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I come today as a Vermont resident, advocate for reproductive choice in all aspects of reproduction, and a woman who has had both a wonderful homebirth, and a medically necessary high-risk hospital birth.

I will focus my testimony today specifically on how certificate of need (CON) laws block access to reproductive choice when they are required for free-standing birth centers.

Free standing birth centers, for those who do not know, are separate from hospitals. They are very simple buildings, designed intentionally to feel like a home rather than a medical setting. They are intentionally, low-tech, and do not involve the expensive capital investment that a hospital or other high-end facility would require. They are staffed by midwives – who are already licensed here in Vermont. They provide a critical part of the labor and delivery system, and we are missing them.

I will submit today a fact sheet in addition to my written testimony, and you can find much more information about birth centers there. Very briefly, birth centers serve low-risk pregnancies and provide a safe and evidence-based setting for natural physiological birth. Vermont is one of only 8 states without a free-standing birth center. All of our border states have them. People delivering at free standing birth centers experience better outcomes at lower costs (see fact sheets for the multiple studies supporting this evidence). Birth centers are supported by private and public insurance, ACOG, and other national groups focused on improving perinatal outcomes and reducing costs of health care in the United States.

A very quick history:

1. In the 1970s, Congress required states to adopt CON laws to be eligible to receive certain federal funding. Congress then realized that CON laws were an abject failure and repealed this requirement in 1986. Since that time, every presidential administration has condemned CON laws and called on states to repeal them.
2. 40% of the nation's population live in a state with zero or very limited CON laws for healthcare. This makes it easy to compare outcomes.
3. The overwhelming academic evidence shows that CON laws increase costs, decrease access, and decrease quality. This is in line with exactly what you'd predict when supply for any good/service is restricted.
4. States that have already repealed CON laws see the biggest benefits for rural communities. This is the opposite of the argument that rural areas somehow need CON to keep healthcare facilities.

The following states have recently repealed CON requirements for birth centers: CT (2023), GA (2024), MI (2024), WV (2023). Kentucky just passed its bill to exempt birth centers from CON laws through its Senate unanimously.

As a former long-time state employee, I have supported efforts to get State projects through CON. I can tell you that as someone with years of experience in state bureaucracy, a masters in public health, and a team of lawyers, it took us months and months to get a project through that had already been funded by the Legislature, and that was being demanded by this very Committee.

I don't really want to think how much you paid me to do that. And thank goodness we had awesome lawyers and administrative support.

A midwife looking to open a free-standing birth center in Vermont (and let me be clear, if we exempt them from CON and stand up a licensing system, we will be so lucky if we get one or two groups of midwives interested in doing this work), does not have that team of lawyers, or that administrative support. They also probably do not have the time and definitely not the money to go through this process.

CON laws are associated with fewer birth centers in a state. In the 13 states with CON requirements for birth centers, 6 (62%) have 0 or 1 birth centers, compared with 9 of the 37 (24%) of the states without CON laws.

Reduced supply leads to lack of access to a model of maternity care that improves outcomes, narrows racial disparities, enhances patient satisfaction, and reduces cost to state Medicaid programs and other payers.

Requested Amendments to H.96

We are requesting that **birth centers be exempt from CON** under the Exclusions provision in 18 V.S.A § 9435.

We are requesting that the word “includes” be changed to “means” in Section 1 of H.96. This change will ensure that the financial caps are the ONLY requirement for being exempt from CON. Unfortunately, without this, we have evidence from a number of years ago, that the GMCB can require a CON for other reasons because the list of financial caps starts with the critical word: “includes”.

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

*(a) A health care facility other than a hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a “new health care project” **includes means** the following:*

I believe in state oversight and regulation. I have been (and probably always will be at heart) a regulator. Birth centers should be licensed by the State (and we fully support and hope you pass S.18/H.40). But that is it. Our job is to make sure Vermonters have access to reproductive choice that is safe and effective. By requiring a CON for birth centers we are, in essence pretending to support them, but effecting a barrier we know from data they cannot overcome. Thank you for hearing from me today.