



February 11, 2020

Testimony to the Michigan Certificate of Need Commission

Good Morning. My name is Diana Prichard. I am the Community Engagement Director for Americans for Prosperity-Michigan and I'd like to begin by thanking each of you for being here, and for the opportunity to speak. I am here today on behalf of AFP-Michigan's volunteer activists, as well as more than 3.2 million AFP activists across all 50 states. Our volunteers engage friends and neighbors on key issues and advocate for a patient-centered health care system that lowers costs, increases choices, and improves access for millions of people. Because the addition of an occupancy rate requirement to the nursing and long term care beds standard will not accomplish those goals here in Michigan we oppose the addition and urge the commission to reconsider.

Current utilization rates are a flawed indicator of needed utilization. It fails to consider extenuating circumstances, especially our rapidly aging population. According to the 2018 Census, the state of Michigan had the 12th oldest population in the nation as measured by median age, and that median age is over 50 years in 21 of Michigan's 83 counties.

While the current standards attempt to take population age demographics into consideration, the burden of an additional 85% utilization rate would handicap that attempt, marrying bed numbers to historical use statistics rather than the reality of a population that is quickly and constantly aging. This is supported by MDHHS's own admission at the last meeting of this board, when they stated that the addition of this rule would drastically and immediately cut need in the state — from 46 counties to just 13.

And it is not just about the quantity of care. While data shows that CoN states have fewer facilities¹⁻⁶ and patients drive further⁷ to access care than they would in non-CoN states, it also shows that CoN requirements are detrimental to both quality and cost of care as well. CON states have higher mortality rates following heart attacks, heart failure, and pneumonia.⁸ And patients in states with four or more CoN laws have higher readmission rates following heart attacks and heart failure, more postsurgery complications, and lower patient satisfaction levels.⁹ All while also paying more.¹⁰

The result is families torn apart when elderly parents have to be placed in separate nursing

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homes, patients who have to cross state lines to find the care they need – taking the economic and community benefits of their care needs with them – and an overall increase in the stressors that make it most difficult for families to live and thrive in this state.

And it's not just detrimental at the patient level either. This requirement establishes a perverse incentive for incumbent facilities to over invest in and underutilize beds as a means to prevent competitors from obtaining Certificate of Need approvals. With 56 letters of intent submitted for beds available under current need in 11 areas, it defies any and all rational thought for the commission to unilaterally decide this demand is not indicative of need.

While we may agree to disagree on the need for a Certificate of Need Commission at all, if we are to accept that the mission of this commission is to optimize access, quality, and affordability of care, the addition of an occupancy rate requirement to the nursing and longterm care bed standards would be a reckless abandonment of that duty to the people of Michigan. For that reason, we urge you to reconsider this addition and to honor the need standards you voted to make active fewer than six months ago.

Thank you again for your time. I will be happy to answer any questions you may have.

Diana Prichard
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Notes

1. Thomas Stratmann and Jacob W. Russ, "Do Certificate-of-Need Laws Increase Indigent Care?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, July 2014).
2. Stratmann and Russ, "Do Certificate-of-Need Laws Increase Indigent Care?"
3. Jon M. Ford and David L. Kaserman, "Certificate-of-Need Regulation and Entry: Evidence from the Dialysis Industry," *Southern Economic Journal* 59, no. 4 (1993): 783–91.
4. Thomas Stratmann and Christopher Koopman, "Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, February 18, 2016).
5. Thomas Stratmann and Matthew C. Baker, "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 2016).
6. Melissa D. A. Carlson et al., "Geographic Access to Hospice in the United States," *Journal of Palliative Medicine* 13, no. 11 (2010): 1331–38.
7. David M. Cutler, Robert S. Huckman, and Jonathan T. Kolstad, "Input Constraints and the Efficiency of Entry: Lessons from Cardiac Surgery," *American Economic Journal: Economic Policy* 2, no. 1 (2010): 51–76; Stratmann and Baker, "Are Certificate-of-Need Laws Barriers to Entry?"
8. Thomas Stratmann and David Wille, "Certificate of Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, September 2016).
9. Stratmann and Wille, "Certificate of Need Laws and Hospital Quality."
10. Matthew D. Mitchell, "Do Certificate-of-Need Laws Limit Spending?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016).

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CON Public Hearing
Nursing Home and Hospital LTC Units Standards
February 11, 2020

The Health Care Association of Michigan (HCAM) represents more than 350 nursing facilities and hospital LTC units across the state. HCAM supports the CON Commission's recommendation to change the standards to include a planning area occupancy threshold. This additional requirement in the standards recognizes the current operating environment for Nursing Home and Hospital LTC units (NH/HLTCUs) and the changes in the delivery of long term care services.

The change to the standards was a recommendation brought to the CON Commission from the Standards Advisory Committee (SAC) for NH/HLTCUs. The primary charge of the SAC is to review the bed need methodology. HCAM is an active participant on the SAC and the sub-workgroup formed to develop an alternative methodology from the current method. The SAC unanimously supported this change to prevent the release of nearly 3,000 beds based on an inaccurate bed need methodology. Dr. Paul Delamater consultant for CON in his December 3, 2019 report to the SAC noted the significant flaws with the current methodology and the need to review and update the system. As it stands the SAC has until June 2020 to complete its work, then bring to the CON Commission a new methodology which will more accurately predict bed need for Michigan.

Thank you for the opportunity to participate in this hearing.

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February 18, 2020

Re: MDHHS Public hearing on the Certificate of Need (CON) Review Standards for Nursing Homes

As we expressed in our comment to the CON Commission prior to its January meeting and again in person at the CON Commission meeting, Trilogy does not support the proposed new language requiring an additional threshold of 85% occupancy in a Planning Area for projects wishing to increase beds in a planning area. Trilogy believes this stand alone and temporary measure ignores the results of the existing bed need methodology and fails to promote access to high quality care for Michigan's most vulnerable residents; this measure simply enables existing providers to avoid making market-competitive investments in their properties that would benefit the quality of life of their residents.

Should the CON Commission continue to support this proposed rule, Trilogy requests that the CON Commission make important clarifications to the proposed language.

Proposed: THE APPLICANT SHALL DEMONSTRATE THAT THE PLANNING AREA FOR THE PROPOSED PROJECT HAS AN OCCUPANCY RATE OF 85% OR MORE AS PUBLISHED BY THE DEPARTMENT IN THE MOST RECENT CON ANNUAL SURVEY REPORTS.

During the review of applications submitted on the designated application date of February 1, the Department administers a new CON Annual Survey. The Department typically publishes the results of that newer survey in June. As such, the Department publishes updated planning area occupancy levels during the comparative review process for February applicants. It is unclear, based on the proposed language, whether applicants would be able to utilize the newer CON Annual Survey Report as the "most recent CON annual survey report" to demonstrate that the planning area for their proposed projects meets this requirement. Similarly, it is unclear whether the Department would be able to use this newer CON Annual Survey data as a basis to disapprove February applicants who believed they qualified based on the prior year CON Annual Survey. We believe this language is ambiguous for applicants and the Department as written and requires clarification.

We respectfully ask the CON Commission to table this potential language until the Nursing Home SAC completes its work on a comprehensive bed need methodology that considers all aspects of cost, quality and access.

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