



April 16, 2020

Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Via email

Dear Governor DeSantis,

Pacific Legal Foundation (PLF) is writing in support of Brewster Ambulance Service to ask that you immediately suspend Florida's Certificate of Public Convenience and Necessity (COPCN) requirement during the COVID-19 pandemic.¹ Governors in 18 other states have already suspended Certificate requirements like Florida's, which impede dynamic healthcare responses in our fast-changing and life-threatening crisis.

Brewster is a family-owned business that provides transportation to sick and disabled people in Collier County, Florida. While it's based in Naples, the company is ready, willing, and able to provide transportation by ambulance and handicapped accessible van to Coronavirus patients and others in neighboring counties. Last year, Brewster applied for a Certificate to operate in Lee County.² Despite finding that Brewster satisfied all of the relevant health and safety criteria, County officials denied them a Certificate after concluding that a new ambulance operator was simply not "needed." Brewster again appealed to County officials for permission to do business after the novel Coronavirus crisis emerged in Florida, but those officials once again told the company to wait until they decide that a sufficient need has arisen. Today, there's just one ambulance company operating in Lee County.

Forcing Brewster to wait for permission to operate until local bureaucrats deem the business "needed" puts Floridians' lives in danger. When COVID-19 reached its peak in New York City, a lack of providers and lagging wait times forced overstretched ambulance companies to choose between life and death for some patients.³ Governor Cuomo eventually suspended most of the state's COPCN laws to allow medical providers to quickly start up and expand, but by then, there was already a severe shortage of hospital beds, equipment, and ambulances.

¹ These laws are sometimes called "Certificate of Need" or "CON" laws in other states.

² Fla. Stat. § 401.25(2)(d) requires ambulance companies to obtain a Certificate of Public Convenience and Necessity from each county in which they operate, in addition to a license from the State Board of Emergency Medical Services.

³ <https://www.nytimes.com/2020/03/28/nyregion/nyc-coronavirus-ems.html>; <https://www.bloomberg.com/news/articles/2020-04-02/nyc-response-times-lag-as-ambulances-wait-in-line-at-the-er>; <https://www.businessinsider.com/nyc-ambulance-service-stretched-heart-attack-sufferers-left-home-2020-4>.

Florida's expected peak of Coronavirus infections is just weeks away, and Florida ambulance businesses have already expressed concerns that if one crewmember gets sick, they may have to quarantine entire shifts of workers.⁴ Healthcare providers should not be forced to wait until things take a turn for the worse to proactively start operating now. Staying Florida's COPCN law would give ambulances flexibility to respond to calls as they arise.

Floridians applaud the bill you signed last year repealing many of the State's COPCN requirements. That measure went a long way toward making the state a better place for healthcare entrepreneurs and consumers, but it omitted repeal for ambulances. While the Certificate requirement for ambulances should also be permanently repealed, a temporary suspension during the COVID-19 crisis to protect Floridians' well-being is imperative.

I. Florida's COPCN law arbitrarily restricts ambulance providers who wish to help during the COVID-19 crisis

Brewster is a family-owned ambulance company that has operated since 1906. Over the past century, the company has expanded from its original location in Massachusetts to other states, and in recent years it began operating in Collier County, Florida. Because it perceived a growing need for its services, Brewster applied for a Certificate to operate in Lee County in 2019.

Under COPCN laws, healthcare providers must not only demonstrate that they abide by safety criteria, but also that a new service is "needed." Despite finding that Brewster was fit to operate and that it followed the relevant safety protocol, the County Commissioners denied Brewster's application after they determined there was no need for a new ambulance service.⁵

It's often difficult, if not impossible, to prove before opening one's doors that the public *needs* a new service, but it's even more problematic to rely on slow, bureaucratic decision-making processes in the middle of pandemic when demand can increase many fold in a week and supply can plummet overnight (if, say, ambulance crews are quarantined due to illness). With the possibility that a single positive case could sideline an entire crew, having only one usable service is even more dangerous.

Florida should learn from the crisis in New York and suspend COPCN requirements *before* healthcare workers are forced to choose how to ration limited services. Staying Florida's COPCN law would allow ambulances to respond to calls as they emerge rather than waiting for local officials to deem them "needed."

⁴ <https://www.clickorlando.com/news/2020/04/02/coronavirus-brevard-emts-report-jump-in-possible-covid-19-emergency-calls/>.

⁵ <https://leecounty.novusagenda.com/agendapublic/AttachmentViewer.ashx?AttachmentID=7526&ItemID=2470>.
Brewster applied under the name of its subsidiary, Concierge Medical Transport.

II. COPCN laws harm the public and violate the Constitution

Hyperbole is thrown around a lot in public policy debates, but COPCN laws are literally a matter of life and death.

While intended to ensure adequate supply of healthcare services and to deter “overinvestment” in medical equipment, decades of research show that, in practice, COPCN laws accomplish neither. The Mercatus Center has found that states with COPCN laws have 30 percent fewer total hospitals per 100,000 residents, higher overall healthcare prices, and lower levels of care.⁶ The Department of Health, Department of Justice, and Federal Trade Commission have all warned that COPCN laws do not achieve their goals and instead act as an anti-competitive barrier to new medical products and services.⁷ Journalists have reported on instances of COPCN laws leading to preventable deaths.⁸

Under most COPCN laws, existing companies have the right to protest and oppose any Certificate application. Evidence from PLF lawsuits challenging COPCN laws in other states shows that whether an applicant is able to secure a Certificate often depends on whether an existing business objects to their application.⁹ This characteristic is the reason why commentators, and even courts, have called COPCN laws the “Competitor’s Veto.” At Brewster’s hearing, the lone Certificate-holder in the area testified that no new competition was “needed” in Lee County.

Years of research, litigation, and experience demonstrate that COPCN laws prioritize the financial interests of incumbent operators over the public interest. These laws are anti-competitive and unfair barriers to earning a living under any circumstances, but they are especially pernicious in the middle of a pandemic when healthcare providers must be free to adapt to changing circumstances.

Suspending COPCN requirements for ambulance services would not turn Florida into the Wild West. While 36 states have COPCN requirements for healthcare services, just 5 require them to operate an ambulance business. Moreover, even apart from the Certificate requirement, Florida

⁶ <https://www.mercatus.org/publications/corporate-welfare/certificate-need-laws>.

⁷ <https://www.ftc.gov/sites/default/files/documents/reports/improving-health-care-dose-competition-report-federal-trade-commission-and-department-justice/040723healthcarerpt.pdf> (“The [agencies] believe that, on balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits.”); <https://www.hhs.gov/about/news/2018/12/03/reforming-americas-healthcare-system-through-choice-and-competition.html>; <https://www.ftc.gov/public-statements/2015/12/certificate-need-laws-prescription-higher-costs>.

⁸ <https://reason.com/2017/01/25/virginia-certificate-of-need-hospital/>; <https://www.wymt.com/content/news/Womans-mom-dies-says-she-waited-hours-for-ambulance-430443193.html>.

⁹ <https://bit.ly/34Hgg00>.

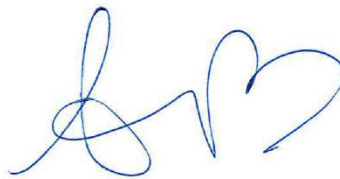
ambulance providers are licensed through the State Board of Emergency Medical Services. Brewster has been providing ambulance services since 1906, it holds a license from the State Board, and it safely provides thousands of trips each year. Florida's COPCN law is not protecting the public from unsafe operators; it's protecting incumbent businesses from legitimate competition.

Conclusion

Your action in signing HB 21, which repealed the state's COPCN program for most services, including hospital-related facilities and equipment, was a much-needed step toward fair competition and better outcomes for Floridians. But some healthcare providers, including ambulances, still must obtain a Certificate. Now, more than ever, we should remove irrational obstacles that prevent individuals from providing vital services during the Coronavirus crisis.

PLF respectfully asks that you join the 18 other states that have suspended their healthcare-related COPCN laws during the pandemic.¹⁰ After the emergency passes, PLF will continue to fight to end COPCN requirements through litigation or legislation. We hope to work with your administration in that effort.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AP Boden', with a stylized flourish at the end.

Anastasia P. Boden
Senior Attorney

A handwritten signature in blue ink, appearing to read 'Mollie R. Williams', with a stylized flourish at the end.

Mollie R. Williams
Attorney

¹⁰ <https://pacifical.org/certificate-of-need-laws-covid-19/>.