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Policy Analysis

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Certificates of Need: An Oklahoma CON that Needs Repealing-Summary*

By Byron Schlomach, Per Bylund, and Vance H. Fried

Existing CON laws in Oklahoma favor existing long-term care facilities and psychiatric facilities by limiting competition. A business contemplating entering or expanding in an industry must first get government permission to do so. As a result, patients are forced to do business with the existing facilities even if they could potentially deal with a new facility that would provide higher quality and/or lower cost.

- CON laws were enacted in every state (except Louisiana) as a result of a 1974 federal mandate which required all 50 states to control health care facilities spending. This mandate was repealed in 1987 and many states have repealed their CON laws, which is also true of Oklahoma save for its two remaining statutes.

- CON laws are often connected to business licensing laws, but are not a necessary part of licensing. Therefore, repealing the two CON statutes would not alter current health care licensing laws.

- Since CON laws were designed to prevent investment, they arbitrarily define upper bounds of investment in the markets CON laws regulate. For example, regulations require an existing nursing facility to have a 95 percent occupancy rate prior to expansion. A general rule is to keep the maximum number of nursing home beds at 84 per 100,000 population.

- CON laws contribute to rising health care costs, artificially restricting the supply by preventing new competition from entering the market.

- CON laws monopolistically: 1) restrict the supply of service, 2) increase the price of service, 3) negatively impact the quality of service, and 4) increase the profits of "insiders" who are approved to provide the regulated service.

- Certificate-of-Need economic regulation limits opportunity for would-be entrepreneurs and innovators. It limits options for those who could benefit from potential innovations, lower pricing, improved quality, and greater service availability.

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This paper, in its entirety, can be found at
www.1889institute.org/con.html

Byron Schlomach is Director for the 1889 Institute.

Per Bylund is Records-Johnston Professor of Free Enterprise in the School of Entrepreneurship at Oklahoma State University.

Vance Fried is Senior Fellow for the 1889 Institute.

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- Studies show that, at best, CON laws have failed in their mission to control costs for taxpayer-financed public health programs. At worst, they have predictably done just the opposite by causing higher costs.

- Across the country, CON laws have been almost entirely repealed. The main reason such laws persist is that special interests – those already in an industry made relatively non-competitive by CON laws – want to see them remain.

- CON laws do not serve a public purpose. They are examples of cronyism where select private parties benefit at the expense of other private parties (potential competitors) and society as a whole.

Repealing CON is an easy first step in scaling back regulation in America's heavily regulated and high-cost health care industry. As health care delivery becomes increasingly innovative, with mobile technology making patient monitoring less labor intensive, these regulations only get in the way of higher quality, lower-cost care.