Interim Joint Committee on Licensing, Occupation, and Administrative Regulations

Frankfort, KY

June 20, 2024

Thank you for the chance to submit testimony supporting certificate of need reform. My name is Heather LeMire and I am the State Director of Americans for Prosperity - Kentucky.

One issue that we have been working on as an organization for over a decade is certificate of need (CON). CON laws began as a misguided attempt by the federal government to control rising health care costs by artificially limiting the supply of services. However, as decades of data demonstrates, the CON government intervention has completely failed, and has directly resulted in more expensive care, less available facilities, and lower quality health care.   In fact, a large and growing body of research shows that patients in states with CON laws have less access to health care than patients in states without CON, including those in rural areas. The Mercatus Center finds that states with CON have 30% fewer rural hospitals and 13% fewer rural ambulatory surgical centers.

CON laws require hospital systems and other health care facilities to obtain a government permission slip before they can open or expand in a geographic area—even if providers just want to add more beds or medical equipment. In addition, CON allows existing medical competitors to object to new services, weeding out market competition through a system of central planning. This is failed big government central planning at its worst and, in Kentucky where several counties have health care shortages, blocking or slowing down additional care is unacceptable.

I have no doubt that The Office of the Inspector General CON Division is trying to do their best, but the fact of the matter is, no one has a crystal ball. Government officials can only ever play catch up to our communities' health care needs. No matter how sophisticated their methodology is for deciding what types of facilities, equipment, and treatments are necessary, it will never be accurate enough to predict the future. And it becomes even less accurate of a prediction when incumbent businesses are given the power to chime in on whether their would-be competitors are "necessary" or not.

Kentucky’s CON laws hurt patients. Kentuckians should not have to wait to receive the care that they need. Mercer County in April lost their ambulance service. The county submitted a request for a CON in January, but by the time their service announced it was closing, their CON was not approved. Luckily, they received an emergency CON approval, but this should not have happened in the first place.

Opponents of reform will argue that healthcare is not a free market, but the fact is that the healthcare industry responds to market forces. They will argue that this will hurt safety net hospitals, but when Illinois studied this, they found that safety net hospitals have better margins in states without CON laws. 40% of Americans live in states without CON laws, and the sky has not fallen in other states. The opposition would like to make everyone believe that this would hurt rural areas, but rural areas are already hurting, and artificially limiting access to care is making the problem worse. Americans For Prosperity Kentucky would like to see several reforms that will improve our healthcare system.

1. **End CON for small investments.** Kentucky CON laws include an expenditure minimum, above which new facilities, services, and equipment are subject to CON review. Raising the minimum allows more providers to freely add new services. In 2023 West Virginia raised the minimum expenditure threshold for all health care facilities from $5 million to $100 million. Kentucky should also increase our minimum.
2. **End CON for vulnerable patients.** Kentucky CON laws apply to health care services for vulnerable patients with mental, intellectual, and behavioral health challenges, including psychiatric care facilities, chemical dependency centers, and intermediate-care facilities for individuals with intellectual disabilities. Kentucky should eliminate regulatory barriers to care for these vulnerable individuals by allowing these kinds of treatment facilities to open freely.
3. **End CON for lower-cost health care options.** CON law imposes significant obstacles on facilities that charge lower prices than traditional facilities, such as ambulatory surgery centers, home health agencies, and MRI and PET scan facilities. Allowing these lower-cost facilities to open will offer patients a more affordable alternative to expensive hospitals and nursing homes. Kentucky should repeal its CON requirements for these kinds of facilities, as recommended by the Commonwealth’s Health Care Facility Capacity Report.
4. **End conflicts of interest.**  States with CON programs should exclude individuals and institutions with such an interest from any decision-making role in the CON application and review process.

It is my sincere hope that this committee thoroughly considers these proposals, alongside all the other excellent information you have received. Thank you very much for your time.

Heather LeMire

State Director

Americans for Prosperity - Kentucky