

SB 5178 is the right direction to lower health care costs but doesn't go far enough

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Introduction

Senator Annette Cleveland (D-Vancouver) has introduced a bill, SB 5178, that would move our health care system in the right direction by lowering costs and increasing access, but the proposed bill does not go far enough in providing adequate health services to the people of Washington.¹

The measure would remove Washington's harsh Certificate of Need limitations that impede access to care, but only during times when the Governor has declared an official State of Emergency.

If an idea is good policy during an emergency, why not let people benefit from it all the time? Besides, many would argue that our health care system is already in a state of emergency when it comes to run-away costs and limited patient access to services.

The decades-old CON rule is a barrier to entry that hinders patient access to care. Washington state should not need a declared State of Emergency to abolish CON restrictions. Several other states and the federal government abandoned their 1960s-era CON laws long ago.

Text of SB 5178

Under SB 5178, the state's Certificate of Need requirements would be waived for: The construction, development, or opening of a new health care facility, or the reopening of a shuttered facility;

- The establishment of a new health care facility including hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers,

ambulatory surgical facilities, and home health agencies;

- Changes in bed capacity for a health care facility that increases the total number of licensed beds;
- Changes in bed capacity that redistributes beds among acute care, nursing home care, and assisted living facilities;
- Increases in hospital and emergency room bed capacity;
- Critical access hospital bed limitations of twenty-five beds; and
- Dialysis chair limitations at kidney dialysis centers.

Policy Analysis

Long-established research and the experience of other states shows that CON laws needlessly block patient access to care during normal circumstances, not just during a public emergency.²

Certificate of Need in the health care setting has existed since the 1960s. The goal was to regulate the number of hospitals and services in certain areas. The thinking then was that by limiting the number of hospital beds, quality of care would improve, and the cost of care would decrease. Experience soon showed the concept did not work. The federal Certificate of Need law was struck down in 1987 because it was not accomplishing these goals. Well-established and politically connected hospitals were awarded Certificates of Need, while doctors and facilities without strong lobbying operations were shut out. Predictably, as supply went down and patient demand increased and healthcare prices

1 SB 5178, establishing automatic waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency, Washington State Legislature, introduced January 13, 2021, at <https://www.washingtonvotes.org/Legislation.aspx?ID=191696>.

2 "Why Washington's restrictive Certificate of Need medical services law should be repealed," by Dr. Roger Stark, Washington Policy Center, Policy Notes, February 2016, at <https://www.washingtonpolicy.org/library/doclib/Stark-Why-Washington-s-restrictive-Certificate-of-Need-medical-services-law-should-be-repealed.pdf>.



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increased, resulting in reduced access. The economic justification of the original CON laws was debunked decades ago.

Arbitrarily stopping the creation and expansion of health facilities not only raises health care expenses, these restrictions limit health care facilities' surge capacity.

The development and construction of these facilities need to be planned and executed before another health crisis hits. The hobbling effect of these outdated and inefficient laws has been highlighted by the need to waive them during the Covid-19 health crisis. Our community health is better served by giving the industry more flexibility in building healthcare infrastructure.

Conclusion

For that reason, the de-regulation proposed by SB 5178 moves the health care system in the right direction but does not go far enough. These CON laws in our state should be permanently abandoned, not waived only if the governor declares a temporary state of emergency.

The construction of hospice care centers, ambulatory surgical facilities, psychiatric facilities, nursing homes, dialysis centers, and more hospital bed capacity, should not be artificially restricted. Instead, available patient services should reflect the needs of the community, not the top-down planning of a bureaucracy based in the state capitol.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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