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LEGISLATIVE POLICY ANALYSIS

**Testimony of Michael W. Thompson**  
**President, Thomas Jefferson Institute for Public Policy**  
Before the  
**Virginia House Committee on Health, Welfare and Institutions**  
Regarding  
**HB 193 (Delegate O'Bannon) to Reform COPN Laws**  
**February 4, 2016**

Mr. Chairman:

I'm Mike Thompson, President of the Thomas Jefferson Institute, and I am here today to ask for your support and that of your colleagues to dramatically reform the Certificate of Public Need law here in Virginia. As a foundation, we cannot lobby for specific legislation, but we can and do support ideas and the philosophy behind good proposals to make our lives here in Virginia a little better.

As you know, the COPN laws were originally urged by the federal government to control costs, but according to the Mercatus Center at George Mason University the law has not succeeded in that regard. As a condition for federal funding, 49 states implemented COPN laws under the National Health Planning and Resources Development Act. The federal requirement was repealed in 1987, and since then the number of states with COPN laws has been reduced to 36. Fourteen states, large and small, have taken these laws off their books.

Not only do we here in Virginia still live under our COPN law, but of the remaining 36 states with similar laws, ours covers one of the highest numbers of specific areas where state approval is needed, some 18 while Arizona has only 2 or 3 falling under its Certificate of Need statute.

Those opposed to removing the COPN regulatory statute, say that hospitals are in financial trouble and need this law in order to survive. It is said that the poor will be put into jeopardy and that charity care provided today by our hospitals will disappear.

Yet, in the 14 states where there are no such laws, the rural hospitals are operating today, charity care is provided, patients are being taken care of and the hospital industry has not gone bankrupt. As a Richmond Times-Dispatch editorial explained last fall, *“The COPN system is an outdated response to a bygone problem that had been created by old federal reimbursement formulas. But big hospital chains have found (COPN laws) very handy when they want to stifle competition from upstarts who might provide better services at lower prices.”*

To underscore that point, you have all received copies of our reports from late last year that merely reprinted the profit/loss and net worth figures from all the hospitals in our state. Overall, the hospitals are doing quite well as their own numbers show. Indeed, over the past three years the number of hospitals operating in the red have decreased and there is no reason to believe this won't continue to be the case. So the COPN laws are not needed to protect the hospitals' bottom line.

Last fall the Federal Trade Commission once again said, as it has over almost 30 years now, that these Certificate of Need laws are anti-competitive, out-dated and are not in the country's or the health care industry's best interest. And this from the Federal Trade Commission under one of the most non-friendly-to-business Administrations in recent history. If this Federal Trade Commission feels so compelled to again publicly oppose Certificate of Need laws, then they must be pretty bad.

We've all heard the stories of hospitals that have been denied equipment and expanded capacity; where procedures are more expensive than in non-COPN states; but let's take a look at a state just north of us that might have a meaningful experience for your consideration.

Pennsylvania ended its Certificate of Need laws 20 years ago. But a concerned legislator last year decided that it should be restored. And look who opposed its return: the Hospital Association of Pennsylvania opposed that measure as did the doctors in that state. They had lived under a Certificate of Need law once, saw the benefits of its removal and did not want such a regulatory system re-imposed.

So while the Virginia Hospital Association claims hospitals and patients will be significantly harmed without COPN laws, the Hospital Association of Pennsylvania explains that these laws should not exist because there is no evidence that they contain costs and the result is a costly and cumbersome process. As others have written and have told you over the past few weeks, the COPN process results in unintended consequences, including preventing the appropriate availability of services in a community.

The Hospital Association of Pennsylvania concluded its testimony last year in opposition to the reinstatement of its COPN law by saying, “.....hospitals believe that fair competition is essential in health care delivery, just as it is in health care coverage. Competition that enables choice by consumers in accessing health care fosters innovation and improvement in health care and is essential in advancing medical practice and technology.”

Mr. Chairman and members of this Committee, you have the distinct opportunity to not only enact reforms that will empower patients with more choices on where to receive care, but to also give health care providers the opportunity to treat more patients. Reforming Virginia's

COPN laws should increase access to care, do a better job of controlling health care costs, and encourage more innovative health care solutions. Removal of these laws has worked in 14 other states, and many states that still have such laws, the areas they regulate are much fewer than the 18 areas here in our state. Ridding Virginia of this COPN law would likely result in a healthy pro-business free-enterprise health care system as in many other states. As fourteen states have shown: doing away with this restrictive law does not deny the poor access to health care, hospitals continue to operate and charity care continues.

It's time for Virginia to dramatically reform its COPN law. Total removal of this law would be ideal and the results in other states can be your guide in how to do that. If, however, you want to dramatically reduce the areas where this law applies, you can see where states like Arizona are providing quality health care with only 2 or 3 regulated areas, not 18 as we have today in Virginia.

Thank you, Mr. Chairman.

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