Testimony before the Indiana State Senate Health and Provider Services Committee  
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Thank you for allowing me to speak today. My name is Samuel Karnick. I am a resident of Indiana and research director for The Heartland Institute, a 31-year-old national nonprofit research organization dedicated to finding and promoting ideas that empower people.

There are two mechanisms states commonly use to limit health care competition. These are the approval process known as certificate of need (CON) and the use of state-imposed moratoria banning the construction of new health care facilities.

Patrick John McGinley explains in an article for the Florida State Law Review, “CON laws evolved from the health care reforms of the 1940s and were heavily promoted well into the 1970s by health care providers, who found CON effective in sheltering their businesses from the costly effects of a competitive marketplace. Congress mandated CON in 1974, but quickly repealed the mandate when CON failed to lower the nation’s health care costs.”

Thirty-six states currently use traditional certificate of need laws as a strategy to slow the growth of health care prices, promote consolidation of health care providers, and limit duplication of services. Unlike other licensing laws, CON laws generally are not based on quantifiable criteria, such as experience or education. While other states are considering repealing or rolling back parts of their CON laws, Indiana has proposed a three-year moratorium on new nursing home facilities and even additional beds. The previous moratorium on nursing home construction in Indiana ended in 2008.

My testimony today will address three main points:

1. The percentage of empty beds is a shortsighted and weak argument for imposing a moratorium.
2. A ban will shield current businesses from competition, thereby driving up costs and driving down quality for consumers.
3. It is not the proper role of government to impose an arbitrary ban on new nursing home construction.

Point 1: The percentage of empty beds is a shortsighted and weak argument for imposing a moratorium. Supporters of the moratorium proposal argue Indiana has too many empty beds in nursing homes. Focusing solely on occupancy rates, however, requires us to ignore the underlying reasons why the beds are unoccupied. Many of these facilities are below capacity because they are older and are not offering the services consumers want or need. Health care companies invest in new facilities because they are in demand and because people want new and
improved facilities and services. If the government allows the market to function without a moratorium, new facilities eventually replace the old and occupancy rates adjust naturally. Demand for these types of facilities is expected to grow significantly in the near future. According to AARP, “The number of Indiana residents age 85 and older is projected to grow by 48 percent by 2030.”

In addition to forcing a shortfall of needed facilities, the nursing home moratorium would damage Indiana’s job market. According to the National Federation of Independent Business, the average nursing home project in Indiana represents a $5 million investment and employs more than 300 construction workers while providing business to other construction-related firms.

**Point 2: A ban will shield current businesses from competition, thereby driving up costs and driving down quality for consumers.** A joint letter signed by the free-market groups Americans for Prosperity and 60 Plus in response to 2014’s moratorium proposal said, “This legislation would contribute to a more captive market by insulating those already in the nursing home market from potential rivals, and the market forces that come along with increased competition. Such a policy will both limit the choices available to seniors and the opportunities for cost savings that less regulated markets create.”

Government-imposed limits on competition harm consumers and increase the cost of health care. Moratoria on the construction of new health care facilities, just like CON laws, fail to achieve many of their stated goals and instead reduce the availability of health care services.

According to data from the Kaiser Family Foundation, health care costs are 11 percent higher in CON states than in non-CON states. Jordan Bruneau of the Foundation for Economic Education found the greater the number of CON law restrictions, the higher the cost of health care. States requiring certificates of need on 10 or more services averaged per-capita health care costs 8 percent higher than the $6,837 average for states requiring certificates of need for fewer than 10 services. In a 2003 study, Christopher Conover and Frank Sloan of Duke University examined Michigan’s CON program and found “there is little evidence that CON results in a reduction in costs and some evidence to suggest the opposite.”

Similarly, in a new study by the Mercatus Center at George Mason University, Thomas Stratmann and Jacob Russ examined the effects of CON laws on health care pricing and services. They found CON laws not only raise the price of medical care by preventing new medical providers from competing with existing hospitals, but they also reduce the availability of medical equipment and hospital beds. The authors also found states with CON laws had 99 fewer hospital beds per 100,000 residents and lower availability of MRI services, CT scanners, and optical and virtual colonoscopies. Russ and Stratmann say governments are not currently justified in restricting competition among health care providers.

These are just a few citations from the overwhelming amount of academic economic literature that shows these regulations drive up health care costs and reduce the quality of health care services.
Point 3. Finally, it is not the proper role of government to impose an arbitrary ban on new nursing home construction. When government considers imposing a heavy-handed protectionist policy such as this, we must first ask ourselves whether this policy would solve a significant problem and whether there are no less-intrusive and damaging solutions available.

For decades, the people of Indiana and other states have suffered the unintended consequences of these laws, and as a result, numerous experts are calling for their repeal. The Heartland Institute has called for the rollback and repeal of these unnecessary regulations since at least 1991, when that recommendation appeared in its influential book titled Why We Spend Too Much on Health Care.

When government chooses to restrict competition and impose needless barriers to entry for businesses, consumers are harmed and so is the public health. States should avoid implementing moratoria such as those discussed here. Instead, lawmakers should allow more competition in long-term care and other health care markets. Supply and demand will best determine whether there is real demand for new health care facilities.

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