FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Agencies Submit Joint Statement Regarding South Carolina Certificate-of-Need Laws for Health Care Facilities

FOR YOUR INFORMATION

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TAGS: Health Care | Office of Policy Planning | Competition

In response to a request by South Carolina Governor Nikki Haley, the Federal Trade Commission and the Department of Justice's Antitrust Division (the agencies) have submitted a statement regarding the competitive implications of certificate-of-need (CON) laws and South Carolina House Bill 3250 – a legislative proposal that ultimately would repeal South Carolina's CON laws.

Although they vary considerably by state, CON laws, including those in South Carolina, typically require certain health care providers to obtain state approval before expanding, establishing new facilities or services, or making certain large capital expenditures.

The statement explains that the agencies historically have urged states to consider repeal or reform of their CON laws because they can prevent the efficient functioning of health care markets, and thus can harm consumers. As the statement describes, CON laws create barriers to expansion, limit consumer choice, and stifle innovation. They can also deny consumers the benefit of an effective remedy for antitrust violations and can facilitate anticompetitive agreements. In addition, incumbent providers seeking to thwart or delay entry by new competitors may use CON laws to that end. Arguments favoring CON laws have not been supported by the evidence.

The Commission vote approving the comment was 3-1. Commissioner Julie Brill issued a separate dissenting statement. (FTC File No. V160003; the staff contact is Daniel Gilman, Office of Policy Planning, 202-326-3136.)

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