

January 10, 2022
An Open Letter to The Senate of South Carolina



Dear Senator:

The South Carolina Orthopaedic Association, representing orthopaedic surgeons throughout South Carolina (SC) who are both employed by health systems and working in private practice, seeks your support to repeal SC's Certificate of Need (CON) requirement as proposed by S 290.

Proponents of CON argue that it promotes cost-containment; yet multiple national studies indicate healthcare costs increase in CON states as existing facilities monopolize markets unchecked by would-be competitors. The national focus on price transparency, surprise billing, and employers directly contracting with providers highlights that no existing regulatory mechanism, including CON, has adequately addressed cost.

Proponents of CON argue that it preserves healthcare access in rural communities, yet multiple SC rural hospitals have already closed and quite a few others have been purchased by larger systems. CON has not mitigated that trend.

Proponents of CON argue that it prevents the proliferation of for-profit healthcare entities that will "cherry-pick" patients who can afford care and decline to treat those who cannot. Certainly, any facility receiving federal or state assistance to offset care for fragile populations is accountable to do so; but this issue can be further addressed through facility licensing requirements, rather than CON.

Proponents of CON argue that it preserves healthcare quality by preventing duplication of services that dilutes the opportunity for each provider to capture enough patient volume to maintain its clinical competence in the regulated service. Quality guard rails are important, but they can also be addressed through licensing requirements rather than CON.

Across the United States, CON laws have failed to live up to their intended purpose. According to a report by the U.S. Department of Health and Human Services, "The evidence to date...suggests that CON laws are frequently costly barriers to entry for healthcare providers rather than successful tools for controlling costs or improving healthcare quality."

In SC, the CON process allows all applications to be contested by competing facilities. Without question, anticipated opposition, and the expense to counter it discourages many providers from pursuing a CON; thereby reducing access while also depriving SC's healthcare marketplace of competitive forces that naturally regulate cost.

We appreciate your commitment to healthcare access and equity for all SC citizens and your thoughtful consideration of the negative impact CON has on those priorities. We welcome the opportunity to discuss further if that is helpful to you.

Respectfully,

A handwritten signature in black ink, appearing to read "JB Jackson", written over a horizontal line.

James Benjamin Jackson, III, M.D., MBA
President

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