providers often use the CON process to block potential competition.

4. **Worse Outcomes**
   - States with CON laws have a mortality rate about 5.5 percent higher than the average rate in non-CON states.

5. **Bad for Rural Areas**
   - CON laws are especially detrimental to rural areas because they have resulted in 30 percent fewer rural hospitals.

**Policy Solution**

The ideal reform for South Carolina would be a full repeal of the state’s CON laws. Some states have only partially repealed these laws, choosing which providers and services to exempt. However, this flawed approach leads to political infighting and cronyism. On the other hand, a full repeal would help restore a thriving health care market.

Fortunately, South Carolina legislators are considering a bill to repeal the state’s outdated CON laws. The proposed legislation, HB 3823, would fully repeal all of the state’s CON laws. If it becomes law, HB 3823 would immediately increase health care competition, improve access to quality care, and lower costs.

A state profile of South Carolina’s CON laws conducted by the Mercatus Center, which relied on existing data from other states, estimates total health care spending could drop by $200 per person if CON laws were repealed.

According to the Mercatus study, if South Carolina did not have CON requirements, the Palmetto State would have 34 additional health care facilities, 12 additional ambulatory surgery centers, and nine rural hospitals.

**Contact Us**

For more information, contact The Heartland Institute at 312/377-4000 or by e-mail at governmentrelations@heartland.org.

Or you can visit our website at Heartland.org
Certificate of Need Laws: Implications for South Carolina – Before the South Carolina Department of Health & Environmental Control
https://www.heartland.org/policy-documents/certificate-need-laws-implications-south-carolina-south-carolina-department-health-
Christopher Koopman, Thomas Stratmann, and Mohamad Elbarasse of the Mercatus Center at George Mason University say South Carolina’s certificate of need laws do not control costs and instead decrease the supply and availability of health care services by limiting entry and competition. They recommend legislators repeal these laws and open the market for greater ease of entry, more competition, and ultimately more options for those seeking care.

Amending CON Laws
http://www.scpolicycouncil.org/legislation/amending-con-laws
The South Carolina Policy Council examines state Rep. Murrell Smith’s (R-Sumter) CON law proposal and argues it would be a positive reform for the state.

‘Certificate of Need’ Program: Not Needed
http://www.scolicycouncil.org/research/healthcare/con-not-needed
The South Carolina Policy Council studies the state’s certificate of need program, why it was implemented, and why they are no longer needed.

Certificate of Need Laws: A Prescription for Higher Costs
In this article from Antitrust, Maureen K. Ohlhausen, a commissioner at the Federal Trade Commission, outlines several reasons why states should repeal CON laws.

CON Job: Certificate of Need Law Used to Delay, Deny Expansion of Mental Health Options
https://goldwaterinstitute.org/article/con-job-certificate-of-need-laws-used-to-delay-deny-expansion-of-mental-health-options/
In this article, Mark Flatten of the Goldwater Institute discusses how certificate of need laws hold back the expansion of needed mental health care facilities.

Certificate of Need Laws and Hospital Quality
Thomas Stratmann and David Wille of the Mercatus Center at George Mason University challenge the claim CON laws improve hospital quality.