Resolution on Certificate of Need (CON) Laws Required for the Establishment of Certain Health Care Services

WHEREAS, Certificate of Need (CON) laws and similar programs are prominent government-imposed barriers to entry into the health care market that force health care firms to fulfill various onerous burdensome requirements to obtain state permission to provide certain services; and

WHEREAS, Government-imposed barriers to entry into the health care market thwart access to quality care and healthy competition by preventing and/or delaying entities from bringing new technologies into certain geographical regions; and

WHEREAS, Barriers to entry stifle competition in the health care arena by not allowing services to follow the demand of patients and payors; and

WHEREAS, The Antitrust Division of the U.S. Department of Justice and the U.S. Federal Trade Commission, in a joint statement, noted that CON laws “impede the efficient performance of health care markets” and “pose serious anticompetitive risks that usually outweigh their purported economic benefits”; and

WHEREAS, CON laws derive their origin from a repealed federal law (The National Planning and Resources Development Act of 1974) that advocated for the establishment of CON laws based on the then-current reimbursement arrangements that have since changed dramatically; and

WHEREAS, Market forces tend to improve the quality of care while lowering the cost of services and lead to innovation in the health care world; and

WHEREAS, The health care system thrives on efficient and effective services that are at odds with the effects of CON laws.

THEREFORE BE IT RESOLVED THAT {insert state} opposes the establishment or expansion of government-imposed barriers to health care access such as Certificate of Need (CON) laws, and further urges the repeal of existing CON laws.

Adopted by the Health and Human Services Task Force May 1, 2009.

Approved by the American Legislative Exchange Council’s Board of Directors June 6, 2009.

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