



September 11, 2015

The Honorable Raymond E. Cleary, III
South Carolina Senate
610 Gressette Building
Columbia, South Carolina 29201

RE: H 3250 Certificate of Need (CON)

Dear Senator Cleary,

On Wednesday September 16th, the Senate Medical Affairs subcommittee will continue consideration of **H 3250**, a House bill that in current form makes dramatic changes to the Department of Health and Environmental Control's *Certificate of Need (CON)* regulatory process.

Some changes are meritorious; the pro-business modernization of the application process through technology has been long overdue. The common sense legal reforms to the application, protest and appellate process will protect all parties' right of due process and hopefully end the drawn out divisive legal battles of the past.

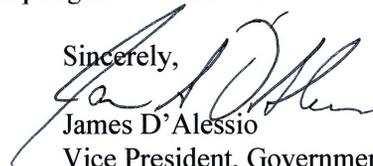
However, a number of changes made to the CON process in **H 3250** will artificially increase the cost of care while stifling future innovation and investment in South Carolina's health care industry. Specifically:

- Section 8 - Exemption from Certificate of Need Process = Unlimited Expansion. A provider who has previously received CON approval is allowed unlimited future expansion, exempt from any review. They may build new facilities, expand the number of beds, and increase services at will; without regard to cost, quality or community need. However, a provider seeking to enter a market for the first time must apply to DHEC for a Certificate of Need and go through the entire regulatory and legal process – including costly protests by the providers “exempt” from CON seeking to block potential high quality, low cost competitors from the market.
- Section 19 – Certificate of Need Sunset Provision. On January 1, 2018, the CON program and controlling statutes are repealed. Combined with Section 8 above, this gives existing CON holders a date certain head start on future market competition and a perverse incentive to add unnecessary capacity.

During the House's consideration of **H 3250**, BlueCross BlueShield of South Carolina, working in good faith with fellow stakeholders, proposed the attached compromise position that allows for limited CON exemption with demonstrated community need, but otherwise treats competing providers similarly.

We respectfully request the Medical Affairs Subcommittee adopt these critical changes to restore balance and thoughtful review to the CON process. We strongly believe the state would be better served by repealing the CON process in its entirety, than by adopting the current version of **H 3250**.

Sincerely,



James D' Alessio
Vice President, Government Affairs

cc: Senate Medical Affairs Committee Members

COMPARISON OF CERTIFICATE OF NEED ISSUES

CON Topic Area	H. 3250 AS PASSED BY HOUSE APRIL 30	BlueCross BlueShield of SC
Equipment Threshold	<p>No requirement of CON for acquisition of new and emerging technology used for diagnosis or treatment.</p> <p>Eliminates \$2 million threshold for medical equipment</p>	Supported increasing equipment threshold from \$600,000 to \$1 million.
Capital Expense Threshold	Increases capital expense threshold increased from \$2 million to \$5 million	Agreed with SCHA and original H. 3250, to increases capital expense threshold from \$2 million to \$5 million (linked to inflation) and codify in statute.
Bed Expansion	<p>Allows existing licensed acute care hospitals, rehabilitation facilities or psychiatric hospitals to expand beds or change their bed capacity without limits or review.</p> <p><i>This would allow bed expansion in facilities with existing CON, but facilities without CON would be forced to undergo lengthy process for same expansion.</i></p>	<p>Supported requiring CON for bed increases unless:</p> <ul style="list-style-type: none"> • Average occupancy of similar licensed beds within a 30 miles standard exceeded 80% of capacity during the most recent calendar year; and • Number of beds exempt from review under this section may not exceed the number of beds in the geographic area in excess of the 80% capacity.
Service Expansion	<p>Allows addition or expansion of existing health services at facilities that have previously been granted a CON (within mile of site for which CON was granted.)</p> <p><i>This would also allow unregulated growth at facilities with existing CON, but facilities without CON would be required to obtain CON for same expansion.</i></p>	Supported requirement of CON for expansion of services.
Bed / Service Expansion Calculation	Allows existing CON holders to add beds without regard to expansion calculations.	Supported including all expansions in calculations for CON purposes.