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Opinion: Why SC no longer needs health-care 'Certificates of Need'

In the early years of the last century, the federal government thought it was good policy to encourage states not to allow overbuilding of health-care facilities and services. The fear was that hospital beds would sit idle and expensive medical equipment would go unused, and that would raise health-care costs for everyone. So, the federal government inserted itself into the free market for health care.

The feds gave breaks to states in return for agreeing to adopt what are called “Certificate of Need” (CON) laws. South Carolina took the bait and dutifully passed a CON law. With this statute on the books in the Palmetto State, a health-care provider is required to file a request with a state agency and receive approval before any significant new medical capital outlay or service can be undertaken. , In fact, our CON statute is one of the nation’s broadest (with 18 different services requiring a CON) and has one of the lowest ceilings (kicking in for any medical equipment that costs \$600,000 or more).

Often, because of the way SC law is written, all that is necessary for an expansion of care to die on the launching pad is for a competitor to lift a finger to veto it. An entrepreneur may have the funds to provide more care, or to build a facility. But the government—or a competitor—can say no.

Can you imagine if a government were to rule that there were too many cars for sale in Greenville and then banned any new dealers from building on The Motor Mile?

CON proponents argue that CON laws protect rural hospitals by keeping non-emergency medical facilities from competing for patients. But evidence shows that CON laws actually restrict access. The Mercatus Center at George Mason University estimates that South Carolina would have 10 more rural health-care facilities than it does were it not for the CON program.

There might have been a time for Certificate of Need laws. But—and I feel my background qualifies me to say this—the time has come and gone. I served four terms in the South Carolina General Assembly, and since that time (and during it), I have worked in the health care industry. From both of those perspectives, I can tell you that in 2021 CON laws are hurting our state.

Right now, in one of the fastest growing states in America, millions of dollars of needed health care projects are stuck on the drawing board, or more precisely, in the offices of DHEC. Some will eventually be approved, but even those could be challenged (and killed in the cradle) by a competitor.

In addition:

- Litigation over CON costs the state a fortune. Rivals hiring top-flight law firms to litigate endlessly drives up costs for both health care and our justice system. Litigation drives up medical bills and clogs court dockets..

- Ambulatory Surgery Centers (ASCs), many of which are currently being blocked by CON, are a less expensive and more convenient outpatient option for a number of patients facing in-patient hospital surgical procedures. That's why doctors recommend them.

But there may be hope. State senators on both sides of the aisle have been calling for repeal of CON. Sen. Wes Climer (R-York) told his colleagues: "It's absolute nonsense that this physician who is trying to take care of his patients has to go hat-in-hand begging the government to invest in a new health-care facility to care for the people he is already serving." Sen. Richard (Dick) Harpootlian (D-Richland) agreed, noting that with CON, "the behemoths of the health care industry are competing for monopolies in certain areas..."

The effort to repeal CON laws has also been embraced in the Upstate by Physicians for Act 432, a group that works to promote patient choice, encourage competition, and strengthen the doctor-patient relationship by supporting initiatives that provide a strong and protected independent practice of medicine.

As a policy issue, efforts to repeal Certificates of Need are crossing party boundaries. In fact, both the Obama and Trump administrations issued statements through their cabinet agencies calling for repealing CON and stopping restrictions on health-care services and competition that are at the core of CON.

Surely a policy on which both Presidents Obama and Trump agree is worth our attention. It could very well be the only one.

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