**Testimony of Sofia Hamilton**

**Policy Analyst, Americans for Prosperity**

**To the Health and Human Services Committee, Nebraska Legislature**

**March 12, 2025**

**RE: Americans for Prosperity Support of** **L.B. 437, Repeal the Nebraska Health Care Certificate of Need Act.**

Dear Chair Hardin, Vice Chair Fredrickson, and Members of the Health and Human Services Committee,

On behalf of Americans for Prosperity, a nationwide grassroots advocacy organization that works to increase opportunities for all Americans, I am submitting the following comments regarding **L.B. 437, Repeal the Nebraska Health Care Certificate of Need Act.**

Countless studies have shown that Certificate of Need (CON) laws have been ineffective at their stated purpose: lowering health care costs, increasing access to services, and ensuring high quality of care. In practice, CON laws do the opposite. Compared to states without, states with CON laws are associated with higher patient spending, fewer medical facilities, and inferior patient outcomes.**[[1]](#footnote-1)**

States were initially compelled by the federal government to adopt CON laws or risk their health care funding. In 1986, realizing the ineffectiveness of the regulation, Congress reversed this action. Every presidential administration since, both Republican and Democrat, has called for the total repeal of CON laws throughout the country.**[[2]](#footnote-2)** Unfortunately, 35 states and Washington, D.C. have ignored this guidance and still have CON laws on their books.

Nebraska currently regulates long-term care and rehabilitation beds through its CON requirements. There are strict moratoriums on these bed types, only allowing additional beds to be established if highly specific conditions are met.**[[3]](#footnote-3)** This regulation specifically effects nursing homes, intermediate care facilities, and skilled nursing facilities by prohibiting these providers from expanding to meet the needs of their patients.

Available research shows that CON laws have a profoundly negative effect on nursing homes and their patients. CON restrictions on nursing homes lead to lower staffing levels of registered nurses, substituting these professionals with lower-quality certified nursing assistant care. As a result, health survey scores for nursing homes in states with CON regulations are 18–24% lower. **[[4]](#footnote-4)** At the same time, costs are higher for nursing home patients and government payers in CON states. Medicare and Medicaid spending for nursing home care is higher per enrollee in CON states.**[[5]](#footnote-5)** Per-patient variable costs in states with CON laws that affect nursing homes are also higher than in CON-free states.**[[6]](#footnote-6)**

To complicate matters further, the population of Nebraskans aged 65 years and older is projected to increase 29.7% by 2030. As the baby boomer generation ages, the older demographic is poised to comprise 20.4% of the total state population.**[[7]](#footnote-7)** The need for quality nursing homes and residential treatment in Nebraska will only be increasing over the coming years. Implementing **L.B. 437** to address this increased need would not be an unprecedented move. During the 2025 General Session, the Wyoming Legislature moved to repeal their CON laws that regulated nursing homes, citing these same concerns.**[[8]](#footnote-8)**

There is no doubt that Nebraska’s CON laws are keeping Nebraskans from accessing safe and affordable health care. As Nebraska’s population inevitably increases and ages, the health care marketplace will only become further strained, inaccessible, and expensive — especially for the state’s most vulnerable populations.

Americans for Prosperity is appreciative of the reforms proposed in **L.B. 437** and applauds Senator Riepe for his important work in introducing this bill. We appreciate the Legislature opening this subject up for comment and are hopeful that Nebraska’s health care market will see these needed changes for the good of all Nebraskans and the state itself.

**With gratitude,**

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**Sofia Hamilton**

**Policy Analyst**

**Americans for Prosperity**

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**ABBREVIATED VERSION:**

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On behalf of Americans for Prosperity, a nationwide grassroots advocacy organization that works to increase opportunities for all Americans, I am submitting the following comments regarding **L.B. 437, Repeal the Nebraska Health Care Certificate of Need Act.**

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Countless studies have shown that CON laws have been ineffective at their stated purpose: lowering health care costs, increasing access to services, and ensuring high quality of care. In practice, CON laws do the opposite. States with CON laws are associated with higher patient spending, fewer medical facilities, and inferior patient outcomes.

Available research shows that CON laws have a profoundly negative effect on nursing homes and their patients. CON restrictions on nursing homes lead to lower staffing levels of registered nurses, substituting these professionals with lower-quality certified nursing assistant care. As a result, health survey scores for nursing homes in states with CON regulations are 18–24% lower.At the same time, costs are higher for nursing home patients and government payers in CON states. Medicare and Medicaid spending for nursing home care is higher per enrollee in CON states. Per-patient variable costs in states with CON laws that affect nursing homes are also higher than in CON-free states.

To complicate matters further, the population of Nebraskans aged 65 years and older is projected to increase 29.7% by 2030. As the baby boomer generation ages, the older demographic is poised to comprise 20.4% of the total state population. The need for quality nursing homes and residential treatment in Nebraska will only be increasing over the coming years. Implementing **L.B. 437** to address this increased need would not be an unprecedented move. During the 2025 General Session, the Wyoming Legislature moved to repeal their CON laws that regulated nursing homes, citing these same concerns.

There is no doubt that Nebraska’s CON laws are keeping Nebraskans from accessing safe and affordable health care. As Nebraska’s population inevitably increases and ages, the health care marketplace will only become further strained, inaccessible, and expensive — especially for the state’s most vulnerable populations.

Americans for Prosperity is appreciative of the reforms proposed in **L.B. 437** and applauds Senator Riepe for his important work in introducing this bill. We appreciate the Legislature opening this subject up for comment and are hopeful that Nebraska’s health care market will see these needed changes for the good of all Nebraskans and the state itself.

1. 1. Matthew D. Mitchell, “Do Certificate-of-Need Laws Limit Spending?,” Mercatus Center at George Mason University, September 29, 2016, <https://www.mercatus.org/research/working-papers/do-certificate-need-laws-limit-spending>; Thomas Stratmann and Christopher Koopman, “Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals,” Mercatus Center at George Mason University, February 18, 2016, <https://www.mercatus.org/research/working-papers/entry-regulation-and-rural-health-care-certificate-need-laws-ambulatory>; and Thomas Stratmann and David Wille, “Certificate-of-Need Laws and Hospital Quality,” Mercatus Center at George Mason University, September 27, 2016, <https://www.mercatus.org/research/working-papers/certificate-need-laws-and-hospital-quality>. [↑](#footnote-ref-1)
2. 2. Americans for Prosperity Foundation, <https://americansforprosperityfoundation.org/wp-content/uploads/2024/04/AFPF-CON-AdminQuotes.pdf>. [↑](#footnote-ref-2)
3. 3. “Statutes Relating to Nebraska Health Care Certificate of Need Act,” Department of Health and Human Services, <https://dhhs.ne.gov/licensure/Documents/Facilities-NebraskaHealthCareCertificateOfNeedAct.pdf>. [↑](#footnote-ref-3)
4. 4. Bichaka Fayissa et al., *“*Certificate-Of-Need Regulation and Healthcare Service Quality: Evidence from the Nursing Home Industry,” *Healthcare*, October 23, 2020, <https://www.mdpi.com/2227-9032/8/4/423>. [↑](#footnote-ref-4)
5. 5. Momotazur Rahman et al., “The Impact of Certificate-of-Need Laws on Nursing Home and Home Health Care Expenditures,” *Medicare Research and Review*, July 29, 2015, <https://pmc.ncbi.nlm.nih.gov/articles/PMC4916841/>. [↑](#footnote-ref-5)
6. 6. Susan L. Ettner et al., “Certificate of Need and the Cost of Competition in Home Healthcare Markets,” *Home Health Care Services Quarterly*, February 14, 2020, <https://pmc.ncbi.nlm.nih.gov/articles/PMC7166169/>. [↑](#footnote-ref-6)
7. 7. “Nebraska Economic Insight and Outlook,” Nebraska Department of Labor, September 2023, <https://neworks.nebraska.gov/admin/gsipub/htmlarea/Uploads/Economic%20Insight%20and%20Outlook%202023.pdf>. [↑](#footnote-ref-7)
8. 8. House Bill 289, “Certificate of Need Repeal-3,” State of Wyoming 68th Legislature, March 3, 2025, <https://www.wyoleg.gov/Legislation/2025/HB0289>. [↑](#footnote-ref-8)