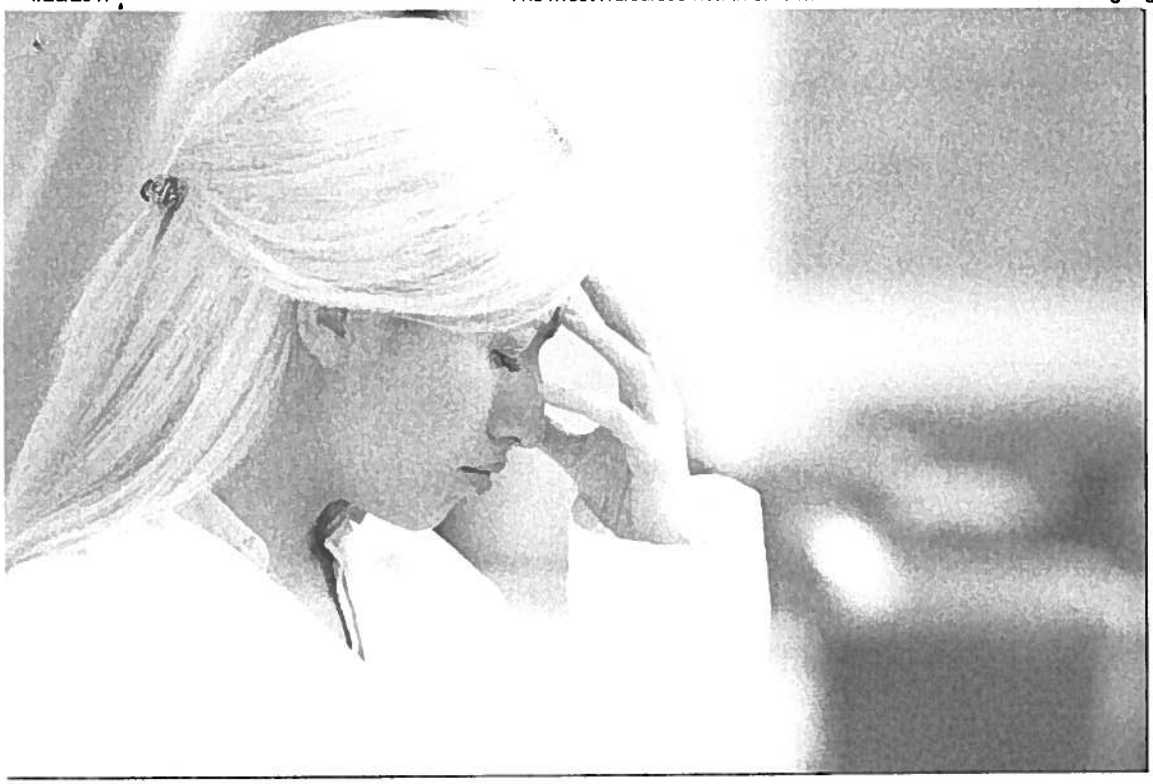
The Government Watchdog

The most ridiculous health care law: Certificate of Need

By Patrick Marvin / April 29, 2015 / 3 Comments



(https://watchdog.org/wp-content/blogs.dir/1/files/2015/01/healthcare-6.jpg)

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By Patrick Marvin | Watchdog Opinion

Maine legislators looking to support substantive health care reform need not look further than LD 734 (http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280055213) which would repeal the most ludicrous law on health care – the Certificate of Need (CON) law (http://legislature.maine.gov/statutes/22/title22ch103-Asec0.html) .

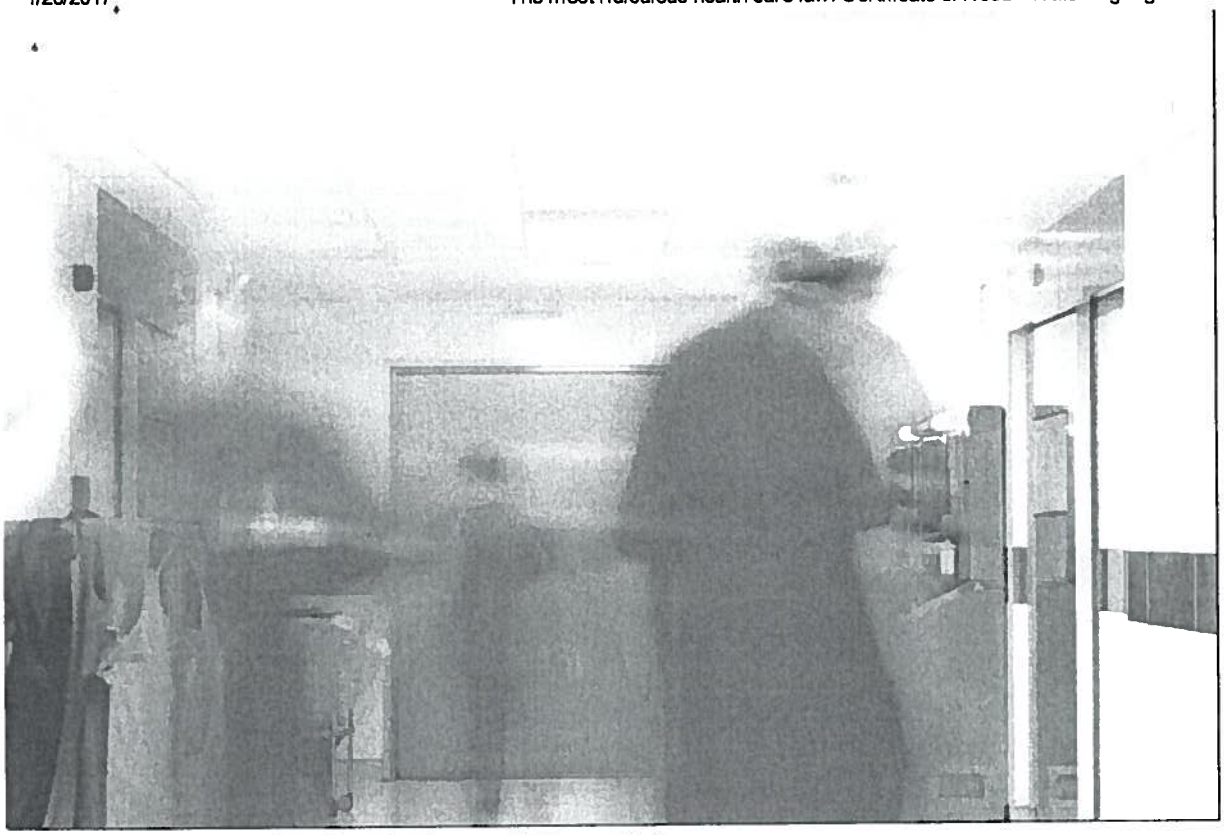
A prime example of cronyism and free market obstruction, Maine's CON law essentially allows hospitals to maintain a monopoly on the health care market, enabling them to increase prices without any fear of losing customers.

Once a law at the federal-level, CON laws have been passed down and established at the state level, as they were too invasive and ineffective for even the federal government.

That alone should raise red flags about this draconian-style government mandate.

Maine's CON law functions by forcing health care providers or facilities that meet a certain investment threshold to apply for a "Certificate of Need" from the Department of Health and Human Services before offering any new services, expanding operations, undergoing capital expenditures, or opening for business for the first time.

Keep in mind that hospitals are already forced to meet countless other regulatory burdens and standards, meaning that this law only adds to the mess of government red-tape surrounding the health care industry.



(https://watchdog.org/wp-content/blogs.dir/1/files/2015/04/hospital.jpg)

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But in order to receive a CON, a health care facility or provider must prove not only that there is a "public need" for their facility and services, but also that there will be a minimal impact upon existing hospitals and health care providers. The negative consequences suffered by established hospitals cannot outweigh any benefit that may be experienced by the community or those wishing to receive health care treatment.

In other words, the applicant must show that their decision to treat patients (at potentially a lower and more affordable price) will not impact large powerful hospitals who already have staked their claim in the marketplace.

But it gets even worse.

Maine's CON law not only establishes a regulatory hurdle for health care providers and facilities, but it *mandates* that other hospitals have the opportunity to influence the CON approval process.

Within five days of a provider or facility filing a CON application, a public notice about the application must be published in a newspaper in the applicant's service area, published in a newspaper in Kennebec County, sent out to all parties who have requested to be notified, and published on the DHHS website.

And if an existing hospital may be impacted by a CON proposal, this public notice is also sent to the municipal officers and elected officials that represent the area of the potentially affected hospital or health care clinic.

Hospitals, lawmakers, and members of the public can then submit comments on the CON application, and attempt to sway or influence the CON application review process.

This creates a situation where hospitals are able to prevent other health care providers and facilities from receiving a Certificate of Need, which in turn limits competition, and causes stagnation in the health care market. Additionally, our government's, and our taxpayer dollars, have become a tool used by private businesses to monopolize a market and place consumers and other private businesses at a complete disadvantage.

Despite the fact that this law defies logic, it is still strongly protected by Democratic lawmakers in Augusta. Democrats managed to kill a similar bill (http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280046544) last year, and overpower the pleas for common sense and responsibility from prominent Republicans including Gov. Paul LePage.

(https://watchdog.org/wp-content/blogs.dir/1/files/2012/08/Medicaid.jpg)

Predictably, Democrats were encouraged to preserve Maine's CON law by the strongest and (what seems to be the only) supporter of the law, the hospital industry.

Arguing that increasing the supply of hospitals, beds, medical equipment, and doctors will only encourage more people to use our health care system, the hospital industry contends that CON laws help keep down the cost of health care. They assert that a smaller supply of health care reduces demand, allows cost-savings, and ensures that needy individuals and families can afford health care.

But that argument is blatantly and obviously false.

Research has shown that in states that have CON laws, **health care spending is actually 11 percent higher** (http://dailyreckoning.com/the-great-health-care-con/) than in states without CON laws, meaning this program may be actually contributing to the very problem it is purportedly solving. Maine even checks in with the 5th highest health care expenditures per capita, a full 31 percent more than the average in non-CON states.

"Certificate of need laws tend to reduce available resources in the case of hospital beds and MRI machines but do not impact indigent care," explains Thomas Stratmann, Professor at George Mason University and noted expert on CON laws.

Rather than decrease spending, CON laws increase the cost of health care by minimizing the supply, and forcing consumers to compete and out-spend each other in order to receive the best care.

And in addition to being completely inaccurate, the argument for CON is the *total opposite* of the line of reasoning used by Democrats in the fight to expand Medicaid.

In that debate, Democrats have repeatedly declared that expanding Medicaid and allowing more individuals to visit a health care facility will reduce chronic illness, reduce emergency room visits, improve the health of our population, and subsequently boost our economy. They contend that increased utilization of medical services is a beneficial development, not something that will lead to higher costs and expenditures.

(https://watchdog.org/wp-content/blogs.dir/1/files/2015/04/hospital-1.jpg)

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This not only shows the deceitful and dishonest nature of the argument for increased government involvement in the health care market, but it is a perfect example of why big government cannot be trusted to make important decisions regarding our health care.

Certificate of Need is a backwards and counterproductive law that goes against our sacred American tradition of free market capitalism, and violates every economic principle that explains that market disruption, innovation, and increased supply are vital to our economy.

On a basic level, increasing the supply of a product or offering a new product provides many benefits to consumers, as it forces businesses to lower prices, innovate, and increase quality in order to attract customers.

As said by Senator Eric Brakey, the sponsor of LD 734, "here in Maine. and in the United States at large. we are desperate in our need to increase access to healthcare and make healthcare more affordable. Repealing certificate of need requirements would be a good place to start."

This piece was first published (http://mainepolicy.org/the-most-ridiculous-health-care-law-certificate-of-need/) by the Maine Heritage Policy Institute.

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