



April 21, 2020

## **Support the Increasing Hospital Capacity to Fight the Coronavirus Act, H.R. 6336**

On behalf of FreedomWorks' activist community, I urge you to contact your representative and ask him or her to cosponsor the Increasing Hospital Capacity to Fight the Coronavirus Act, H.R. 6336, introduced by Rep. Dan Bishop (R-N.C.). This bill would temporarily allow states to suspend their certificate-of-need (CON) laws for the duration of the coronavirus emergency without fear of losing federal funding under Medicare or Medicaid.

Currently, 35 states have some form of certificate-of-need laws, which Mercatus Center Senior Research Fellow Matthew Mitchell [has called](#) “a remnant of an era in which it was thought that central regulatory planning could yield better outcomes by restricting the supply of services valued by consumers.” These laws force medical practices and hospitals to submit any new capital expenditures, such as building expansions or new medical scanning devices, that are over a certain cost to a board that determines whether the expenditure is justified.

Ostensibly, CON laws were intended to keep hospitals from socking customers with higher medical bills in order to pay for overly expansive facilities or shiny new test equipment that they don't really need. This sort of cost control became a more acute concern once the government got into the business of paying for people's health care via Medicare and Medicaid and, in 1974, CON laws were made mandatory for every state.

In reality, CON laws never did manage to demonstrate much in the way of tangible benefits, while coming with a number of deleterious side effects. The most obvious problem was the way CON laws are used to stifle competition because the state boards included health industry incumbents in the decision-making process. Naturally, entrenched medical interests were predisposed to see new capital expenditures by their competitors as not fulfilling a “need.”

Fortunately, the federal law mandating that states have CON laws on the books was repealed in 1987, and in the intervening years 15 states have repealed these laws outright, while many others have at least reduced the number of services that they apply to. Moreover, several decades of

having some states with and without CON laws has allowed for a solid comparison of the effects of the policy over time.

According to a Mercatus Center study by economist James Bailey, states with CON laws generally experienced [greater increases](#) in health care costs than those without - by up to 5 percent for general health care expenses and by 6.9 percent for Medicare costs. He concluded, "A primary reason for the spending increase rather than decrease is that demand for healthcare services remains virtually steady, while CON laws restrict the supply of health care. Economic theory holds that if supply shrinks and demand remains steady, prices will increase."

That decrease in supply can be dramatic. Another Mercatus study, this time by Thomas Stratmann and Jake Russ, [found](#) that "The presence of a state CON regulation program is associated with 99 fewer hospital beds per 100,000 people." Rural health care is hit [particularly hard](#) by CON laws and other anti-competitive regulations, reducing the supply of hospitals and ambulatory surgical centers (ASCs) by 30 percent in areas that already struggle with adequate access to quality care.

Although the federal CON mandate has been repealed, there are still portions of law relating to federal health care funding that could make the remaining states nervous about repealing CON laws outright. During this coronavirus epidemic, many states have already suspended some or all of the CON laws in order to facilitate the faster expansion of beds and equipment needed to prevent hospitals from being overrun in the event of a worst-case peak outbreak.

The Increasing Hospital Capacity to Fight the Coronavirus Act would reinforce this by affirmatively suspending the portions of federal health care law that might call federal funding for these states into question. The very fact that these CON regulations needed to be suspended for the healthcare industry to adequately respond to the current outbreak certainly recommends further legislation to eliminate them after the crisis has abated - both the state laws and these remnants of federal law that are dependent upon them.

For these reasons, I urge you to contact your representative and ask him or her to cosponsor the Increasing Hospital Capacity to Fight the Coronavirus Act, H.R. 6336.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', with a stylized flourish at the end.

Adam Brandon  
President, FreedomWorks