

CERTIFICATE OF NEED TASK FORCE

Minutes of the 4th Meeting of the 2023 Interim

September 18, 2023

Call to Order and Roll Call

The fourth meeting of the Certificate of Need Task Force was held on September 18, 2023, at 10:30 AM in Room 171 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Donald Douglas Co-Chair; Representative Russell Webber Co-Chair; Senators Karen Berg, David P. Givens, Stephen Meredith, and John Schickel; Representatives Lindsey Burke, Daniel Elliott, and Susan Witten.

Guests: Jaimie Cavanaugh, Attorney, Institute for Justice; Matthew D. Mitchell, Ph.D., Senior Research Fellow, Certificate of Need Coordinator, Knee Center for the Study of Occupational Regulation, West Virginia University; Senator Shelley Funke Frommeyer; Mary Kathryn DeLodder, Kentucky Birth Coalition; Victoria Burslem, MSN, Faculty, Frontier Nursing University; and Nancy Shirey, CNM.

LRC Staff: DeeAnn Wenk, CSA, Logan Bush, and Becky Lancaster.

Approval of Minutes

A motion to approve the minutes of the July 17, 2023, meeting was made by Senator Schickel, seconded by Senator Douglas, and approved by voice vote.

Birthing Centers and Certificate of Need

Mary Kathryn DeLodder, Kentucky Birth Coalition, discussed the need for legislation to remove certificate of need requirements for freestanding birthing centers, how the burden of certificate of need impacts the lack of birthing centers in Kentucky, the typical birthing center design, and the 2012 denial for a freestanding birth center certificate of need application.

Victoria Burslem, MSN, Faculty, Frontier Nursing University, discussed the birth center feasibility study she developed for the university and recent birth center litigation.

Senator Shelley Funke Frommeyer discussed the need for birthing centers, meetings she has coordinated to educate the stakeholders, and maternity care deserts.

In response to questions and comments from Senator Berg, Ms. DeLodder stated that anyone working at a birth center must be licensed by the state and issued by the Board of Nursing and that certified professional midwives have the same midwifery training as nurses but do not have a nursing degree. Senator Funke Frommeyer stated that the midwifery licensure is addressed in administrative regulation not in statute and that the certificate of need statute is separate from licensure requirements. Ms. DeLodder stated that birthing centers carry malpractice insurance,

however other medical facilities are not mandated to carry malpractice insurance but do carry malpractice insurance for other reasons and individual providers carry malpractice insurance with mandated amounts for Medicaid and private insurance participation. Ms. Burslem stated that in Georgia an individual midwife's malpractice insurance is approximately \$50,000, which is lower than a doctors because of the scope of practice and the midwife professional is working within a team of providers. Senator Funke Frommeyer discussed rural maternity deserts, the opportunity for professional care, and the importance of hospitals.

In response to questions and comments from Senator Douglas, Ms. Burslem stated that the certified professional nurse midwives are held accountable for birth outcomes similar to obstetrician-gynecologists (OB-GYNs) explaining why liability insurance and licensure is important and that a new bill would update midwifery standards and accredit birth centers.

In response to questions and comments from Senator Givens, Ms. DeLodder stated that birthing centers are under a nonsubstantive review for a certificate of need, there are lower number of birthing centers in states with a certificate of need requirement, and hospitals have been the biggest opponent of birthing centers in Kentucky.

In response to questions and comments from Senator Meredith, Ms. DeLodder stated that there is not a rule that a birthing center must be within 30-minutes of a hospital, birth centers may or may not be located close to a hospital, typically uterine ruptures have warning signs, and patients are closely monitored for any distress. Ms. Burslem stated that accredited birthing centers do not provide vaginal birth after cesarean sections and that these deliveries should take place at a hospital. Senator Funke Frommeyer stated that if there are serious issues noted in the months prior to delivery the patient is recommended to see a doctor. Ms. DeLodder stated that if a hospital cannot sustain a labor and delivery unit, most likely it would not be profitable for birthing center to also be in that same community.

In response to questions and comments from Representative Burke, Ms. DeLodder stated that in areas that are considered maternity deserts, patients often do not receive adequate prenatal care and that birthing center providers may also provide prenatal care in a separate facility. Senator Funke Frommeyer stated that the midwifery model offers more patient education, understanding, and awareness. Ms. DeLodder stated that in cases of emergency, such as police officers, the birthing center providers would assess and care for the patient. Ms. Burslem stated that the standard is for a birthing center provider to do a home visit on days one and two after birth to report on the maternal and neonatal status.

In response to questions and comments from Senator Berg, Ms. DeLodder stated that taking care of high-risk patients is not within the scope of practice of a midwife, but is within the scope of practice of a physician at a hospital.

Discussion on Certificate of Need

Jaimie Cavanaugh, Attorney, Institute for Justice, discussed the history of certificate of need laws in Kentucky, how certificate of need laws do not prevent rural hospital closures, that the lack of evidence that hospitals rely on cost-shifting supports repealing the certificate of need, that certificate of need laws increase healthcare costs, the federal courts' findings regarding

Kentucky's certificate of need laws, and the consequences of artificially limiting the supply of healthcare.

In response to questions and comments from Senator Meredith, Ms. Cavanaugh agreed that Medicare only pays a percentage of a patients' costs and that Medicaid pays less than Medicare, discussed the differences between cross subsidization and cost-shifting in rural hospitals, and discussed the benefits of access to care.

In response to questions and comments from Senator Berg, Ms. Cavanaugh stated that it was recommended that Kentucky repeal certificate of need for home health care and imaging centers and the 12 percent of Kentucky patients do not receive care because of the healthcare costs.

Certificate of Need: A Review of the Literature

Matthew D. Mitchell, Ph.D., Senior Research Fellow, Certificate of Need Coordinator, Knee Center for the Study of Occupational Regulation, West Virginia University, discussed the anticompetitive features of certificate of need laws, the history of certificate of need, and the literature that examines how much certificate of need affects healthcare spending, access to care, quality of care, and underserved populations.

Adjournment

There being no further business, the meeting was adjourned at 12:43 PM.