

Certificate of Need Task Force
Written Public Input
Dec. 14, 2023

The Certificate of Need (CON) Task Force has the following duties:

1. Review Kentucky's CON program, including the state health plan and related statutes.
2. Review the need for maintaining or modifying CON for each health service currently covered.
3. Submit findings and recommendations regarding CON to the Legislative Research Commission for referral to appropriate committee of jurisdiction. In completing its duties, the co-chairs and members of the task force would like to consider input from all parties with an interest in Kentucky's certificate of need program.

Due to time limitations preventing in-person testimony from all interested parties, the co-chairs provided the opportunity for all parties to submit written statements for consideration. This document contains all written statements received.

1. I am writing to voice my opposition to Certificate of Need in Kentucky. There is ample need for healthcare facilities all across Kentucky. From PCP offices, Urgent Care Centers, to Hospitals with ERs, we need more. There are millions in Kentucky who are underserved. Kentuckians in the mountains, in the hollers, on farms who have to drive more than 30 miles or be transported by ambulance more than 50 miles to reach a medical facility. We do not need government determining if sufficient needs exist. We need the free market to make that determination. We need competition for our business to exist so that patients get the best care at the best price possible. As a former EMT, Certificate of Need has always been a burden on Emergency Services as we end up being the ones called to provide care because other forms of medical care was just too far away.

Thank you for your time,
Virgil Edwards.

2. I am writing to ask the General Assembly to repeal the certificate of need program for healthcare, and for other industries as well.
Speaking briefly on other industries: It was well-publicized a few years ago that there was a CoN program for moving companies. That's just ridiculous. Asking your potential competition for permission to operate is nice if you're an incumbent, I'm sure, but it's not good for consumer choice and provides no protection whatsoever to anyone except to the pocketbooks of the aforementioned incumbents.

Speaking specifically to health care:

I am a lifelong resident of Kentucky. My mother is an X-Ray Tech worked for and retired from St Elizabeth. My mother-in-law is a nurse who worked for St Luke until it was purchased by St Elizabeth and retired from St Elizabeth. My wife is a nurse who worked for Interim Healthcare, which is not St Elizabeth, providing home health care (where CoN does not apply).

CoN programs encourage and protect monopolies. As we witnessed over the past few decades in Northern Kentucky, the various hospitals were systematically consolidated. The provider with the best care during my lifetime, St Elizabeth, "won" the battle and now the only provider in Northern Kentucky. Since becoming the monopoly, however, their quality has notably decreased. It appears that being a monopoly has harmed their corporate drive to "be the best" because now there's no one left to compete with. In every corporation, there is a board and bean counters who balance marketing, quality, etc. Without any check-and-balance from competition, quality suffers.

CoN programs harm employees. Those who have a fundamental issue with the local monopoly have no other alternative for employment, other than to drive to another county or state. For instance, St Elizabeth is a religious-based institution. If someone leaves on bad terms; where do they go to work now? Or perhaps the employee didn't like how the company was run. This harms employees by taking away the economic incentive for a business to create a better workplace for employees.

CoN programs hurt people. As a resident of Pendleton County, it is my understanding that all of our "allocated beds" were sold decades ago and are now in Campbell County. When someone is hurt in Pendleton County, it's a 40+ minute ambulance ride to a

hospital in another county. In the case of a time-sensitive emergency, it means life flight is required. One of my in-laws once needed this for their daughter, and it was \$25,000. It may, or may not, be economically viable to have a hospital in Pendleton County - we're not a wealthy county, and our population is relatively small as compared to our neighboring county. But the CoN actively prevents anyone from even trying to provide those services here.

Further, CoN programs specifically limit the number of beds. We just had a pandemic a few years ago and what was the #1 resource we needed? Beds! In light of the pandemic, it seems absolutely foolish to continue to limit beds with CoN programs.

In summary, the CoN program harms the ability to respond to pandemics, harms patients, harms employees, and harms the quality provided by companies. The Federal Government repealed their CoN laws decades ago. It's time for KY to follow suit.

Thank you,

Ken C. Moellman, Jr.

Pendleton County resident

3. This needs to be repealed in KY. We need more choices and no monopolies here in northern KY.
Linda Geisselbrecht
4. Repeal them ASAP. Unelected bureaucrats have more control over health costs than they should. It's because they get rich at the expense of everyone else. The hospital mafia has to fall so innovation and competition may lower costs for all.
Azofeifa Delvin
5. We need repeal CON because we need competition. St E has killed some of my family and does not offer the best care. We need options.
Stacie Earl, Hebron KY
6. Please consider this email in support of repealing Certificate of Need laws in Kentucky.
Bill Schult
Councilman, Crescent Springs
7. I do not see the benefit of certificate of need laws. If a doctor or medical facility can offer better service or more competitive prices they should have the opportunity to open for service. Competition improves both the quality of service and the cost of service. One of the biggest problems that consumers have today is the lack of options. Corporations have been on a buying spree and have consolidated businesses. Anti-trust laws are being trampled.
After 3 years of Covid brouhaha, the fact that medicine is an excrement show is plain as day. If you don't see it, you're not paying attention. Instead of limiting consumer options, the service field should be wide open. Only then will patients have a chance of receiving quality service and fair prices.

My Kentucky health insurance company, Anthem Blue & Cross Blue Shield, paid doctors to administer Covid shots to patients. This was unethical. The doctors were financially incentivized to administer a new (novel) drug that had not been thoroughly tested. Patients did not receive quality medical care under these circumstances.

I would have liked to see Kentucky lead the pack by banning the Covid excrement shots. It's almost too late, Florida republicans are leading that charge. Here's the news article:<https://twitter.com/iluminatibot/status/1680991653035749377>

Our very own Senator Rand Paul understands that the Covid jabs were a money making opportunity for pharma. He's doing his best to hold Anthony Fauci accountable for his lies. <https://www.dailymail.co.uk/health/article-12308421/Anthony-Fauci-accused-perjury-Former-White-House-doctor-LIED-oath-funding-gain-function-research-China-feared-started-Covid-pandemic-Republican-Senator-claims.html>

I am against certificate of need laws that create hospital monopolies. I ask you to support the free markets and patient choice.

Respectfully,

JP Always

8. Keep the government out of the healthcare industry. Market analysis, investors, and public participation should dictate the need for health facilities and treatments, Not the government and big business. Free markets should be in control not the government.

Ira Eppley

Bradfordsville, KY

9. Certificate of need (CON) laws require healthcare providers to obtain government approval before building a new hospital or expanding existing facilities. These laws are intended to control healthcare costs and ensure that new facilities are needed in the community. However, there are a number of problems with CON laws, including:
They can reduce access to healthcare. CON laws can make it more difficult for new hospitals to open, which can lead to longer wait times for patients and fewer healthcare options in rural areas.

They can increase healthcare costs. CON laws can make it more expensive to build and operate hospitals, which can be passed on to patients in the form of higher healthcare costs.

They can stifle innovation. CON laws can make it difficult for hospitals to adopt new technologies and procedures, which can lead to lower quality of care.

They are often arbitrary and inefficient. The CON approval process can be long and complex, and it is often based on subjective criteria that do not necessarily reflect the actual needs of the community.

Here are some specific examples of the problems with CON laws:

A study by the Mercatus Center at George Mason University found that CON laws are associated with 30 percent fewer hospitals per 100,000 residents across the entire state.

Another Mercatus Center study found that CON programs have about 99 fewer hospital beds per 100,000 people than states without these regulations.

A study by the Kaiser Family Foundation found that states with CON laws had 11 percent

higher healthcare costs than states without those laws.

In recent years, there has been a growing movement to repeal CON laws. As of 2022, 35 states still have CON laws, but 24 states have repealed them during the COVID-19 pandemic. The repeal of CON laws has been credited with helping to increase hospital capacity and reduce healthcare costs in these states.

Overall, CON laws are a blunt instrument that can have negative consequences for healthcare access, quality, and costs. There is a growing body of evidence that suggests that CON laws do not achieve their intended goals, and they should be repealed in favor of more market-based approaches to healthcare regulation.

Robert A. Lodder, Ph.D., MSAS

Professor

Department of Pharmaceutical Sciences

Department of Electrical and Computer Engineering

Department of Chemistry

10. As a business owner for over 40 years, I can assure you that there is ONLY one formula that works when it comes to lower costs, better services and improved quality. That formula is market competition.

And you cannot have competition unless there is choice and options.

If you have rules and regulations that make it impossible for only a few to offer services, then you create monopolies operated by those big enough to jump through unreasonable hoops.

That is why I am opposed to Certificate of Need laws. Let the market decide if there is a need. The government needs to keep its nose out of the marketplace as much as possible. When it comes to healthcare, your responsibility should be to ensure there is no fraud, theft or incompetence. Leave the business of healthcare up to the providers.

Bob Barney

Wilmore, KY 40390

11. My name is Karl and I've been in Kentucky for 4 years. My political beliefs can be summarized as "freedom across the board" and I wanted to contact you and your office in regards to the Certificate of Need discussion.

I grew up in Western New York, and there were three forms of medical care when I was young. You could go to the hospital in the middle of town, you could go to your family doctor at their office in a strip mall, or you could hope that your parents know how to treat you properly. I vaguely remember a day when my sister sliced her foot open on a gardening trowel she left in the grass and she needed to go to the hospital to get stitches. My mother applied a temporary bandage to stop the bleeding and called the Olean General Hospital (OGH) to let them know she was coming because back then, that's how our hospital operated. The receptionist told my mom that my sister couldn't be seen for approximately 4 to 5 hours due to the waiting room being backed up. I remember seeing my mom carrying my sister out to the car saying, "Okay thank you, we'll go to Cuba," which is a town approximately 25 minutes east of Olean. Because they are a much smaller town, Cuba General was able to help my sister as soon as she entered

the front door. Throughout the rest of my young life, any time one of my family members needed to go to the hospital, they went to Cuba half of the time. Later on when I was in high school, the first urgent care center opened. Many people in the Olean area had a family doctor, but if there was a medical situation that was after-hours or if their primary care physician was all booked up, they could immediately seek local treatment. This had a far-ranging effect that sped up the hospital's waiting room time and it added to our local economy in a big way. OGH didn't even take a hit, financially, when this office opened. With a relatively small staff, OGH was always dealing with the same number of patients at a time and the local population was receiving medical treatment faster, and that's a good thing.

As an administrator of Kentucky's Health Services, your main task is to promote and ensure the wellbeing of the citizens within Kentucky's borders. There is probably enough of the proverbial red tape around the medical industry to circle the planet twice over, and I believe we should cut some of it back where it isn't needed. **I fully believe that the Certificate of Need should not be required by the State.**

Hospitals can easily adjust their chargemaster if they're worried about losing money, and since everyone has health insurance, it'll get paid, right? Seriously though, opening up the market by dropping the Certificate of Need requirement will do more than create a financially competitive market, it'll also let people choose based on the quality of care. The option for someone to say "let's go to *that* doctor cuz they do a better job" can cause the doctors to start competing to do a better job, and that helps patients out in the long run.

Lastly, I believe the Certificate of Need only exists as a state-sponsored monopoly scheme.

Thank you for taking the time to read my thoughts on the matter. I hope everyone involved in this decision has the wellbeing of all Kentuckians at the front of their mind when they make their decision!

Sincerely,
Karl Ebert

12. These laws definitely need to be abolished.

St.E's needs to be reigned in!

Fae-Marie Donathan

13. I write to oppose granting government more power to dictate outcomes. I oppose growing government and support smaller government. I support the tyranny and chicanery of free markets over tyranny by government.

Can you share with me how the government is more qualified to determine market needs than Laissez-faire?

Please voice my opposition to CON requirements by the Kentucky government.

Lloyd Bennett

14. I wanted to provide feedback on the CON laws in Kentucky. I believe that hospitals and institutions are able to function most effectively when given autonomy. I would support

the elimination of CON laws in Kentucky. Hospitals/healthcare facilities already have to meet high standards for certification and insurance reimbursement. Government regulations make access more difficult for patients as well.

Thank you for your time.

Angela Shinabery
Simpsonville KY

15. I just heard that Kentucky's certificate of need laws are currently under review. Speaking strictly as a consumer and not in a position to be otherwise advantaged or disadvantaged by CON laws, I'd like to urge the Kentucky legislature to completely eliminate all certificate of need laws. This is big government we absolutely do not need. CON laws are a prime example of government meddling where a free market is a far better regulator. CON laws not only serve no use and provide no benefit, they make things worse for consumers. CON laws serve only to protect existing businesses against competition that would provide better products and services at a lower price. CON laws are crony protectionism. Eliminating CON laws would be a great first step in reducing corruption by eliminating the possibility for corruption.

Bruce Layne
Lexington Kentucky

16. One great need of healthcare is options! We consumers of crucial services need to be able to choose the provider of those services.

Ruth Howell

17. Please pass along my comments on CON law repeal to the Special Committee Certificate of Need Task Force. I appreciate your time and effort in this request.

I am in STRONG opposition to the current CON law I live in Northern Kentucky, Boone County. St. Elizabeth has a total monopoly for our area's hospital needs and over 95% market share for healthcare needs in general. I find this lack of competition to be a detriment to the local healthcare system. I have heard many horror stories from friends and family on their experience with St. E's, with many of them vowing to never be treated by them again.

My personal experience has been extremely concerning to say the least. Our most recent visit was with my mother-in-law. She had a gaping wound on her leg that was infected. She was being seen for other health issues at the Edgewood facility. With her leg 'dripping' puss, she was told to go home and the doctor would call in a stronger antibiotic. My wife said absolutely not and we went to Christ hospital for IMMEDIATE treatment.

Also, two years ago I knew someone who was treated for covid-like symptoms. There is too much detail to go into here but I truly believe that they killed this person due to ineffective care. On top of this, this patient's spouse had worked at St. E's for decades but was NOT ALLOWED to visit, until he/she was dying. This spouse could see any other covid patient but was denied visitation to a spouse.

I truly believe we need to repeal the CON law so there can be true competition for our healthcare needs. It will provide the opportunity for better employment, lift the standard of healthcare, and bring revenue, at least in our NKY area, back to the county/state.

Sincerely,

Jeff Dwyer

Florence, KY 41042

18. Please notify my state legislators that I oppose Healthcare Certificate of Need laws & regulations as a state-enforced network of monopolies that is creating a shortage of healthcare providers and is increasing the costs of healthcare coverage.

Sincere Concerned Voter

James Kevin Rodgers

Columbia, Kentucky 42728

19. Please take note - I oppose government created monopolies in our healthcare system. Free markets are a good thing and should be supported. Please support my opposition. May you be blessed all the days of your life...

Camille Stark

20. I have learned that you are soliciting feedback for reform or repeal of CON laws.

My feedback is: why is the state of KY in the business of granting monopolies to health care providers?

This is absurd on its face and needs to be repealed. I do not want the state government dictating what health care providers are available to me.

S. Davis

21. Certificate of Need is a hindrance to quality health care in Kentucky! I live in Boone County. So many of my neighbors go to Cincinnati, Ohio, for health care because St Elizabeth has NO competition in Northern Kentucky. We shouldn't have to cross state lines in order to have choices in our personal health care!

Please repeal CON!

Thanks,

Jennifer Kahmann

22. The Current Certificate of Need laws should be repealed and the free market allowed regarding Healthcare, Hospitals and Ambulance Services etc. The ability to start up businesses to serve people in their community should not be controlled by competitors. The monopolies are causing higher health care costs and limited services available. Free markets are a good thing and should be supported.

Linda W Rose

Prestonsburg, KY 41653

23. I voice my opposition to CON laws.

OPPOSE!

Mary McHugh
Fairdale, KY 40118

24. Our government shouldn't be involved in this at all! We're turning into a Communist country like China! Stand up and be the Republicans you should be instead of rino's(republicans in name only) AMEN

Tammy Stewart

25. Please consider changing the law to keep Ambulance providers from gaining a monopoly. As it stands now, when an ambulance provider obtains a certificate of need, they lock up a community and no other provider can obtain a certificate of need to compete!

David G. Sayre
Paducah, KY 42003

26. I am writing as a citizen of Northern Kentucky and to urge our legislators to abolish these Kentucky CON Laws which have created government enforced healthcare monopolies in Kentucky. If they cannot be abolished they at least need reforming. A great example is the St. Elizabeth health care network here in Northern Kentucky. They have become a monopoly here and continue to grow. They have great new state of the art technologies and the facilities, but the level of health care is lacking. All the good doctors and nurses are leaving. My primary care doctor left.

I had a heart condition 4 years ago that came to a head when I passed out at the breakfast table. I was rushed to St. E. and kept overnight. They could find nothing wrong and put me on a heart monitor. To make a long story short, I fought for three years with no resolution and finally had to go to Christ Hospital in Indiana before I could find a cardiologist that could confirm my symptoms (I had a-fibrillation and flutter. My heart was out of rhythm 25% of the time) They did surgery in Cincinnati, Ohio and I'm doing fine now. Three years of fighting is unacceptable, however. There is no other option in Northern Kentucky except an office for Christ Hospital, which I am now using and I'm fortunate that Cincinnati is close enough that I could get the surgery I needed.

Also, I have heard that St. Elizabeth is in litigation for fraudulent billing schemes, such as unbundling and double billing. Because they are a monopoly, they are extremely difficult to fight. If nothing else, their billing system is extremely confusing. I have not had near the billing problems since switching to Christ Hospital, but my wife continues to fight with St. E over billing.

Regards,
Richard Weaver

27. I would prefer you repeal it. A state enforced monopoly on health care, is wrong.

Robert Yoder
Economic Consulting/Grant Writing

28. I was in the pharmaceutical industry for 35 years. Called on many Drs. & hospitals in KENTUCKY.

It definitely showed positively in the areas with multiple hospital systems. Competition showed that EVERY hospital had to offer the BEST service & outcomes. Without competition, a hospital system didn't have to show it's best. It was them or travel a distance for something better.

Many of our friends have had to use the ONLY one available in Northern KENTUCKY and were less than pleased with the service & especially the outcome. I can name 3 that were dismissed from the ER and left to return home. All 3 passed away without returning to the ER, stating it would be a waste of time. Their families were beyond upset but left with no recourse without another ER to get the all important "2nd opinion".

I have heard stories of people on gurneys sitting in the hallways of the ERs waiting to be triaged for care. WAITING.

Different hospital systems in the 3 Northern KENTUCKY counties would alleviate just this one problem and far more than room to mention.

Anyone who has ever studied economics knows that a MONOPOLY of any kind is BAD for consumers. The only thing that benefits is the owner of the MONOPOLY.

THIS MUST END FOR THE GOOD OF KENTUCKY RESIDENTS. WE DESERVE BETTER.

Dennis Kelley

29. I am all for abolishing these unfair laws. We need to get the government out of our healthcare system. Let the doctors build wherever the need is in this Commonwealth, especially in the rural areas, where need is great, without government interference.

Carolyn Sue Phelps

30. Please vote to repeal the anti-competition Certificate of Need program. The medical industry had already been exposed as corrupt and anti-American. This program gives them additional tools to squelch competitors and continue on their journey to riches at the expense of all Kentuckians. Supply and demand are all that's needed for a fair and just industry.

Thank you,

Bambi Shingler

Concerned Kentucky resident

31. Please repeal the CON in Kentucky. The current hospital situation in Kentucky is like a monopoly. Other than St. Elizabeth Medical Center (SEMC), we are forced to go across the Ohio river to seek out alternative providers and hospitals or to Indiana. The current situation does not serve the citizens of Kentucky. Not only is it affecting seeking alternate personal health care (having choices) but it affects the salaries of the St. E employees. As a former employee, I did decide to leave and go "across the river" to complete my nursing career in Cincinnati. My decision provided me with better benefits and salary. Why should people have to leave their home state to receive better working conditions? In addition, Kentuckians leaving to work in other states takes away tax money from the people of Kentucky.

Respectfully,
Debra Litmer RN, BSN, MSN (retired)

32. I support removing CON from Kentucky. I am a lifelong citizen of Northern Kentucky and have been both a patient and an employee. I have seen patients held in the E R for hours or kept in the recovery unit due to a lack of hospital beds. I have had family members leave the state to get appropriate care. As an employee I have spoken with the head of Human Resources who said St E was happy to pay the lowest salary in the area. They knew people would not want to cross the river to work. Statistics show that the average Kentuckian would save \$216 a year without CON. Also, we rank 45th in quality of care and 37th in access. Kentuckians deserve better!

Thanks,
Tony Litmer

33. There should be no monopoly on hospitals. There should be no monopoly on anything.
Period.

Respectfully,
Dolly Guenther

34. Please take note - I oppose government created monopolies in our healthcare system. Free markets are a good thing and should be supported. Please support my opposition.

Thank you,
Kim Humphrey

35. In NKy we have a dearth of healthcare options. Many people do not want to drive to Ohio for healthcare. Many insurances don't cross state lines.

Competition breeds excellence.

In Liberty,
Jan Skavdahl
Covington, Ky

36. Call to action: Certificate Of Need Laws (CON) in Kentucky create hospital monopolies and are causing higher health care costs.

We should be in Free markets which are a good thing and should be supported. Create better opportunities jobs and services. Perhaps lower the costs.

I'm opposing to government created monopolies in our healthcare system.

Repeal it.

Thanks
Jeremiah Swiger
Eastern Ky 41622

37. We urge the repeal of CON in Northern Kentucky. Our residents should have a choice in healthcare. My wife goes to UC for some of her treatment, and we have many friends who go to Christ and Mercy.

Sincerely,
Bob Handahl
Bonnie Handahl

38. I have been having major medical issues and would like to tell you my thoughts on Certificate of Need and why I feel we need more doctors in NKY. Would love to share my story with you.
Thank you, Tammy Nolan

39. Hello,
I am writing in response to a recent article stating that the KY legislature is seeking input from KY residents. As a Registered Nurse who has lived in NKY my whole life, I very much want to participate in this discussion.
When I was growing up, we had several local hospitals to choose from in the area. Likewise, when I became a nurse in the 80's, I worked at both St. Luke & St. Elizabeth at various times. Having options meant nurses & patients could have hospitals compete for them. Nurses benefitted with pay raises, better positions & patients could choose the hospital & doctors that provided the best care for them. All of that changed when St. E became a monopoly around 2008. Patient care had been declining at their hospitals for a while, but after pushing St. Luke out, they had less incentive than ever to deliver quality care.
In 2004 my husband had a heart attack. Because he was young & got early care, we were told he would be hospitalized a "couple days" at St. E (the only choice we had because St. Luke was denied the ability to have a heart center because of CON regulations). Eight days later he finally went home after numerous nurse, doctor & hospital errors that extended his stay & caused more problems, yet they didn't find out what caused the heart attack! Eleven months later, I had him admitted to St. Luke after symptoms of blood clots sent us back to his St. E cardiologist (who assured me he couldn't have a blood clot). Sure enough, St. Luke's vascular doctor discovered he had a genetic blood clotting disorder & was admitted to ICU! We have sought health care at Christ Hospital & other places since then for most things.
My parents moved to Edgewood 45 years ago & were in good health so it was convenient for them to use St. E physicians & services. My mom was diagnosed with liver cancer this past February & was sent to St. E Florence on 3/16/23 for paracentesis (procedure to remove fluid from her abdomen). My mom had just developed a draining wound on her lower leg, three days prior to the procedure at the hospital & they doctor had placed her on antibiotics after I insisted. After the procedure, we were called to see my mom who was more pale & weak than before, & we had hoped she'd feel better as she did before when the paracentesis was done. The Nurse Practitioner who did the procedure told us my mom's white blood cell count had doubled in 5 days & was up to 30 (a critical level), & she had called mom's doctor. But she told US to take her home & "they'll probably call in a stronger antibiotic". I asked if she could see how weak she was & that her wound actually was draining more & looked worse in the 2 hours since she came to the hospital. She said "yea, but you can take her home". We put her in the

wheelchair & left that hospital to drive 35 minutes in rush hour traffic to Christ Hospital Emergency Room. It was very busy there, but they admitted her within 10 minutes of her arrival because we told them her white blood cell count & they looked at her wound. She was diagnosed with SEPTIC SHOCK & they worked on her for 5 hours in the ER to stabilize her with fluids, antibiotics & other medications. The doctors & the nurses were amazed she was sent home from St. E & told us mom would've certainly died had we taken her home as her blood pressure was critically low & she was starting to lose consciousness because of the toxic levels of infection in her body. She was at Christ Hospital for EIGHT days to resolve that issue. Had it just been my parents, my dad would've listened to that NP at St. E & taken her home & she would've died. Patients shouldn't have to have a nurse in the family to recognize bad medical care & advice, but unfortunately there are many that I know who've received bad care at St. E. I know St. E has political clout & connections that keep them as the monopoly in NKY, but enough is enough! Patients deserve options & the competition would drive better care, lower costs & better job opportunities. Let the free market take care of Kentucky's health care, not the CON job we've had for years that makes people suffer & sends our healthcare dollars to neighboring states. Please contact me for any clarification or further information.

Thanks,
Carol Dwyer RN

40. I oppose CON Laws.
Paula Johnson

41. I'm not very educated on the ins and out of these laws but in general I think they sound like nothing but government overreach and feel that they should all be repealed. I find it hard to see what good could come from limiting competition in any industry, and the healthcare field is THE ONE place where anything and everything that can be done to lower costs SHOULD be done.
Thank you. Dana Justis

42. Please eliminate all certificate of need throughout the Commonwealth. It is no longer needed, and competition is very necessary.
Pastor Kevin Richardson

43. I am a Certified Nurse Midwife here in KY and have been since 1992. I used to practice in Shelbyville, KY but have since retired. Before I did, though, I did many births at what was Jewish Shelbyville in the small OB unit there. Many of my patients came there to have as "natural" a birth as was possible - there was no freestanding birth center and many didn't want to do a homebirth. Years passed, and a colleague attempted to open a birth center in Elizabethtown but was met with considerable resistance from the hospital association - citing CON as the reason. The CON process had no applicability to her birth center but it was effectively used to shut down a business opportunity, a healthy birthing opportunity for women in

central Kentucky, and made a long-standing CNM give up her practice and leave KY. Once again, access to health care was impacted by this loss of a practitioner. CON is an outdated process that restricts legal commerce and trade. It needs to be removed. I refer you to this NIH study (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7427974/#Sec11title>) for further support that CON is outdated. From the study:

The Federal Trade Commission and U.S. Department of Justice, [15] after extensively reviewing the available literature and hearing from expert witnesses, concluded the following: "The Agencies believe that CON programs are generally not successful in containing health care costs and that they can pose anticompetitive risks. As noted above, CON programs risk entrenching oligopolists and eroding consumer welfare. The aim of controlling costs is laudable, but there appear to be other, more effective means of achieving this goal that do not pose anticompetitive risks A similar analysis applies to the use of CON programs to enhance health care quality and access"

If citing CON as a means to control cost, the study again found no support for that as well. ("In light of all the varied findings regarding CON on total expenditures, no reduction in overall spending seems most consistent with the available evidence.")

PLEASE stop using CON in Kentucky. We need more opportunities for health care, not more restrictions limiting access to care.

Sincerely,

Ruth-Ann Bode, RN, CNM, MSN
Fisherville KY 40023

44. I am totally against our Government being involved by CON laws!! Our government is pushing a Socialism agenda. Hospital and health care already corrupted (COVID HOAX!!!!) We are losing our freedom every day and this bullshit Govt. con job is nother prime example of Complete Stupidity by our leaders!!! All involved should be jailed or fired!!!!

Scott Thomasson

45. Hello

Government interference in the medical services marketplace is not necessary here in NKY and detrimental. When St. E's went crazy with masks and harmful shots - our family had no alternative doctor(s) to treat our family. This situation needs to be rectified. My family fully supports the removal of any bureaucratic policies that prohibit competition in our medical marketplace.

If I can be of assistance, please let me know.

Adam Hand
Colonel, USAF Ret
Walton, KY

46. Hello, my name is Sherry Brackney (Hebron, KY 41048). My husband and I are from Cincinnati but have lived in Northern KY (NKY) for over 40 years. I have great concerns regarding the monopolization by St. Elizabeth (St. E) over the healthcare of northern

Kentucky's constituents. When I was hospitalized over 20 years ago at St. E, long before they absorbed all the other hospitals, AND physician practices, etc. in NKY, I felt I got excellent care for the 11 days I was hospitalized. However, my current experience with St. E has been vastly different. The staff appears disorganized, they don't know what the left hand is doing from the right hand; just getting a simple CT scan at the ER on a Tuesday afternoon was a marathon in confusion and sloppiness. I feel that, as in everything else, competition is good especially for customers/constituents. We don't have that here in NKY. We've been told I to go across the river for healthcare which is just 15 minutes away. That may be true mile-wise, but for those who live in NKY and have to cross the river on the obsolete Brent Spence bridge and cope with northbound 75 traffic it's more like a half hour or more. And if someday we get a new bridge it will likely be a toll bridge. Given the fact that other counties, smaller than the combined Campbell, Kenton and Boone counties of NKY, have multiple choices, seems unfair to say the least. So as someone who loves NKY, I would ask that these unreasonable and restrictive CON laws be repealed and give us the choice other Kentuckians enjoy. Thank you.

47. I believe that CON laws impose substantial costs on consumers and health care markets and that their costs as well as their purported benefits ought to be considered with care. CON laws were adopted in most states in the 1970's under particular market and regulatory conditions substantially different from those that predominate today. They were intended to help contain health care spending, but the best available research does not support the conclusion that CON laws reduce such expenditures. On balance, CON programs are not successful in containing health care costs, and . . . they pose serious anticompetitive risks that usually outweigh their purported economic benefits. CON laws tend to create barriers to entry for health care providers who may otherwise contribute to competition and provide consumers with important choices in the market, but they do not, on balance, tend to suppress health care spending. Moreover, CON laws may be especially subject to abuse by incumbent providers, who can seek to exploit a state's CON process to forestall the entry of competitors in their markets. For these reasons, I encourage the Kentucky legislators to seriously consider whether CON law does more harm than good, especially here in Northern Kentucky. Checking St. Elizabeth's bed occupancy week ending July 2, 2023 for impatient beds, they range between 105.2% to 110.6%, so you couldn't get a bed if you needed one. How is that serving our ever-growing population?

Sincerely,

William J. Walczak

Union, KY 41091

48. I am emailing to respectfully request the Kentucky Legislature repeal Certificate Of Need for medical facilities in Kentucky. I am located in the City of Falmouth; an area desperately in need of medical offices but currently denied such services because of this terrible rule. CON enables medical monopolies and poor quality care from those same institutions.

Falmouth recently attempted to obtain a new medical facility that would have brought much needed taxes, medical care, jobs, and infrastructure to the region. We were denied because of CON, which has trapped this region in a continuing cycle of poverty and decaying health. If CON is repealed entirely, new life - in every sense of the phrase - can be brought to my city and the entire state.

Thank you,
Katelyn Darnell

49. Government has no right to create it's own monopoly on healthcare. There are enough regulations on zoning and services that we don't need the state to require their permission too.

No CON laws please.

Kathy McCooy

50. It is my wish that there were more health care facilities in Northern Kentucky. Currently I see an urologist and ophthalmologist in Edgewood. But for each of them I have had to drive to Cincinnati for procedures because they can't perform them in Northern Kentucky. I am 77 years old and it's a hardship for me to get across the river and I have no one to drive me.

Would also like to see Assisted Care facilities in Kentucky to be able to offer more services such as they do in Indiana.

Jane Tumey

Hebron, KY 41048

51. Dear Legislators,

My name is Alex Berling, and I live in Independence, KY, which is in Kenton county, NKY. As you know, our choices in general hospital options here are extremely limited to one (1) hospital in NKY, St Elizabeth healthcare. This is due to KY's Certificate of Need.

I am the mother of an amazing 5 year old little boy, a child that was born premature at only 2 lb 6 oz and very medically fragile. He was born requiring oxygen, and was on oxygen via a nasal cannula for the first 18 months of his life, and required 5 airway surgeries, due to an extremely severe case of Laryngomalacia.

About a month after my son came home from the NICU, he stopped breathing, and I had to perform CPR on him. The ambulance came, and the EMS did NOT even ask me if we wanted them to take our son to St Elizabeth, but rather Cincinnati Children's. This is because even the EMS knows that when it comes to children's healthcare in an emergency situation, St Elizabeth is not an option as they lack the expertise that Cincinnati Children's has.

Now, for us, the distance to Cincinnati Children's during rush hour traffic, is about 30-40 minutes (a safe 30 in an ambulance), while St Elizabeth is closer to 10 minutes away. As a mother who just did CPR on her infant son, I felt every single long second in that ambulance ride.

Thankfully, in Independence, we are still close to Cincinnati Children's, compared to NKYians who live even further away. And even more, I am thankful my son is alive and healthy

today. Cincinnati Children's Hospital medical team have saved my son's life more times than I can count.

His own pediatricians who have a medical office within St Elizabeth hospital recommend taking our son to Cincinnati Children's over St Elizabeth. Again, this is due to the expertise that Cincinnati Children's has being set up as, SPECIFICALLY, a children's hospital. St Elizabeth is good at many things. They deserve to be able to specialize in their own field of medicine, like the hospitals in Cincinnati do (Christ for cardio, UC for brain, Good Sam for high risk pregnancies, Cincinnati Children's for pediatrics). The Certificate of Need in KY currently tried to force St Elizabeth to be a catch all, jack of all trades type of hospital. This does not help them to be able to keep up and have the best quality care due to the overwhelm.

My question to you is this: why are we, as the state of KY, sending Kentuckians to another state for healthcare? Why should my son not be able to have access to a hospital where he lives, in his community/greater region of NKY? We chose to live in NKY, in Kentucky, specifically. We should be able to receive quality healthcare where we live, in our own state!

If we reformed the Certificate of Need to allow NKY to be seen as a region vs by county, then maybe Cincinnati Children's could open a NKY location HOSPITAL (and not just doctors office) within our area so the children of NKY and their families could receive quality healthcare here in NKY.

Thank you for taking the time to read my story, please reform the CON,
Alex Berling

52. I am writing to let you know that I am opposed to certificate of need requirements. There should be no monopolies in our health care system. Monopolies stifle competition and drive up cost, without ensuring better outcomes for patients. Please pass legislation to eliminate this requirement.

Sincerely,
Steve Carter
Boston KY

53. Dear Legislators,

I support repealing the Certificate of Need. I believe it is harmful and has provided the opportunity for a monopoly to take over the healthcare field in Kentucky. Northern Kentucky is dominated by one hospital. At one time we had three different hospitals allowing people a choice. Since St. Elizabeth has taken over all the hospitals there is a take it or leave it attitude towards our care. They also treat their employees with the same attitude. If you don't like it go to Ohio. We need competition to insure we are getting the best possible care.

Thank you,
Jean Centers
Crittenden, KY 41030

54. When I first heard the acronym. CON, it was 20 years ago in Ohio in the context of limiting nursing home beds. It was quite obvious CON limitations were in place to limit Medicaid beds—>not as many destitute people will need care if we limit the amount of care, • just let the excess die.

My first thought when I heard CON removal in Northern Kentucky-• Competition improves every provider, and customers (patients and their family, and insurers) get better products at lower prices.

Let me illustrate with another quasi-monopoly, home internet access. I share ownership of a home on Norris Lake, with only one internet provider, Comcast. I own a home in Boone County with two internet providers, Spectrum and Altra Fiber. 400Megabytes from Comcast is \$120/mon. 750Megabytes from Altra Fiber is \$70/mon. Internet Service is very technical, capital intensive, essential for work, entertainment, and interaction and competition yields more for less. I doubt anyone could identify anyway I would be better off with only one internet service provider in Northern Kentucky.

I read Mr. Mather's June 19, 2023 presentation and I could not identify one benefit Kentucky's CON process provided any customer (patients and their family, and insurers). The presentation touts how CON keeps valuable capital and human medical resources from being wasted. I challenge any CON zealot to identify a time from the beginning of the Constitutional Republic where America was awash in hospitals, test facilities, ambulances, medical personnel, etc. I also challenge these CON zealots to identify in this era of healthcare consolidation when any of these massive healthcare conglomerates are at bankruptcy risk by adding more capability. They maybe so-called non-profits, but they're loaded and being encouraged to not take improvement risks by CON.

Mr. Mather's bureaucracy and the laws instigating CON need to be irradiated. If the State wants to help, take the CON budget and do what the business world calls business development. Advertise and solicit more prestigious healthcare providers, more rural providers, and the latest testing and treatment techniques. Fewer healthcare resources lead to distrust of the present system and an invitation to on-line quackery.

Finally, what would you call a system where the state limits products and services because the state knows better than the citizenry what the citizenry wants or needs? Usually this is the definition of socialism.

Where's the Voice for the Voiceless?

Having reviewed the July meeting presentation materials, I am appalled by your solution for public input. How could you award two whole meetings to pro-CON entities, funded well enough to have lobbyists in Frankfort? And your solution for anti-CON is to post on the LRC website, which I suspect 90% of Kentuckians don't know exists, much less know this solicitation is being made, an email address for individual input.

Most of the pro-CON, vested interest presenters essentially stated they are at financial risk (translated, senior executives may not make their bonus every year) because the State and Federal government has capped the income. So supply has to be limited by government to insure the financials that are expected occur. If government has screwed up Healthcare every time they have acted, why would more government not screw it up more?

It turns out the data for the impact of keeping CON in place will be several hundred stories of unavailable care, poor care, unavailable technology, long waits while actual physical suffering occurs, etc by individuals. Not having a forum where you have to hear these stories, face to face, to feel the pain and suffering is cowardly. It appears you don't want your heart to be touched or be knowledgeable of the sad experiences. You could easily schedule individuals to be in person or by ZOOM if unable to travel. Add a meeting in August for the voiceless to be heard.
James Stigall

55. We need the Certificate of Need in order to preserve and protect our viable healthcare institutions that serve Kentucky. Evaluating the current Certificate of Need program is not a bad thing, as all initiatives should be evaluated periodically to assess performance and identify improvement opportunities. At the end of the day, we need to ensure that existing healthcare institutions are not threatened and that growth of those not be stymied in the approval process for expansion where need exists.
I would like to see more support for the expansion of existing behavioral health hospitals like The Ridge to keep pace with the mounting mental health needs in Kentucky.
Regards,
Jenny Sutton-Amr
The Ridge Behavioral Health System

56. I am opposed to government created monopolies in our healthcare system!
Anita Edmonds

57. We need to get rid of the Certificate of Need. Everyone should have the right to open up a business of their choosing. Monopolies are never a good thing especially in healthcare.
Thank you
Bridgette Fore

58. We are KY residents and have been very concerned about the Certificate of Need that hospitals use as a monopoly here in our Commonwealth. This causes us to have poorer health care than we should have at a higher cost and not even the availability that we should have. PLEASE get rid of this law that in our opinion should have been illegal to start with and it is certainly immoral.
Please let us know what you do about this.
Sincerely,
Kari and Chris Ostby
Louisville, KY
Shelby County

59. Hello,
I am writing to ask you to remove the certificate of need requirement for new medical facilities. I live in Bowling Green, and am extremely unhappy with the lack of medical

choices we have here. Trying to get an Appointment with Graves Gilbert Clinic, which has a stranglehold on medicine in our town, takes weeks for most appointments.

Our adult daughter moved back to our home because of severe medical issues she was experiencing. The issues were wide ranging, requiring trips to many different types of doctors. We gave up trying to see doctors in Bowling Green because of long waits to get appointments. We opted to drive the distance to Louisville and use the Baptist Health System because appointments were much easier to get there. This should not be happening in Kentucky! I believe if there were more competition available in Bowling Green, these long waits for appointments would not be tolerated. It would be better for patients if the Certificate of need requirement would be dropped. Competition is always best for consumers. Lack of competition only benefits businesses that are poorly run. Why would we want to prop up poorly run medical businesses!

We moved to Kentucky 8 years ago and love it here. But the biggest drawback we have found is poor healthcare in Bowling Green. You have the opportunity to help the people of Kentucky get better healthcare, and I hope you side with the people and not the businesses.

Best Regards,
Diane Smith

60. Please consider getting rid of the Certificate of Need. End the Monopoly, and let Kentucky grow.

Please let me know of your decision.

Thank you,
Edward D Sherwood JR

61. Please remove the need to have a certificate of need to expand or provide health care. This prevents new providers from moving to an area, increases the cost of care and suppresses wages of workers.

Most other states do not have CON's for hospitals and only two states have CON's for EMS. They don't have any of the problems CON's claim they prevent.

William V Kone, B.Sc. NRP
AHA CPR Instructor

62. No!!! It's not up to the government to tell hospitals what they can do. This is just one more act of CONTROL!!!!

Carol Adkinson

63. Hello,

I saw this was the email for the public to comment on the need of certificate of need. I personally would like to see this removed if somebody wants to open their own business the public will dictate if they're needed if they're not they lost their own money thank you for taking time to read this if able I would like to know how you would vote on that.

Thanks
Steven Hart

64. I understand that you and others are soliciting public views on the Kentucky Certificate of Need. I am 71 years old and have chosen to live in a rural community, near the old town of Cornishville, KY. I'm told it used to be a prosperous town with three stores, a gas station and a bank. Now it only has a volunteer Fire Department and has been incorporated into the city of Harrodsburg which is over nine miles of twisty highway away. It is from Harrodsburg that any ambulance would have to come from if anyone on my farm had a need for one, the same goes for the Emergency Room. Cornishville is not alone in this area. To the West is Bushtown, to the North is Bohon, and there are other communities that are even smaller without any medical support other than Harrodsburg to the East. It is very, very, rare to hear a siren here. If it is a police care or an ambulance the sound can be heard for 20 to 30 minutes as the echoes linger in our hillside area. Please do what you can to remove the monopoly held by large hospitals and allow those who way wish to take a risk and put smaller medial support facilities in rural areas an opportunity to do so. The free-market system should be able to take care of the cities and rural communities better. Please, if you would, let me know what it is that you intend to support.

Sincerely,

John and Lesley Reno

65. I would like to see the repeal of CON in KY, because I feel there is an increase in price, a decrease in care, and a decrease in access to care if there is a monopoly (which is what St. Elizabeth Hospital has here in northern KY right now)!!!!

Thank you,

Linda Geisselbrecht

Taylor Mill, KY 41015

66. Please help to stop the Certificate of Need. We should have more choices in our community. Political involvement has taken the place of community participation and we the people should have a choice of whether or not a medical facility is close to us, instead of being told that we must go to the other side of town to get that specific type of treatment.

Thank you for listening to our concerns and please respond back regarding your decision.

Be Blessed,

Larry & Wenda McMillan

67. My name is Andria Humpert; I am a resident and taxpayer in Kenton County writing to you today regarding Certificate of Need in Kentucky. Certificate of Need (CON) law has created a situation here in NKY where St. Elizabeth is able to prevent other healthcare providers and facilities from receiving a Certificate of Need and opening their doors to serve the people of this community. This is a major problem and I urge the Kentucky General Assembly to eliminate the Certificate of Need in the Commonwealth. Below are points to support this position.

Certificate of Need is a counterproductive law that violates every economic principle that explains that market disruption, innovation, and increased supply are vital to our economy.

CON law protects the controlled domain of existing providers like St. Elizabeth, eliminating the worry that a competitor might come in and provide something better. This is preposterous. It's why we don't ask Papa John's if it's OK for Dewey's or Donato's restaurants to open up nearby.

This law has enabled our taxpayer dollars to be used as a tool by St. Elizabeth to monopolize the healthcare market here in NKY and place community members and other private businesses at a disadvantage.

Fixing health care should be about making its services MORE affordable, MORE accessible, and of BETTER quality. CON laws are unnecessary government regulation that favor large, incumbent healthcare systems like St. Elizabeth, prevent competition, and impact medical care and outcomes for the people of this community.

I urge the General Assembly to eliminate the Certificate of Need in Kentucky; the citizens are counting on your vote to repeal.

Sincerely,

Andria Humpert

Edgewood, KY 41017

68. Greetings,

My public comment on Certificate of Need - I do not want health providers and facilities to have a monopoly in their geographic areas. I want all Kentuckians to have better access to a wide variety of health care options, giving them freedom to choose.

Knowing the outcome of this issue is very important to me. I would appreciate if you could email me back to let me know which direction this goes.

Thank you for listening,

Mary Pollard

Munfordville, KY

69. Members of the task force,

Please consider repealing the certificate of need statutes. By repealing these rules, it will allow competition among Healthcare organizations resulting in better health care for northern Kentuckians. A little competition among Healthcare systems will attract the best physicians, nurses, technologists and etc..., with a competitive pay scale and salary increases.

The attitude within organizations seems to be "do more with less". Less staffing to care for an ever-increasing patient load, inferior equipment to meet the demands of providing quality care in a timely manner, not enough beds, but too many patients, long wait times.

Perhaps distributing patient load between institutions will improve staffing and quality care, and just to mention "burn out."

One last point, I can only comment from my family members experiences. Most visit UC, Christ or Children's Hospitals or offices. These organizations do have limited office

services in NKY. But often, health care requires travel "over the river" as needed to UC, Christ or Children's Hospitals in Cincinnati for care.

As a retired healthcare professional with over 40 years of experience, repealing of the CON process is overdue. Hope this gives you some insight.

Thanks for your consideration,
Karen Leek
Verona, Boone County, Ky

70. Please tell the committee to repeal all CON laws in Kentucky. They create monopolies and hamper access to healthcare.

Marthine Krogdahl

71. Capitalism please, monopoly isn't helping our health care in Ky.

End the certificate of need.

Keith Howell
Edgewood Ky 41018

72. I wanted to give some perspective on the KY CON for people who live in Northern Kentucky.

I truly believe the CON is an outdated tool. It has NOT served the people who live in our area of Northern Kentucky well. We used to have choices of hospitals here but St Elizabeth has been allowed to buy up all of the competition and when any other hospitals try to get a foot hold with a surgery center or something like that, it is always shot down.

There are a significant number of people who have issues with St Elizabeth and their monopoly of hospital and OP surgery care here. We have absolutely no choice except to go to Ohio for our care if we do not choose St Elizabeth. This is definitely an inconvenience. Nowhere else in KY (Lexington, Louisville) has such a lack of choice of health care providers.

I believe if you did a survey of people who live in the Northern Kentucky area, most would agree with me.

Thank you for the opportunity to give feedback.

Andrea Halkiotis
Erlanger, KY 41018

73. Please remove the certificate of need requirement.

We need more choices for medical access and competition for pricing.

Please reply to me as to what action you intend to take.

Melinda Schoenwald

74. To the task force:

I am opposed to governments setting up healthcare monopolies, so I oppose the CON laws. You need to abolish or reform those laws so that we have choice in medical care. Better choice will lead to better health care.

Thank you,
Heather Hughes
Wilmore, KY

75. Please strike down and remove this certificate of need. Entrepreneurs and businesses take their own risk when they establish a business for service. This certificate of need only serves monopolies. Restore the free market in the Commonwealth.
I would like to have a response as to what you have done regarding this matter. Thank you for your time and service.

Dean Spooner
Henderson, KY 42420

76. The Christ Hospital out of Cincinnati Ohio wanted to open a location in Fort Mitchell Kentucky (Kenton County). Saint Elizabeth Blocked that effort using Certificate of Need as the blocking instrument. Saint Elizabeth has major representation in Campbell County, Boone County, and Grant County. They also have a major facility in Dearborn Indiana. They do have a minor facility in Kenton County. This controversial (to many) action is what prompted the uproar.

St Elizabeth's action was clearly because they thought this additional Health Care Facility was competition to their monopoly in the Northern Kentucky Community. Northern Kentucky is not a small community and is growing rapidly. Yes, one Health care entity can have some efficiencies such as spreading administrative cost over a bigger origination, efficiencies in computing both in equipment and programming, and Maintenance of facilities. Clearly complacency can creep in when you are operating in a monopoly. This is concerning. There are rumors locally that ST. Elizabeth has asked its employees to respond objecting to changing the Certificate of Need laws.

A Monopoly is not good for employees of the Hospital. There is not competition which leads to stagnating wages, and limited choice of employers in such a specialized field. Who knows what health care services are missing in Northern KY with one provider? The Kentucky Legislators are to be commended for addressing the certificate of need laws.

Respectively
Jay Weber
Fort Wright, Ky 41011

77. Please eliminate. The certificate of need and allow fair competition.
I'd like to know as soon as possible what you decide to do.

Don Barbour
Hodgenville, KY 42748

78. I am in favor of removing this roadblock to competition and of allowing greater choice in healthcare.

Thank you,
Christine Young

Owensboro KY

79. I believe that it would be in the best interest of fellow Kentuckians and their communities to get rid of the states Certificate of Need. It appears to be a monopoly of big business health care. I think the communities could benefit and have access to better health care with the elimination of the Certificate of Need, opening the door for individuals/or other businesses to accommodate rural communities. Please let me know what the task force finds out.

Thank you for the work you are doing.

Terri Lowery

Benton, KY 42025

80. The American people demand our 1776 Constitutional Laws be enforced!! All elected officials swore an oath to uphold those laws, they lied to the citizens of this state and country! We will no longer tolerate big government control over our lives! Elected officials have forgotten they are servants of the people! My opinionus
Carolyn Mills

81. I was originally hired by a hospital system in the mid-1980's to assist in reducing costs as a response to Medicare's implementation of the DRG-based Inpatient Prospective Payment Systems. I have continued to work in the healthcare industry ever since, working for both healthcare providers and for medical support companies including Premier, Inc., GE Healthcare, and Roche Diagnostics. As a consultant and hospital chief operating officer, I have worked on operational cost reduction, technology implementation, and clinical practice improvements throughout the United States and Canada.

Certificate of Need (CON) legislation protects incumbent providers, establishing a de facto monopoly or oligopoly conditions. These structures restrict consumer choice but do nothing to reduce healthcare costs, as the protected organizations have far lower incentive to operate efficiently. Yes, increased competition will drive up labor costs as workers flock to the best environment, and yes, some providers will find they are unable to compete effectively given increased cost pressures vs. relatively fixed revenues. But it should be the market that forces organizations to decide whether they have the capital, reputation, and sufficient revenue opportunity to provide some category of services, not the companies that will be their competitors!

Preserving artificial barriers to market entry rewards inefficient providers while potentially harming patients and the local workforce.

Terry Dunn

82. Just wanted to let you know that I am In Favor of eliminating the certificate of need, What action are you going to take? It's ridiculous trying to get into a doctor these days!

Anne W Henderson

Maceo, KY 42355

83. We don't need this... It's the State trying to regulate progress.
Why can't a new practice just open its doors if it meets legal requirements?
Let the market decide if its viable or not
That's the American way, and it works well where it's allowed to be used!
Barry Adkins
84. We need Christ Hospital in NkY! St. E's has a monopoly and their service is terrible and expensive! Whatever reasonable legislation can bring this about ought be done.
Capitalism is competitive, so let's encourage it.
Russell E. Buss, MD
85. To those on the committee considering CON reform and/or repeal, I commend your efforts. It is my opinion that while certificate of need may have been well-intentioned, it is not needed in a state where poor health outcomes have become the norm. Full repeal of CON should be the outcome of the committee's work. If an entity wants to add healthcare services in an area in Kentucky, let them take on the potential risk/reward. Eleven states have removed all CON laws or caps: California, Colorado, Idaho, Kansas, New Hampshire, North Dakota, Pennsylvania, South Dakota, Texas, Utah, and Wyoming. Let's make Kentucky number 12 and the first in the Southeast.
The views expressed here are my own and do/may not represent the views of my employer, Mountain Comprehensive Health Corporation.
Best regards,
Chris Bates, MPA
Corporate Compliance Officer
Mountain Comprehensive Health Corporation
Whitesburg, Kentucky 41858
86. I have spent 40 + years of my career in the N KY Healthcare playground.
Having owned a Pharmacy and Medical Equipment company over 20 plus years I have witnessed the use of this CON in Hospitals and other Medical Licensed businesses.
It is abused by members of Chambers of Commerce as well as other medical business to reduce competition from other areas.
The CON is old and outdated and useless in today's market. Please repeal it!
Steven Mueller
Petersburg, KY 41080
87. This email is to inform you that as a resident of Daviess Co. KY and a registered voter, I am in favor of eliminating the " certificate of need."
Please inform me of your action regarding this decision.
Thank you,
Sally Boles

88. Please remove any requirement for a Certificate of Need. Currently hospitals who deny care to patients are allowed to participate in determining if there is a need for a service which they oppose. As such free trade is hindered. Wellness care is hindered.

Norton Healthcare denied me care despite having a contract with the Veterans Administration to provide services. September 30, 2021, Norton Brownsboro murdered Mary Ann Ridge who had a seasonal allergy during COVID, Norton refused to treat her seasonal allergy, withheld care and put her on a ventilator until she died. They engaged in human experimentation with a non-FDA cleared drug resulting in negligent care and homicide. Adam Mather IG CHFS was made fully aware of the issues before Mary Ann Ridge was murdered, but Adam Mather failed to prevent her murder and failed to open any inquiry, being complicit himself for failure to act.

There is a real need for wellness and health care which treats the underlying causes, rather than masking them with pharmaceutical drugs which are among the top three killers in the USA: doctor prescribed drugs creating Adverse Drug Reactions (ADRs). The leading causes of death, cancer and cardiovascular disease are also the result of pharmacological interventions rather than addressing the underlying causes of toxins, unnecessary medical care and treatment, parasites, contaminated air, food, and water. Those who advocate for a Certificate of Need engage in practices to maintain their status quo without providing for or allowing new health paradigms for true patient care. Hospitals earn over \$80,000 per year per cancer patient, whereas the cancer could be eliminated or reduced by those employing wellness protocols to address the true underlying health issue which manifests as cancer. A Certificate of Need requirement hinders the establishment of clinics which provide appropriate and proven therapy which improves health, whereas status quo chemotherapy begins the long slide into a painful protracted death in most cases. Cancer has increased 11x since 2021 due to the unnecessary medical practices and treatments of those who advocate for restricting competition via a Certificate of Need.

Norton denied care to those who refused to participate in their human experimentation using experimental, patented gene modification therapy and other unnecessary treatment known to cause injury and death, my having discussed a similar case with the pathologist following autopsy of a woman who died within 24 days of getting the covid swab which caused meningitis which killed her.

Please allow for the free market development of wellness care/ healthcare and remove all requirements for Certificate of Need.

All the best,

Kurt Wallace, IHFA
Louisville Kentucky

89. I would very much like to see more competition and medical choices here in NKY.

Disappointment over Christ Hospital losing the opportunity to build at the old Drawbridge site was the consensus of all the people I know.

Arlene Luebbe

90. I am writing to express my thoughts and concerns for this above issue. My understanding is that this issue is being reviewed by our representatives in our northern Ky area due to the lack of medical representation in our region. I have firsthand experience with the issues of only having one choice of medical attention in my region. I absolutely DO NOT WANT to be treated by this medical institution. Currently I am diagnosed with terminal cancer and am being treated by UC Medical in Cincinnati, which means I drive to Cincinnati to all my doctor visits and therapy treatments. As residents of northern Ky we should have a choice of convenient, dependable, and trustworthy medical staff and facilities near our homes. I was in critical need of my medical institution before and was taken against my will to St. Elizabeth. They would not communicate with my doctor, treated me for heart issues that I did not have, and was very uncaring of my wishes. These type stories go on and on and I personally know several family members and friends that have had the same type issues. This is not ok and this has been going on for way too long. We switched to UC in 2015 when my husband was diagnosed with cancer. The St Elizabeth doctor referred us to UC Medical then because they did not have the ability to do that type of surgery in northern Ky. Once we were there, we discovered the absolute best medical care given. My husband had a major surgery and beat the cancer. I now have been told by that same doctor that I am in the best place possible for my cancer journey. As said, "We cannot get that type of studies here. Your doctor is a very good, sought after doctor and you are in the best place for treatments." I appreciate his honesty. I have been telling anyone who will listen to me at UC that they need to build a hospital in Walton Ky as it is in the middle of Cincinnati, Lexington, and Louisville. St Elizabeth has stopped every effort to keep them out and that is absurd and should be illegal in my opinion. We need choices and specialized care that we can depend on and trust and having one choice is not ok for anyone. The need for quality medical care is needed to help "step up" the type of care given to our area. We need medical institutions that we can trust. No one should have "settle" for medical care provided. I hope this helps with some of the questions and concerns that might arise. Please feel free to contact me should you have any questions or concerns.

Thank you,
Marsha Ross

91. Below are my feedback and comments on the upcoming Certified of Need Reform. I am a lifelong resident of the Commonwealth of Kentucky and of Pulaski County. I have experienced this firsthand in my community. In November 2020, I was exposed to COVID-19 because of being an Essential Employee by Governor Beshear's Executive Order. I flowed to UK Chandler Hospital from Lake Cumberland Regional as they were unable to manage my health issues, and since they were the only hospital locally, that was necessary. However, since it was during the COVID pandemic, resources were stretched thin, and many individuals died because of not being able to receive care. If there had been more than a single hospital in our community as well as in others across the state, it is unknown how many more lives could have been saved. The Certificate of

Need, as currently in place, limited the medical community's ability to effectively respond because of having a population of over 65,000 and a single hospital.

In my area, Somerset, Kentucky, Lake Cumberland Regional Hospital is a monopoly on health care in our community and has been for decades. Since it is currently owned by LifePoint, which is a larger conglomeration, it has lowered the standard of health care in our county and surrounding counties; the county to the south of us, McCreary County, has no hospital and is left with going out of state to TN or coming to Somerset. Local healthcare monopolies are a problem all over the country, not just in Kentucky. I fully support the repeal of the certificate of need requirements and the enacting of other reforms that will basically put patients in charge. I hope there will be reform here in Kentucky and look forward to seeing it succeed. Among other groups with an interest in health care in Kentucky, the Kentucky Medical Association spent \$98,182, and the Kentucky Hospital Association spent \$95,946 lobbying the Kentucky legislature during the first quarter of 2023, according to the Kentucky Legislative Ethics Commission. Furthermore, the recent involvement of organizations such as the Kentucky Chamber of Commerce during legislation passed during the COVID-19 pandemic regarding Malpractice and Health Care availability should be restricted if not outright eliminated. Never should a "business entity," whose sole goal is to make money, should be involved in any health care decision or regulation. I believe the people in all counties in Kentucky should be making the health care policy for their respective of their areas of Kentucky, not out-of-state corporations, and I trust that our legislators in Frankfort will do what's right.

Healthcare needs should be solely between a patient and their provider. The elimination or reduction in the requirements for the Certificate of Need would allow more c services to be available and break the monopolies held in many communities across Kentucky, especially in my area. This will benefit the patient citizen and raise the level of care that is available in the local areas. As facilities must become competitive, it will drive down costs and increase options for better patient-centered care. It is not about the money as many, especially the opposition to the reform, would have the public believe.

I hope politics and the effects of lobbies such as the Kentucky Chamber will be disregarded, and the Kentucky General Assembly will initiate meaningful reform in modifying, if not eliminating, the Certificate of Need in Kentucky.

Sincerely,

Michael R. Grigsby

Nancy, KY 42544-8713

92. End the monopoly of health care in NKY. Eliminate the certificate of need that St. Elizabeth is using to stifle competition in NKY. We regularly trave to Cincinnati to get the health care we need and want. These same health care providers would set up offices in NKY if the monopoly did not exist. Government interference in the free markets is not productive.

Respectfully submitted,

Garth Kuhnhein

93. Certificate of Need laws increase price, decrease quality of care, and hurt access to care. I thing the Certificate of Need laws should be repealed.

Jim Pfister

Melbourne, Ky 41059

94. I would like to see the CON here in KY be repealed.

We need to have competition here in northern KY, as St. Elizabeth Medical Center has a monopoly. Competition provides better service and better rates.

Personally, I would like to see Christ Hospital expand here in northern KY, ss most of my doctors are at Christ.

In 2010-2012, my cardiologist was at St. Elizabeth, and for two years could not fully diagnose my heart condition. I was filling up with fluid and had to have the fluid drained every 6-8 weeks. I finally decided to go to the Cleveland Clinic. They diagnosed my Tricuspid Valve regurgitation and operated immediately.

They also told me they wanted me to go to Ohio Heart and Vascular at Christ, not to St. Elizabeth.

That's where I've gone ever since.

Thank you for listening to my explanation.

Sincerely,

Linda Geisselbrecht

Taylor Mill, KY 41015

95. Thank you for giving me the opportunity to voice my concern over the current Certificate of Need restrictions.

Why should bureaucrats choose what health care facilities open in the Commonwealth? The Federal Government decades ago stopped this because it wasn't improving care, yet Kentucky is one of the few that still does. Those bureaucrats also take money from the Kentucky Hospital Association and other lobbyist groups. Seems unfair that the decisions of a few impact the Kentucky consumer.

Competition always drives better results for the consumer, the end user.. Sports, business and everything in between.

Competition has proven to drive up wages and drive down consumer costs.

Why should our health care dollars go across the Ohio river into Ohio and Indiana? Currently, that is 20% of health care dollars in northern Kentucky.

Why wouldn't we want consumers to all utilize Kentucky health care? This drives more taxes into the state economy.

Rural hospitals and health care facilities have closed in the last 10 years because of CON. Why should we allow that because of CON?

Monopolies are poor for the consumer and open up the door for corruption. Why should we allow that?

The effects of Free Enterprise 'lifts all boats'! Taxes, consumer care, associate wages, etc...

Thanks for allowing me to share my thoughts on the negative effects of government overreach and how the consumer pays the price in the Commonwealth!

Thanks,
Gregg Proctor

96. I would like to chime on the Certificate of Need discussion. This legal requirement has negatively impacted healthcare in Kentucky. My family has been impacted, as well. Two things have resulted from the Certificate of Need: 1. A Healthcare monopoly dominated by St. Elizabeth and 2. The healthcare service level has not been able to keep up with the growing population in Northern Kentucky.

Regarding the first point – I have no alternative than to use the St. Elizabeth network as other providers are not available. The level of health care at St. Elizabeth is quite poor: from excessive wait times, to casual, off-hand treatment, to being referred to in-network specialists for minor issues that the PCP won't address (though such issues would be within a PCP's purview. The lack of healthcare competition has stagnated the quality of care at St. Elizabeth and the Certificate of Need requirement has prevented us from seeking alternative providers – providers who would be more concerned about care rather than increasing network income through unnecessary referrals.

Regarding the second point – The population of Northern Kentucky has drastically increased in the last 15 years. The Healthcare service has not. It took me over 6 months from a positive Cologuard test to finally get a colonoscopy since there was only one such place available in the area (and this wait should never happen, especially when there is the possibility of cancer). Without the Certificate of Need, other providers would be able to establish practice, and wait times would decrease.

As a voting resident of Northern Kentucky, I ask that the Certificate of Need be repealed to eliminate the healthcare monopoly of St. Elizabeth that is negatively impacting the quality and availability of our healthcare.

Regards,
Chris Murphy
Verona, KY 41092

97. I just wanted to express my support for changing the system for allowing new medical facilities to open in Kentucky.

Regards,
Cecelia Ellingsen

98. I am wanting the "certificate of need" to be eliminated for new doctors. This community starting with the hospital down has kept our people from the best medical care. This must be changed! Please inform me on your decision. Thank you.

Tammi Obryan

99. Hello, my name is Jenny Cotton and I'm on KY Medicaid. My carrier is Passport. Something that's very concerning to me is dental care. I live in Louisville and there are only 2 places that take adults on Medicaid for emergency and routine care. I have several teeth that need removing (since I couldn't see anyone for routine care). The problem is there's so many folks on Medicaid and so few places to go that the wait times are

incredible. Then, when you are lucky enough to get an appointment, you can count on at least two reschedulings. The dentists are understaffed and overworked, and Medicaid recipients are DESPERATE for care. The locations are not in easily accessible areas either. Immediadent was shut down for fraud, which they shouldn't have done, but I understand why they did it. The location I went to was within 3 miles of my home, the staff and doctors were top notch, and now I'm looking at losing all of my teeth. And that's if I can get an appointment to have them pulled with novocaine. I've tried to figure out a way to pull them myself at home just to be done with it. I SHOULDN'T HAVE TO DO THAT. If I'm entitled to dental benefits, I shouldn't have to perform spellcasting to find a dentist. Also, why is it only 1 Mortensen Dental accepts Medicaid out of over 10 offices? If they ALL took it, dental care would be much more accessible for everyone. Long story short, dental insurance through Medicaid should be accepted at more offices, and the more offices accepting it would ease the burden on providers AND patients. Thank you for your time.
Jenny

100. A certificate of need (CON) program is a regulatory process that controls the number of health care resources in an area.
As a Northern KY resident and former patient/customer of St. Elizabeth Hospital, more competition to St. E is needed. Competition is universally good in Medical (and business) choices and medical second opinions make good sense, are recommended and often required by Health Insurers, Medicare and Medicaid.
St. Elizabeth's current monopoly in Northern KY restricts choice, can negatively impact quality, and is not cost-effective for consumers. My wife and I now have to "cross the river" for care at Christ Hospital in Cincinnati a trip which depending on weather conditions and traffic can take hours.
I realize you may have received numerous emails from St. E employees, but they are being pressured and can't say what they really believe, that an alternative employer would be good for their careers, be good for hospital care recipients, and through competition ease the strain on constituent's personal budgets.
Northern Kentucky residents need the Christ Hospital to expand in order to improve our health care options.
Please support the elimination of Certificate Of Need.
Thank You for your caring consideration.
Rowland Cresswell

101. Yes yes yes! People should have the right to choose their health care where they go and where they are treated. Saint Elizabeth has had a monopoly on healthcare for far too long and this northern Kentucky community and southward.
Please issue a CON so we may have other healthcare available!
Wren, Fielding, RN, BS,
Florence, KY 41042

102. Greetings, in the Love & Light of the One Infinite Creator, God!
Certificate of Need, in my opinion, is another step towards socialism. Whomever recommends this abomination is unelectable, in my opinion.
Lord Jesus, protect Kentucky from abomination, at the hands of humans. Amen!
Jesus is King!
Thy Will be done!
All glory to God!

103. Just wanted to weigh in on the certificate of need issue. It is sad when the government costs the taxpayers money with unnecessary regulations that not only get in the way of job creation but stops competition. The only positive is that the groups that get an exclusive right to provide healthcare to an area get very wealthy. At the same time the population of the area overpay for services.
Stop the looting our small towns and let free enterprise and competition help build Kentucky.
Stanley B Rosenthal
Oldham Co

104.

“Submission for the Record”

The Failure of Kentucky’s Certificate-of-Need Laws

Thomas Stratmann

Department of Economics, George Mason University

Senior Research Fellow, Mercatus Center at George Mason University

August 14, 2023

To Chairs Douglas and Webber and Members of the Certificate of Need Task Force:

Thank you for the opportunity to share my recent work on certificate-of-need laws as they are applied to healthcare in Kentucky.

My name is Thomas Stratmann. I am a distinguished university professor of economics and law at George Mason University in Virginia and a senior research fellow at the Mercatus Center at George Mason University.

INTRODUCTION

Certificate-of-need (CON) laws require healthcare providers to obtain permission by proving “need” of their services in the community before they open or expand their practices or purchase certain devices or new technologies. CON laws exist in some form in 35 states.

New York, in 1964, was the first state to pass a CON law. The goal was to contain costs. And in 1974, the federal government passed a CON law applicable to all states. Again, the justification for this law was to maintain costs. However, because CON laws did not help to contain costs, the federal government repealed its CON law in the early 1980s. Also, by the 1980s the rationale for the CON laws was gone.

Before the federal repeal, Medicare and other insurance providers used a retrospective reimbursement system, so hospitals and other medical providers were reimbursed for the full cost of whatever services were provided. So, there was some concern about the high costs because providers had some incentive to provide unnecessary services. After all, they got reimbursed for all services provided. However, by the 1980s, Medicare and many insurance providers switched to the prospective, or DRG (diagnosis-related group) system, which paid based on the patient’s diagnosis. So, hospitals had an incentive to no longer over-provide services. Prospective reimbursement is the system used today. So, the original rationale for CON is gone.

However, keeping CON on the books resulted in negative consequences for patients. In four different academic, data-driven studies, my coauthors and I document these harmful effects. These studies compare economic and health measures in the 35 states with CON laws to those states that do not have CON laws.¹ These peer-reviewed studies show that CON laws:

¹ Thomas Stratmann and Jake Russ, “Do Certificate-of-Need Laws Increase Indigent Care?” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2014); Thomas Stratmann and Matthew C. Baker, “Are Certificate-of-Need Laws Barriers

1. Harm patients by reducing healthcare quality.
2. Harm patients by reducing access to healthcare. They reduce the availability of medical care by making it difficult for medical providers to offer their services.
3. Harm patients by reducing the availability of medical equipment such as MRI machines and CT scanners that help diagnose illnesses and prevent premature death.

These findings are consistent with the positions of the Federal Trade Commission and the US Department of Justice under both Democratic and Republican administrations.² They have argued that CON laws fail to meet their stated goals and that CON laws are harmful to patients. Also, the largest association of physicians, the American Medical Association, favors repealing all CON laws.³

CON LAWS IN KENTUCKY

CON laws in Kentucky require already-licensed healthcare providers to obtain government permission to compete for 23 medical services (out of 28 medical services regulated across the US states by CON). Among the states with the highest number of CON laws, Kentucky ranks 6th. Some examples of CON laws are the following:

- In Kentucky, a hospital needs permission to add a new bed.
- In Kentucky, a provider needs permission to open a new hospital.
- In Kentucky, a provider needs permission to purchase an MRI machine, CT scanner, or PET scanner.
- In Kentucky, a provider needs permission to open an ambulatory surgery center.

RATIONALE FOR AND CONCEPTUAL INEFFECTIVENESS OF CON LAWS

While there are many justifications for CON laws, the typical goals include

- ensuring an adequate supply of healthcare resources,
- protecting access in rural and underserved communities,
- promoting high-quality care,

to Entry? How They Affect Access to MRI, CT, and PET Scans” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Thomas Stratmann and David Wille, “Certificate-of-Need Laws and Hospital Quality” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Thomas Stratmann and Christopher Koopman, “Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

² *Certificate of Need: Evidence for Repeal* (Chicago, IL: American Medical Association 2015); US Department of Justice and Federal Trade Commission, *Improving Health Care: A Dose of Competition*, July 2004, 22. See also Maureen K. Ohlhausen, “Certificate of Need Laws: A Prescription for Higher Costs,” *Antitrust* 30, no. 1 (2015): 50–54; Federal Trade Commission and US Department of Justice, *Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250*, January 11, 2016; Federal Trade Commission and US Department of Justice, *Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice to the Virginia Certificate of Public Need Work Group*, October 26, 2015; Letter from Federal Trade Commission Staff to Marilyn W. Avila, North Carolina State Representative, July 10, 2015; US Department of Justice and Federal Trade Commission, *Competition in Health Care and Certificates of Need: Joint Statement of the Antitrust Division of the US Department of Justice and the Federal Trade Commission before the Illinois Task Force on Health Planning Reform*, September 15, 2008; Daniel Sherman, *The Effect of State Certificate-of-Need Laws on Hospital Costs: An Economic Policy Analysis* (Washington, DC: Federal Trade Commission, January 1988); Monica Noether, “Competition among Hospitals” (Washington, DC: Federal Trade Commission, 1987), 82.

³ <https://www.ama-assn.org/health-care-advocacy/state-advocacy/business-medicine>

- supporting charity care, and
- controlling cost.

Certificate-of-need laws were well-intentioned when first introduced in states in the mid-1960s. Their effectiveness, however, should be measured by their outcomes. Even the best-intended laws might not lead to the desired results and might yield unintended consequences.

The failure of CON laws might have been expected because CON laws grant a government-protected monopoly to incumbent providers. Both basic economics and common sense tell us that government-protected monopolies have negative consequences, particularly for poor consumers.

CON laws are designed to restrict competition. Existing hospitals and other medical providers can oppose the CON application of a would-be competitor simply by claiming that there is no need for that additional medical service. This is akin to McDonald's needing permission from Burger King to open a restaurant in Kentucky.

EMPIRICAL EVIDENCE OF THE FAILURE OF CON LAWS

My colleagues and I started have analyzed data to rigorously test whether each of the stated goals of CON was achieved. Specifically, we examined the following claims by CON proponents that CON provides better access to care, higher quality care, and improves indigenous care.

We found that CON laws do not deliver on these promises. CON laws have backfired. It turns out that states with CON laws have less patient access to medical care and lower quality of medical care.

In this context, it is important to note that CON laws do not have a public health justification. CON requirements have nothing to do with public health or safety.

CON REDUCES ACCESS TO MEDICAL CARE IN FACILITIES ACROSS THE STATE

The data show *fewer* hospitals in CON states than in states without CON. In 2017, Kentucky had about 117 hospitals. A comparable state without CON has 166 hospitals. So, *a state without CON has more than 30 percent more hospitals*. This finding shows that CON *reduces* access to medical care.

And our findings also show that *states without CON have more hospital beds* per patient. Why is this important? Well, it means that patients have more choices. They are less likely to be turned away from a hospital. And it might mean that there are hospitals closer to patients.

All these estimates make apples-to-apples comparisons between CON and states without CON. This is because our estimates are adjusted by the age distribution in states, the healthiness of the population, and the percentage of the population on Medicaid and Medicare.

Kentucky also has a CON law for ambulatory surgery centers. Comparing Kentucky to statistically similar states without CON laws shows that *Kentucky likely would have over 36 centers instead of 31* if it were to repeal CON.

One important issue is the effect of CON on medical services in rural areas. CON proponents also say that CON laws increase access to medical care in rural areas. Therefore, I conducted a separate analysis, focusing on the number of rural hospitals separately. The findings of this analysis show that CON does the opposite of what is claimed by CON proponents. Kentucky has fewer ambulatory surgery centers and fewer hospitals, thus fewer choices. Kentucky residents in both urban and rural areas have fewer choices because of CON. For example, states comparable to Kentucky without CON have five additional rural hospitals instead of roughly 31 rural hospitals as of 2017.⁴

PATIENTS IN STATES WITH CON HAVE LESS ACCESS TO MEDICAL IMAGING AND OTHER SERVICES

The negative effect of CON on medical supply is not restricted to facilities. Medical inputs such as MRI, CT, and PET scans are also negatively affected. This is because Kentucky's CON laws require government permission to purchase such imaging equipment. This reduces access to medical care. For example, per year, Kentucky residents have about 28,300 MRI scans. Our estimates show that residents in states comparable to Kentucky without CON have more access to MRI scans. They receive about one-third more MRI scans—that is 38,500 MRI scans.⁵ This gives us a glimpse at how access to medical care in Kentucky would improve if Kentucky were to drop its CON laws. Without CON, access is better for patients, and this better access doesn't represent an over-use of services.

QUALITY OF HOSPITAL CARE IS LOWER IN STATES WITH CON

Hospitals are incentivized to compete to attract patients in states without CON laws. Hospitals cannot compete as well on prices as most industries do because many patients are Medicare and Medicaid patients who can only be charged fixed amounts. But hospitals can compete on different margins, such as quality of service. So, there is a strong incentive for hospitals in states without CON to compete for patients by providing better quality medical services. This incentive does not exist to the same degree in states with CON laws because hospitals are shielded by law from competition in these states.

The data show that CON laws reduce hospital quality of medical services. This quality reduction is due to lacking competition among medical providers when a state has a CON law. When my co-authors and I compare states with CON laws to those with no CON laws, we find that *states with CON laws have a lower quality of service, as measured by their hospital mortality rates and hospital readmission rates*. For example, states with CON laws have:

- A 0.5 percent more deaths for surgery patients with serious complications,
- A 0.6 percentage point higher pneumonia mortality rate,
- A 0.3 percentage point higher heart failure mortality rate, and

⁴ Stratmann and Koopman, "Entry Regulation and Rural Health Care."

⁵ Stratmann and Baker, "Are Certificate-of-Need Laws Barriers to Entry?"

- A 0.4 percentage point higher heart attack mortality rate.

These are statistically significant differences. This evidence shows that CON is harmful to patient health and survival.

QUALITY OF INDIGENT CARE IS NOT BETTER IN STATES WITH CON

CON proponents sometimes claim that CON increases indigent care because successful applicants might commit themselves to increasing their medical services to the indigent. However, the data fail to support such optimism. It turns out that hospitals in CON states have the same amount of indigent care as hospitals in states without a CON law. Thus, *CON does not lead to additional services for the poor.*⁶ In this study, we use uncompensated care to measure indigent care.

Some states have been taking action to reverse the harmful effect of CON laws by repealing these laws. When states experienced increased population growth, the harmful effects of CON laws became more apparent. South Carolina repealed its CON law this year, in 2023. The largely rural state of Montana, also experiencing population growth, repealed its CON law in 2021. And in 2019, Florida repealed significant portions of its Certificate of Need law.

CONCLUSION

The takeaway from these findings is that CON laws are bad for Kentucky residents because they reduce the quality of medical care in Kentucky, they reduce access for Kentucky residents, and they reduce opportunities to obtain important medical services such as MRI and CT scans. Based on the research, Kentucky residents would be better off if the Bluegrass State would join the states without CON laws.

Sincerely,

Thomas Stratmann

Senior Research Fellow, Mercatus Center at George Mason University
Distinguished University Professor of Economics and Law, George Mason University

⁶ Stratmann and Russ, "Do Certificate-of-Need Laws Increase Indigent Care?"

APPENDIX 1: MEDICAL SERVICES AND FACILITIES REGULATED BY CON LAWS IN KENTUCKY AS OF 2020

1. Ambulatory Surgical Centers (ASCs)
2. Assisted Living & Residential Care Facilities
3. Cardiac Catheterization
4. Ground Ambulance
5. Home Health
6. Hospice
7. Hospital Beds (Acute, General Licensed, Med-Surg, etc.)
8. Intermediate Care Facilities (ICFs) for Individuals with Intellectual Disabilities
9. Linear Accelerator Radiology
10. Long-Term Acute Care (LTAC)
11. Magnetic Resonance Imaging (MRI) Scanners
12. Mobile Hi Technology (CT/MRI/PET, etc.)
13. Neonatal Intensive Care
14. New Hospitals or Hospital-Sized Investments
15. Nursing Home Beds / Long-Term Care Beds
16. Obstetrics Services
17. Open-Heart Surgery
18. Organ Transplants
19. Positron Emission Tomography (PET) Scanners
20. Psychiatric Services
21. Radiation Therapy
22. Renal Failure/Dialysis
23. Substance/Drug Abuse

Source:

Matthew D. Mitchell, Anne Philpot, and Jessica McBirney, "CON Laws in 2020: About the Update", February 19, 2021

105. This email shall serve as my vote and my voice to end the certificate of need law in Kentucky.

Thank you

Tiffany Hibbs

Louisville, KY 40222

106. As far as I can tell, all the CON does in key is limit our options of healthcare and establishes a monopoly... for example St Elizabeth.

Thanks, Gayle Mueller

107. I'd like to give input on the health care we receive here in NKY in regard to the Manopoly St. E currently has.

It is my opinion that you would be better serving your community by allowing other hospitals to come to this area to offer Healthcare. St. Elizabeth has a reputation of carelessness and misdiagnosis with everyone I know or have heard or read mention of. We as a community deserve better options. I've tried for years to understand how the St. Elizabeth monopoly is even legal and how they continue to block other hospitals from being built in NKY.

I personally have so little confidence and trust in them that even in dire emergencies, I'd rather not be seen at all than to go to any of their locations as I've been carelessly misdiagnosed with some severe health issues that had they simply run a few quick test, they'd have known the difference.

I thank you for your time in reading this and pray that if it is within your abilities, you'll make the best choice for your community by encouraging new Healthcare options in NKY.

Sincerely,

Jessica Pryor

108.



Appalachian Regional Healthcare, Inc.
www.arh.org

August 25, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Barbourville ARH fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, particularly low income and vulnerable populations. Kentucky's population is older, poorer, and less healthy than the rest of the nation. We rank sixth highest in poverty, have the third highest non-institutionalized disabled population, and rank third highest in the percentage of adults with multiple chronic conditions.

Kentucky hospitals have made significant investments in facilities and services to provide care to their communities so patients can receive care close to their home. Kentucky hospitals, unlike other providers of healthcare, provide services without regard to ability to pay, and 70 to 80 percent of hospital patients are covered by a governmental program that pays below the actual cost of care. Most services offered by a hospital to meet community needs are provided at a loss and must be subsidized from the few services from which the hospital derives revenue, such as elective surgery and outpatient imaging. "Cherry picking" only the most profitable patients by entities without the mission to serve all Kentuckians would harm patients by reducing access to needed hospital services, and potentially could close some hospitals entirely. Reductions in services and closure would cause jobs to be eliminated, costs to rise, and thousands of patients would be forced to travel further for hospital and emergency care, worsening the health status of Kentuckians and patient outcomes.

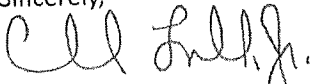
We support reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

Our support of the certificate of need program in Kentucky recognizes that those requirements benefit all of Kentucky by providing access to healthcare services throughout the state, ensuring quality and safety, and helping to keep costs down.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Thanking you in advance for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Lovell, Jr." with a stylized flourish at the end.

Charles Lovell, Jr., FACHE
CEO Barbourville ARH



Appalachian Regional Healthcare

www.arh.org

August 25, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Whitesburg Appalachian Regional Healthcare fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We believe maintaining the CON program is essential for ensuring access to quality healthcare and promoting fair competition within the healthcare industry.

It is evident there is no true free market in healthcare due to the unique nature of medical services. Unlike other industries, patients often do not have the luxury of time to research and choose their healthcare provider during emergencies or critical medical situations. By requiring hospitals to obtain a Certificate of Need before expanding or adding new services, Kentucky ensures that decisions are made based on the needs of the community and not solely on profit motives.

One key point to consider is that hospitals are often the only entities mandated to treat all patients, regardless of ability to pay. This places a significant burden on healthcare hospitals, and the CON program helps to balance some of this responsibility by ensuring that healthcare facilities can adequately serve their communities.

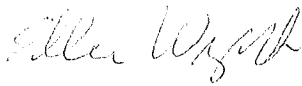
Kentucky's CON program contributes to better access, lower prices, and better value for its residents compared to states without such regulations. By preventing unnecessary duplication of services and controlling healthcare facility growth, Kentucky keeps healthcare costs in check, making it more affordable for individuals and families to access necessary medical treatments. Affordability is crucial for states like Kentucky with such a high poverty population. This also ensures that healthcare resources are allocated efficiently and effectively.

Furthermore, the CON program fosters a competitive environment that encourages hospitals to focus on delivering high-quality care rather than engaging in wasteful over-expansion or duplicate services. This, in turn, leads to improved healthcare outcomes and enhanced patient satisfaction. Hospitals are more likely to invest in improving quality of care and patient outcomes rather than expanding services. This leads to a heightened emphasis on providing better medical care.

In conclusion, I urge you to support the Certificate of Need program for Kentucky hospitals. This program contributes to a healthcare system that prioritizes value and quality. We want to ensure vulnerable populations continue to have access to necessary medical treatment.

Thank you for your dedication to serving the people of Kentucky. We appreciate your time and attention to this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen Wright".

Ellen Wright, RN, MSN, CEO
Whitesburg ARH

Whitesburg ARH Hospital
240 Hospital Road · Whitesburg, Kentucky 41858
(606) 633-3500

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Owensboro Health Muhlenberg Community Hospital fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, but recognize the need to have reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

Our support of the certificate of need program in Kentucky recognizes that those requirements benefit all of Kentucky by providing access to healthcare services throughout the state, ensuring quality and safety, and helping to keep costs down.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Sincerely,

Melissa A. Calloway BSN, RN

Melissa A. Calloway BSN, RN
Owensboro Health Muhlenberg Community Hospital
Director of Quality & Patient Safety
(270) 338-8448

8/25/23

110

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Owensboro Health fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, but recognize the need to have reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

Furthermore, it is worth highlighting that Kentucky's current healthcare system, supported by the CON program, has contributed to better access, lower prices, and better value for patients compared to states without similar regulations. The CON program has fostered an environment where healthcare providers are incentivized to offer services where they are needed the most, ensuring that communities across the state have access to vital medical facilities and services. Kentucky's CON also prevents "cherry-picking" of certain profitable services such as imaging, outpatient surgery, outpatient infusion, and outpatient Cath Lab and GI procedures.

I strongly believe that the Certificate of Need program in Kentucky plays a pivotal role in maintaining a balanced and accessible healthcare system. Rather than advocating for its repeal, I encourage a focus on its modernization to adapt to changing needs. Let us continue to prioritize the well-being of our citizens by preserving a healthcare landscape that ensures fair competition, affordability, and high-quality care for all.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Thank you for your consideration,



Chris Sale
Vice President, Operations
Owensboro Health Regional Hospital

CC: State Senator Gary Boswell, State Representative Suzanne Mills

111. Thank you for providing this opportunity to provide my thoughts on the recent Certificate of Need Task Force (8-21-23 Certificate of Need Task Force (8-21-23) - YouTube).

I do understand the financial difficulties that hospitals are experiencing, the Kentucky's Certificate of Need (CON), hospitals financial reporting, hospital reporting community benefit on its IRS Schedule 990H form, and Kentucky's Hospital Rate Improvement Program HRIP (HRIP).

My supporting documentation is from the following resources: Kentucky Legislature website legislature.ky.gov, pertaining to the HRIP legislation, Guidestar.org on hospital IRS reporting, and online research on various hospitals and what they have reported as community benefit.

In listening to the hearings, I have not heard any mention of what hospitals are receiving from the implementation of HRIP to offset their Medicaid costs.

For transparency purposes, should this additional inflow of HRIP funds to cover Medicaid costs be included in the CON discussion?

Upon review of various documents, you will note that some systems are having their Medicaid costs fully covered and there is a case where a hospital is receiving funds more than their Medicaid costs. Also, you would note that some systems are reporting less community benefit on their tax forms.

Again, thanks for giving me this opportunity to voice my thoughts.

Please contact me should you have any questions or specific examples.

Do have a good day.

David Bailey

112. I hope this letter finds you in good health. I am writing on behalf of Play Cousins Collective, a community-driven non-profit organization deeply committed to the well-being and prosperity of children and families, with a special focus on marginalized communities. We appreciate the opportunity to contribute our insights to the CON Task Force and share our perspective on the certificate of need (CON) requirement for freestanding birth centers in Kentucky.

We wish to express our unwavering support for the removal of the CON requirement for freestanding birth centers. While originally designed to regulate healthcare facilities, the CON requirement has inadvertently transformed into a substantial impediment hindering the enhancement of maternity care options for expectant mothers and families across our state. Freestanding birth centers offer a distinctive and invaluable approach to childbirth that resonates with our organization's core values and mission.

The necessity for freestanding birth centers is glaringly evident in Kentucky. These centers operate under the midwifery model of care, which stands apart from the obstetric model practiced in hospital settings. This model underscores the significance of tailored care, cultural sensitivity, and a comprehensive approach to well-being throughout the childbirth journey. Furthermore, accredited birth centers have proven their commitment to safety through rigorous facility licensing requirements.

Our organization fervently believes that eliminating unnecessary barriers to maternity care is imperative for the well-being of families within our community. By eliminating the

CON requirement, we can significantly expand access to culturally relevant care and address the persisting health disparities, particularly within the Black community. We draw inspiration from the commendable strides made by states like Virginia and Connecticut, which have dispensed with the birth center CON requirement and embraced a more comprehensive approach to maternal and child health.

The March of Dimes 2023 Kentucky Maternity Care Deserts Report has illuminated the challenges concerning maternity care access in our state. It accentuates the pressing need for additional options, such as freestanding birth centers, to bridge the gaps in care. By relinquishing the CON requirement for freestanding birth centers, we can forge a healthcare landscape that is inclusive and accessible, benefiting the women and families we serve.

Importantly, we wish to underscore that the safety of health facilities, including freestanding birth centers, is already stringently regulated through licensing requirements. The retention of the CON for birth centers should not be misconstrued as a matter of safety; instead, it should be regarded as an unnecessary bureaucratic obstacle that deters interested parties from pursuing this invaluable and essential service.

By embracing midwifery as a culturally relevant approach to maternal care, we can take significant strides towards addressing the persisting health disparities. Midwives who possess a profound understanding of the traditions and values within the Black community can offer care that is both respectful and culturally sensitive, empowering mothers with a sense of agency, dignity, and trust throughout the healthcare process. This approach not only addresses the physical needs of expectant mothers but also fosters a nurturing environment for the overall well-being of mothers and their children. At Play Cousins Collective, our steadfast commitment to mitigating the impacts of systemic racism seamlessly aligns with the empowerment that midwifery practice provides. By championing midwifery, we pay homage to the historical strength and resilience of the Black community, fostering an environment where culturally relevant care can flourish. This approach is pivotal in breaking the cycle of violence, poverty, addiction, and depression that disproportionately affect Black families.

In our mission to create a nurturing village around our children and families, we earnestly request that the CON Task Force recognizes the invaluable role that freestanding birth centers can play in actualizing our collective vision. We kindly urge you to take into consideration the resources and information we have presented highlighting the benefits of removing this requirement. Our commitment to maternal and child health, coupled with our advocacy for dismantling systemic barriers, fuels our support for this vital change.

Thank you for your dedicated efforts in enhancing healthcare access and outcomes for all residents of Kentucky. We eagerly anticipate continued collaboration and the potential for transformative change in our state's approach to maternity care.

Warm regards,

Kristen Williams (She/Her)

Executive Director

Play Cousins Collective

113.

#113



166 Hospital Street
Monticello, KY 42633-2416
(606) 348-9343
Fax: (606) 348-5796
www.waynehospital.org

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601

Certificate of Need Task Force,

I am writing this letter to urge you to **RETAIN CERTIFICATE OF NEED** in Kentucky.

Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for profit entities DO NOT go to poor, underserved and rural areas! They simply do not!

If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

Most people do not understand that

- There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.
- Hospitals are the only entities required to treat all patients, regardless of ability to pay. **No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.**
- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Care... Compassion... Close to Home

This institution is an equal opportunity provider and employer.

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Murrell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joe Murrell, MHA, FACHE
ACHE Regent / Kentucky
CEO Wayne County Hospital
166 Hospital Street
Monticello, KY 42633
606-340-3283

114. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky.

Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use

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- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

Angela Burton, RHIA, CAH-CBS

Wayne County Hospital

Director of Health Information Management/Corporate Compliance/Physician Services
Monticello KY 42633

115. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky.

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- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

Teresa F Munsey RN

ED Manager

Wayne County Hospital

Monticello KY 42633

116.

#116

es

PIKEVILLE MEDICAL CENTER

911 Bypass Road, Pikeville, Kentucky 41501

August 28, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Kentucky's certificate of need (CON) program preserves access to important healthcare services for Kentuckians, particularly in the rural parts of the state and Pikeville Medical Center strongly supports retaining the CON program with the reasonable updates in the Kentucky Hospital Association's modernization plan as presented by Nancy Galvagni at the July 17, 2023 meeting of the task force.

Hospital finances are complex. Hospitals provide many services that are vital to their communities that are not profitable. It is necessary that hospitals be able to retain profitable service lines to subsidize the unprofitable service lines. Otherwise, the hospital will not be sustainable.

Most hospitals have debt that represents a significant investment in infrastructure. Sophisticated commercial debt instruments always require the borrower (hospital) to continue to meet certain financial benchmarks such as debt service coverage ratios and/or days cash on hand or else be in default. Hospitals also need to be profitable to be able to finance future physical plant repairs, replacements, and upgrades to continue to provide adequate medical care to the community.

Proponents of CON repeal often tout free market principles and positive aspects of competition. Realize that there would still not be a free market in healthcare even if CON were repealed. A significant amount (usually well in excess of 70%) of the revenue that rural hospitals receive comes from treatment of Medicare and Medicaid patients. Those are government programs with fixed payment rates. Thus, Hospitals cannot effectively raise their prices like other businesses can.

Hospitals also cannot refuse customers. A condition of participation in the Medicare program is that hospitals with emergency rooms must comply with the federal Emergency Medical Treatment and Active Labor Act (EMTALA) that requires hospitals to examine all patients who present to the ER, regardless of ability to pay, and, if they have an emergency medical condition, provide

stabilizing treatment within the capabilities of the hospital. Thus, unlike other types of business (even other healthcare businesses), hospitals cannot refuse non-paying customers.

When a business cannot raise prices and cannot refuse non-paying customers, it clearly does not operate in a free market. Repealing or relaxing CON laws will not change that.

Proponents of CON repeal claim that it will result in more choices for the consumer. They fail to mention that, while that may be true for a few services, it will actually diminish choices and create a barrier to access for other important services. No business can survive that isn't economically viable. The new healthcare businesses that might start up in the absence of CON will only be for certain services that are highly profitable such as outpatient surgery centers and imaging centers. They won't be providing other unprofitable services that hospitals provide. They also will be allowed to be more selective in their customers, focusing on those with good-paying insurance plans. Thus, they will cherry pick both on the type of services they provide and the type of customers/patients they treat. This will drain precious revenue from the local hospital.

Since hospitals cannot raise prices or refuse non-paying customers, when faced with a reduced revenue stream, they have no choice but to make cuts or go out of business unless there is some expensive government bailout plan to replace the lost revenue (which is unlikely). Some hospitals that are already in a precarious financial position will close, leaving their communities without vital healthcare infrastructure. Others will reduce the services they offer to their communities. Those service reductions won't be in the profitable areas duplicated by other businesses, but in the unprofitable areas that nobody else in the community is willing or able to provide.

When services are not available locally, residents of rural Kentucky will be forced to travel long distances to urban centers to receive care. This will over-burden hospitals in the urban centers who will have capacity challenges. More importantly, in emergency situations, some patients won't survive the trip. Even in non-emergent situations, past experience shows that many patients won't make the journey in a timely fashion. They will postpone care due to the travel burden and only seek care later in their disease process as their condition worsens. That means their outcome will be worse. It is also more expensive to treat patients later in the disease process, thereby costing consumers and the state (through Medicaid) more.

It is not just about hospitals and individual health. Hospital contraction negatively impacts the economic health of the entire community. In rural communities, especially those in Eastern Kentucky following the demise of the coal industry, hospitals have become the most significant industry and the economic driver for the community. If hospitals reduce services, it obviously means job loss for hospital workers. It will also negatively impact retail, food service, and other businesses in the community that depend on hospital workers spending their money. All of that means decreased tax revenues for local government. Further, the absence of robust local healthcare infrastructure serves as a significant impediment to future economic development. No significant business wants to start in or relocate to a community without a vibrant hospital.

The repeal or relaxation of CON requirements is bad for Kentucky's rural communities. The negative impact it has on the local hospital and the secondary effect that has on residents, other businesses, and local government will be significant.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Sincerely,



Donovan Blackburn
President & CEO

cc: Senator Phillip Wheeler
Representative Ashley Tackett-Lafferty
Representative John Blanton
Representative Bobby McCool
Representative Jacob Justice

#117



**THE KENTUCKY ASSOCIATION OF NURSE PRACTITIONERS
AND NURSE-MIDWIVES**

P.O. Box 991307, Louisville, KY 40299-1307 | 502-333-0076 | www.kcnpm.org

August 29, 2023

Senator Donald Douglas and Representative Russell Webber, Co-Chairs, and Members
of the Certificate of Need (CON) Task Force
c/o DeeAnn Wenk, CSA, Health & Families & Children Committees

Sent via Email to

RE: CON as a Barrier to Freestanding Birthing Centers

Dear Senators and Representatives,

On behalf of the membership of the Kentucky Association of Nurse Practitioners and Nurse Midwives (KANPNM), we want to thank you for making available the opportunity for interested parties to share with you their input with regard to Certificate of Need (CON) in Kentucky. We would like to provide the following information with regard to the negative impact that the CON process has had on the establishment of freestanding birthing centers in the Commonwealth.

By way of background, KANPNM represents Certified Nurse-Midwives (CNMs) who are one of the categories of Advanced Practice Registered Nurses (APRNs) that are recognized as licensed independent providers in Kentucky. CNMs provide exceptional care across the life span for women.

CNMs attend births, provide annual exams, reproductive screening education and health exams and treatment of minor health issues throughout the life span. CNMs are the primary providers of health care for women in a midwifery and wellness model. In forty-three (43) other states and the District of Columbia, CNM practice settings include hospitals, birthing centers, and community clinics.

Despite the vast majority of other states having birthing centers and their inclusion in the American College of Obstetrics and Gynecology (ACOG) recognition as one of the levels of care for births, Kentucky has no freestanding birthing centers. This significantly reduces choices for Kentucky women giving birth and also closes out these practice setting opportunities for Kentucky's CNMs. Birthing centers provide exceptional care to women and their newborn infants. These centers have a decreased rate of Cesarean (C)-sections in relation to hospital births and therefore have fewer health complications and lower costs. A higher rate of breastfeeding occurs in mothers

who give birth in birthing centers than those in a hospital and there are more opportunities for skin-to-skin bonding between mother and infant.

We know that pregnant women in Kentucky are choosing to have their babies in a birthing center even though there are none in their home state. They are traveling to birthing centers in nearby states, for instance, to Indiana. Sarah Ladd, a health reporter at *The Courier-Journal*, reported in an August 25, 2022 article that from its opening in January 2019 to June 21, 2022, 248 Kentuckians have traveled to Jeffersonville, Indiana to give birth at the Tree of Life Birthing Center, with 176 coming from Louisville. Some mothers came from as far away as Lexington and Bowling Green. A total of 415 people have given birth at the center in that time period. The author concluded "That means Kentuckians have accounted for more than half the center's clients, including 43 of 82 this year."

Birthing center health outcomes are better than those in the hospital for low-risk mothers (ACOG, 2015). More recent data in the Strong Start study commissioned by CMS shows that 6,424 births in 45 participating Birthing Centers experienced a preterm birth rate of 4.42% (vs. national rate of 9.85%), a low birthweight rate of 3.28% (vs. national rate of 8.17%), and a primary cesarean rate of 8.56% (vs. national rate of 21.8%). It is estimated that Medicaid savings per 10,000 births for cesareans prevented is \$4.35 million, and \$24.25 million is saved in reducing preterm births. (American Association of Birth Centers (AABC), 2017).

Despite the desire of a number of Kentucky women to have birthing centers as a choice and the data suggesting that they afford better outcomes and cost-savings for low-risk pregnancies, birthing centers are hardly a source of competition for hospitals. A 2022 article in the *Journal of Perinatal Education* (Jan 1; 31(1): 8–13) reported that the number of births in birthing centers has doubled over the past decade to 20,000 births per year, which represents only 0.5% (less than 1%) of all births in the United States.

Kentucky women want to have birthing centers as a choice. Having them would move Kentucky forward to join 43 other states and DC with birthing centers, none of which have ever acted to get rid of them. ACOG recognizes their value, as do the providers who are opening them: currently, there are more than 400 birthing centers nationwide, more than double the number ten years ago. Kentucky birthing centers would keep more CNMs practicing in Kentucky instead of creating a brain drain when they leave to go to states where there are more practice settings for them. Mothers and babies at birthing centers do well, reduce health care costs, and save money for their state's Medicaid program. **So why doesn't Kentucky have any freestanding birthing centers? The answer is clear: It is because of the CON barrier.**

The KY Hospital Association has long argued that the current requirement for non-substantive CON review for birthing centers sets a "low bar". Try telling that to Mary Carol Akers, CNM, who spent upwards of \$200,000 of her own money (earned and saved from many years of military service) trying to establish a birthing center in Kentucky. She started the process in 2009 and requested the review in 2012. Her "alternative birth center" was considered a new health care facility, meaning that she had to prove that there was an unmet need for the birth center's services. When the public notice was given, three hospitals came forward to oppose her application.

A CON hearing took place over four days in February and March 2013. On 7/26/13 the CON was denied by the Cabinet for Health and Family Services, agreeing with the hospitals that there was no need for a birth center.

Ms. Akers appealed that denial to the Franklin County Circuit Court and the court reversed the decision of the Cabinet for Health and Family Services on 2/23/15. The court ruled that the hospitals were not affected parties because "traditional health providers, by definition, are separate and distinct from 'alternative birth centers'" Therefore, the hospitals lacked standing to challenge the Cabinet's initial determination that her proposed birth center qualified for a CON under the non-substantive review.

The three hospitals appealed the Circuit Court's findings. On 9/8/17 the Court of Appeals ruled 2 to 1 to reverse the Circuit Court ruling, reinstating the Cabinet's denial of a CON. The court ruled that the birth center did not prove the need for service, since the need was adequately met by the appellant hospitals. It further ruled that the projections of patient volume and financial figures were not correct. The dissenting judge noted that projections of patient volume and financial figures are irrelevant to the CON process and that the alternative birth center offers services separate and distinct from those offered by a hospital.

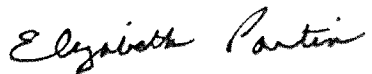
At that point, Ms. Akers gave up her dream and the fight and subsequently moved away from Kentucky. Her experience of fighting the financial and legal resources of three hospitals and the loss of a considerable amount of money in that fight have created a very chilling effect on other providers who would be interested in pursuing the establishment of a freestanding birthing center in Kentucky.

We are opposed to the KY Hospital Association's recent suggestion in testimony to the CON Task Force that freestanding birthing centers be included in the State Health Plan. Making that change would raise the CON barrier even higher for those wishing to meet the need for maternal choice, practice opportunities, better outcomes and health care savings by trying to establish birthing centers in Kentucky.

Instead, we **strongly recommend** that Kentucky follow the lead of recent action taken by the state of West Virginia and remove the CON requirement altogether for freestanding birthing centers here in Kentucky.

Thank you for the opportunity to provide feedback to you as members of the Certificate of Need (CON) Task Force. We appreciate your work on the Task Force and your consideration of our input and recommendation on this important issue. We are happy to provide further information, should you have any questions.

Sincerely,



Elizabeth Partin, DNP, APRN, FAANP
President



Jill York
Executive Director

To: Certificate of Need Task Force

From: Karen Cassidy, RN, MSN, MBA, EdD Palliative Care Nurse Practitioner

Statement to Support Removal of Hospice Care from Certificate of Need & State Health Plan

This statement is to support the removal of hospice care from the State Health Plan and to abolish the certificate of need for hospice services.

If you need a dental care, you have a choice in dentists. If you have heart issues, you have a choice in cardiologists. If you are at the end of life, you have no choices in providers. And you may have limited access. And if you are not happy with your provider, too bad. There is **no other choice but one provider (if any) in your county. And there is no guarantee of quality with the services.**

This is due to Kentucky's archaic Certificate of Need (CON) regulations for hospice care in the State Health Plan.

Is regulating hospice really providers necessary? Generally, hospice providers support CON as a check on market entry of new providers because they associate this "gatekeeping" function with higher quality and less questionable behavior among hospice providers. Hospice providers state that allowing "for profit hospices into the market with lower quality of care." How do we know that? Quality isn't a requirement for the CON. Where are hospice quality measures published in Kentucky?

A radical approach is to consider removing hospice from the scope of CON regulation and developing alternative regulatory mechanisms for providing the "gatekeeper" function served by CON regulation. Take hospice services out of the State Health Plan.

Does the penetration rate (HPR) really indicate that access to care is being met? Does HPR measure any kind of quality? Or patient/family satisfaction? Or access to care in rural counties?

Having a CON for hospice services should not be a forever and ever decision without any kind of accountability for quality.

Many states justify CON programs as a way to cross-subsidize health care for the poor. (Mercantus Center, 2015). This is not happening in Kentucky for hospice care. As Dr. Statmann submitted to this committee, there is no relationship between CON and increased access to healthcare for the poor. For those seeking quality health care throughout Kentucky, this means less competition and fewer choices, without increased access to care for the poor. Forty years of evidence demonstrates that CON programs do not achieve their intended outcomes, but rather decrease the supply and availability of health care services by limiting entry and competition, especially for hospice care. For policymakers in Kentucky, this situation presents an opportunity to reverse course and open the market for greater entry, more competition, and ultimately more options for those seeking end of life care. **This means choice, quality measures and access for Kentuckians in end of life care.**

The reality. In Nelson County, the only hospice is for-profit provider and does not serve patients that cannot pay. The certificate of need prevents other hospice providers from coming into the market to serve those that need hospice care. What happens to those that have no insurance or cannot afford private pay? Is this meeting the need? This is just one example.

What is needed are quality measures, not market restrictions. Hospices should be required to make public their quality metrics. There are industry wide standards used for quality that would be a better indicator than CON for hospice providers in our Commonwealth; CAHPS Hospice Survey or HC Index for example. There are many other more meaningful metrics. *(See Medicare Quality Initiatives)*

Why isn't end of life care treated like hospital ratings – we hear about their quality ratings all the time.
Why can't there be choice and quality and transparency in end of life care?

There can be! It takes political will and vision. Citizens of our Commonwealth deserve access and choice in quality hospice care.

People are dying every day that need hospice care. Some cannot access it.

People are dying everyday that are not satisfied with their hospice provider.

Both economic theory and data accumulated over the last four decades strongly suggest that CON removal will result in greater access to higher-quality end of life services.

One of the hospice leaders testified that a certificate of need encourages hospices to admit patients at the right time to decrease spending. Is it all about the money? What if there are people that need to be admitted that can't access services at all? The assumption is that there is fraud and abuse in all hospices. Kentucky could put in place metrics that ensure quality and accreditation before allowing a hospice to serve Kentucky citizens. *(See Metrics that Matter).*

The people of Kentucky deserve policymakers that are responsive to the current needs and adjust regulations that meet the changing times. As the palliative nurse practitioner in a Louisville community hospital, I witnessed people that were homeless or those without family support or resources to pay for 24-hour caregivers often go without hospice services. The need for hospice services is growing. The population is getting older. The need for hospice services will increase. We need to be proactive and the time is now.

Thanks for your consideration,

Dr. Karen Cassidy, RN, MSN, MBA, EdD

Suggestion: A CON Modernization Task Force could be established replicating the task force established by the state of Maryland in 2018.

<https://www.mercantus.org/publications/regulation/certificate-need-laws-implications-kentucky>

https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/CON_modernization_workgroup/Final%20Report/con_modernization_workgroup_final_report_20181221.pdf

<https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/hospice-quality-reporting/current-measures>

http://www.axcess.com/assets/pdf/Metrics-That-Matter-In-Hospice-Care_Quality_v2.pdf

<https://www.definitivehc.com/blog/why-do-some-states-still-require-certificates-of-need>

Jewish Hospital

UofL Health

200 Abraham Flexner Way
Louisville, KY 40202
UofLHealth.org

August 29, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

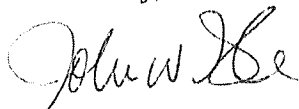
Members of the Certificate of Need Task Force:

UofL Health Jewish Hospital fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, but recognize the need to have reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

Our support of the certificate of need program in Kentucky recognizes that those requirements benefit all of Kentucky by providing access to healthcare services throughout the state, ensuring quality and safety, and helping to keep costs down.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Sincerely,



John Walsh
Chief Executive Officer

CHNK

BEHAVIORAL HEALTH

To: The Kentucky Certificate of Need Task Force
From: Jeffrey Sackenheim, Board President CHNK Behavioral Health
Rick W. Wurth, CEO CHNK Behavioral Health
RE: Support of Kentucky's Certificate of Need Program
Date: August 29, 2023

On behalf of the Board of Trustees, Community Board, and Associates of Children's Home of Northern Kentucky/CHNK Behavioral Health, we write in support of Kentucky's current Certificate of Need Program.

CHNK Behavioral Health is a trauma-informed healthcare organization focused on creating holistic partnerships for health and wellness that are inclusive, innovative, and inspiring. CHNK envisions a community free from adverse environments and childhood experiences that limit hope and opportunity – a community that is safe, acknowledges human emotion and loss, and empowers future possibilities. CHNK positively impacts approximately 3,000 – 4,000 Kentucky clients and family members annually across all 120 counties, providing an array of outpatient and residential mental health services.

As you continue to develop recommendations regarding Kentucky's Certificate of Need process, we urge you to maintain this important program that leads to more accessible, quality, cost-effective care and better health outcomes.

The Certificate of Need program has allowed healthcare providers like St. Elizabeth Healthcare to reinvest in the community they serve. There is perhaps no better example of this than St. Elizabeth's significant investment in CHNK's Psychiatric Residential Treatment Facility (PRTF) program. In fact, St. Elizabeth Healthcare and related associate teams have invested \$1,918,613 (total of cash investments and gifts-in-kind) since 2012 to assist CHNK in the creation and expansion of multiple outpatient and residential treatment lines such as the PRTF program – a program currently in high demand by the Cabinet for Health and Family Services/Department of Community Based Services for youth in its custody. Thanks to the most recent investment of \$500,000 from St. Elizabeth, CHNK is now undertaking expansion plans to open a new PRTF program for females at our Burlington campus. An integral component of the behavioral health continuum of care, PRTF care provides comprehensive mental health treatment to youth who, due to mental illness, substance abuse, or severe emotional disturbance, are in need of treatment that can most effectively be provided in a residential setting. CHNK is the only provider of PRTF care in the Northern Bluegrass Region of the Commonwealth. There are few such facilities in Kentucky with none in Northern Kentucky before St. Elizabeth's initial investment years ago. CHNK itself went through a CON process in order to obtain state licensing to provide PRTF treatment services.

Phone: 859.261.8768 • Fax: 859.291.2431

Devou Park Campus • 200 Home Road, Devou Park • Covington, KY 41011
Burlington Campus • 4836 Idlewild Road • Burlington, KY 41005
Deaconess Health Check • 525 W. Fifth Street, Suite 219 • Covington, KY 41011

www.chnk.org

For referrals, please call 1.844.YES.CHNK





With that in mind, we request that you and your colleagues maintain Kentucky's Certificate of Need program and develop recommendations for the program that put vulnerable youth first.

Thank you for your consideration,

Jeffrey Sackenheim, President
CHNK Board of Trustees

Rick Wurth, CEO
CHNK Behavioral Health

Owensboro Health Muhlenberg Community Hospital

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Owensboro Health Muhlenberg Community Hospital supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. As a Healthcare Leader in Kentucky for more than twelve (12) years I understand the challenges of delivering care in a rural Kentucky community. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, particularly low income and vulnerable populations. Kentucky's population is older, poorer, and less healthy than the rest of the nation. We rank sixth highest in poverty, have the third highest non-institutionalized disabled population, and rank third highest in the percentage of adults with multiple chronic conditions.

Kentucky hospitals have made significant investments in facilities and services to provide care to their communities so patients can receive care close to their home. The December 21 tornadoes reference only one event where the Kentucky residents would surely recognize the value of the importance of the services we provide.

We support reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

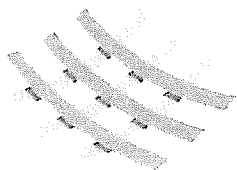
Our support of the certificate of need program in Kentucky recognizes that those requirements benefit all of Kentucky by providing access to healthcare services throughout the state, ensuring quality and safety, and helping to keep costs down.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Respectfully,



Kathleen K Myer
Vice President of Patient Care Services and Chief Nursing Officer
Owensboro Health Muhlenberg Community Hospital



FAITH COMMUNITY Pharmacy

Board of Directors

Gaby Batshoun
Global Business
Solutions, Inc

Kate Brandy
Kroger

Alex Cardosi
Kenton County
Attorney's Office

Jim Cahill
Retired,
Graeter's Ice Cream

Jon Connor
DBL Law

Bradley Eilerman M.D.
St. Elizabeth
Physicians

Kelly Epplen, PharmD
University of
Cincinnati School of
Pharmacy

Bridget Go

Heather Jansen
Cincinnati
Foundation for the
Aged

Eohese Moise, M.D.
St. Elizabeth
Hospital

Matthew Monday
KeySource

Jennifer Panepinto
Painted Bread
Marketing

Erin Proctor
TriHealth

Robert Tracy, M.D.
St. Elizabeth
Physicians

Joan Wurtenberger
Retired, Champlin
Architecture

8/29/23

Dear CON Task Force Members,

I am writing today to express my support for maintaining Kentucky's Certificate of Need (CON) program. Certificate of Need plays an important role in our state's healthcare system, and patients and providers alike would immediately feel the negative impacts if the General Assembly did away with it.

At Faith Community Pharmacy, we provide necessary medication, free of charge, to those unable to pay regardless of race, creed or national origin. No one in Northern Kentucky should go without necessary medications due to affordability. We provide these medications to our region thanks to support from community partners that include St. Elizabeth Healthcare.

Eliminating CON would severely limit the ability of our safety-net hospital providers, like St. Elizabeth Healthcare, to continue delivering quality care to all community members, including clients of Faith Community Pharmacy. The loss of these safety-net services would be severely detrimental to some of our most vulnerable clients. Without safety-net care, their health issues may go unaddressed, leading to even more costly interventions and community impacts down the road.

St. Elizabeth serves a disproportionately high number of patients on Medicare and Medicaid, compared to other health systems in our region. Without CON, St. Elizabeth wouldn't be able to deliver the same volume of care to the population that we serve.

Certificate of Need assures all Kentuckians, no matter what kind of health insurance they have, can access the same, high-quality, cost-effective care they deserve.

I appreciate the Task Force's continued attention to this important issue. Thank you for your time and consideration.

Sincerely,

Aaron Broomall
Executive Director



August 30, 2023

Dear CON Task Force Members,

I am writing today to express my support for maintaining Kentucky's Certificate of Need (CON) program. Certificate of Need plays a significant role in our state's healthcare system, and patients and providers alike would immediately feel the negative impacts if the General Assembly did away with it.

Eliminating CON would severely limit the ability of our safety-net hospital providers, like St. Elizabeth Healthcare, to continue delivering quality care to all community members, regardless of their ability to pay. St. Elizabeth has proudly served Northern Kentuckians for 160 years. The loss of these safety-net services would be majorly detrimental to some of our most vulnerable citizens. Without safety-net care, their health issues may go unaddressed, leading to even more costly interventions and community impacts down the road.

St. Elizabeth also provides much needed support to our community through partnerships with community agencies to prevent or enhance health and address social determinants of need which impact health outcomes. St. Elizabeth is striving to help our community be one of the healthiest in the nation.

I appreciate the Task Force's continued attention to this important issue. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads 'Steve Pendery'.

Steve Pendery
Campbell County Judge/Executive



BRIGHTON CENTER

A COMMUNITY OF SUPPORT

PO Box 325 • Newport, KY 41072-0325 • 859.491.8303 • Fax 859.491.8702 • www.brightoncenter.com

August 30, 2023

Dear CON Task Force Members:

I write on behalf of Brighton Center to comment on the Task Force's research into the Certificate of Need issue.

Together, through our community of support, Brighton Center partners with individuals and families to help them reach financial stability and independence and have the best quality of life possible. During our last fiscal year, we impacted the lives of 28,314 individuals, from infants to older adults, across all eight counties of Northern Kentucky and beyond. Knowing that the challenges families and communities face are often complex and that making positive change requires long-term holistic and comprehensive services, Brighton Center provides support through eight areas of impact and just shy of 50 programs.

I am concerned that any repeal of the Certificate of Need program will have a detrimental impact on the people that we serve. The current Certificate of Need program helps to maintain the safety net of services to many people in our region.

Many of our customers get access to healthcare services via St. Elizabeth, which would be negatively impacted by medical providers who would come to Northern Kentucky without providing for our community in the same way St. Elizabeth does. Furthermore, St. Elizabeth has been a strong partner and supporter of Brighton Center for many years and is an active collaborator in the work that we carry out each day.

I express my support for maintaining Kentucky's Certificate of Need (CON) program and thank the Task Force for its time and attention to this matter.

Sincerely,

Wonda Winkler
President & CEO





THOMAS MORE
UNIVERSITY

OFFICE OF THE PRESIDENT

August 30, 2023

Dear Certificate of Need Task Force members,

As president of Thomas More University and resident of northern Kentucky (Union, KY), I can speak firsthand to the impact that St. Elizabeth Healthcare has had on so many people across our region. We often forget the significant impact that our regional hospitals play throughout the Commonwealth in providing healthcare to all. St. Elizabeth is a mission-driven institution that provides high-quality medical care and services to all, regardless of one's ability to pay or status in society. At a time when we are working together to improve our communities across the Commonwealth, it is necessary that we continue to maintain Kentucky's Certificate of Need (CON) program.

As a public good, St. Elizabeth Healthcare has been serving our communities for more than 160 years. They have been good stewards by providing quality and compassionate healthcare to all across our community. The continuation of the CON program is in our best interest because it will ensure access to healthcare services for all. In economic terms, while some might argue the benefits of competition, we see what happens when competition fails – prices go up and services decline. With a first-rate healthcare system in northern Kentucky, why take the risk?

As Catholic institutions, St. Elizabeth and Thomas More both understand their responsibility to others. Both institutions were founded in northern Kentucky more than 100 years ago and have served a population based on values and an understanding of Catholic Social Teachings. We take our responsibility to others seriously and the impact of our work goes well into every corner of the Commonwealth.

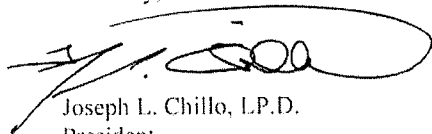
That is why I am writing today to express my support for maintaining Kentucky's Certificate of Need (CON) program. Certificate of Need plays an important role in our state's healthcare system, and patients and providers alike would immediately feel the negative impacts if the General Assembly did away with it. Eliminating CON would severely limit the ability of our safety-net hospital providers, like St. Elizabeth Healthcare. The loss of these safety-net services would be extremely detrimental to some of our most vulnerable citizens and without a doubt substantially increase the cost of healthcare. Without safety-net care, their health issues may go unaddressed, leading to even more costly interventions and community impacts down the road.

St. Elizabeth has also supported and invested workforce development in our community for many years investing millions of dollars in our nursing and other health care related fields. They serve as the onsite teaching site for our nursing students so they can learn from the best firsthand. This in turn provides opportunities for our students to pursue meaningful, professional career paths. The University has graduated more than 16,000 alumni and many continue to reside within 100 miles of Thomas More. These individuals not only work in our communities, but they live and impact the communities as well.

Certificate of Need assures all Kentuckians, no matter what kind of coverage they have, can access the same, high-quality, cost-effective care they deserve. As Catholic Social Teaching illustrates, we must continue to assure that all humans are treated with the dignity they deserve.

Please keep the CON process in place.

Sincerely,



Joseph L. Chillo, L.P.D.
President



CITY OF EDGEWOOD
WHERE EVERY DAY IS A WALK IN THE PARK

August 30, 2023

Dear Certificate of Need Task Force members,

The issue surrounding Certificate of Need (CON) in Kentucky has been very misleading. Currently every provider has the ability to submit a Certificate of Need (CON) in Kentucky to ensure the market is not oversaturated and all providers are playing by the same ground rules. Kentucky's Certificate of Need process works and needs to stay in place with small modifications of improvement.

Without the CON process, we could jeopardize access to quality healthcare in communities across the State. In other states when the process has been eliminated people have suffered, hospitals have closed and cost have risen for the most vulnerable. If the CON process is eliminated for incoming hospitals, current hospitals may have to close facilities, especially those who provide healthcare to individuals in rural areas. People in rural areas will suffer with diminishing opportunities and run the risk of being on an island without healthcare options within a reasonable distance.

Despite what the out-of-state organizations running this anti-CON campaign claim, healthcare is not a free market, nor has it been since the federal government created Medicare and Medicaid in 1965. Hospitals in Kentucky, more so than in other parts of the country, see a high percentage of patients on Medicare and Medicaid which does not cover the cost of providing the care. Hospitals operate as part of a safety net, to ensure access to care for all. These are the people who are counting on us to protect what healthcare they do have.

If you take CON away, the ability of our safety net hospitals to continue serving these vulnerable populations will be greatly impacted. I know this because of our partnerships with St. Elizabeth. Besides serving as the safety net hospital for Northern Kentuckians, St. Elizabeth is an integral part of the community, supporting students and our universities to pursue health care careers which helps our residents who need care and in turn helps boost the economy.

The push to end the CON process is a greedy one and centers around people making money. Do not fall for the trap that Boone, Kenton and Campbell Counties do not have competitive healthcare, we live within 10 miles of some of best hospitals in the region. If you live in one of the river cities you are in a hotspot of healthcare and within five miles of multiple major hospitals, no other place in the State has that opportunity. Please keep the certificate of need process in place to assure the needs of our communities are met. Thank you for your time, considerations and leadership.

Respectfully,

Brian K Dehner, City Administrator

#

127

Dear CON Task Force Members,

I would like to express my support of keeping the Certificate of Need (CON) program in place in Kentucky. Certificate of Need plays a significant role in our state's healthcare system, and patients and providers alike would immediately be impacted negatively if it is repealed.

I have been a part of St. Elizabeth's Foundation Board and now a Board of Trustees member and know the commitment and investments St. Elizabeth Healthcare has made in our community to address the healthcare needs of our community. St. Elizabeth is a safety net hospital delivering quality care to all community members, regardless of their ability to pay. St. Elizabeth has proudly served Northern Kentuckians for 160 years. The loss of these safety-net services would be majorly detrimental to some of our most vulnerable citizens. Without safety-net care, their health issues may go unaddressed, leading to even more costly interventions and community impacts down the road.

St. Elizabeth provides much needed support to our community through partnerships with community agencies to prevent or enhance health and address social determinants of need which impact health outcomes. Through these contributions, St. Elizabeth is helping our community be one of the healthiest in the nation.

I appreciate the Task Force's continued attention to this important issue. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Jo [unclear]". The signature is fluid and cursive, with a long horizontal stroke at the end.

#128



CITY OF EDGEWOOD
WHERE EVERY DAY IS A WALK IN THE PARK

August 30, 2023

Dear Certificate of Need Task Force members,

I am writing today asking that you please look past the misleading campaign against Certificate of Need (CON) in Kentucky. Those pushing the false rhetoric against this process that best serves the needs of real Kentuckians do not have our state's best interests at heart. Kentucky's Certificate of Need process works. Without it, access to quality healthcare in communities across the state will suffer. Hospitals, like St. Elizabeth Healthcare or those in rural areas help our most vulnerable citizens.

Despite what the out-of-state organizations running this anti-CON campaign claim, healthcare is not a free market, nor has it been since the federal government created Medicare and Medicaid in 1965.

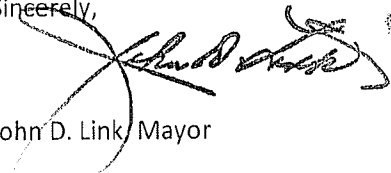
Hospitals in Kentucky, more so than in other parts of the country, see a high percentage of patients on Medicare and Medicaid which does not cover the cost of providing the care. Hospitals operate as part of a safety net, to ensure access to care for all.

If you take CON away, the ability of our safety net hospitals to continue serving these vulnerable populations will be greatly impacted.

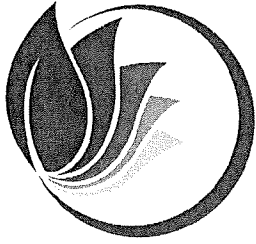
Besides serving as the safety net hospital for Northern Kentuckians, St. Elizabeth is an integral part of the community, supporting students and our universities to pursue health care careers which helps our residents who need care and in turn helps boost the economy.

Please keep the certificate of need process in place to assure that the needs of our communities are met.

Sincerely,



John D. Link, Mayor



AABC

AMERICAN ASSOCIATION
OF
BIRTH CENTERS

3123 Gottschall Road
Perkiomenville, PA 18074
215.234.8068
BirthCenters.org

Bringing Midwifery to Main Street™

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- Joe Marceny, MD, FAAP

EXECUTIVE DIRECTOR

Kate E. Bauer, MBA

August 30th, 2023

DeeAnn Wenk
Committee Staff Administrator
Health Services and Families & Children Committee

Dear Ms. Wenk and the Kentucky Task Force on Certificate of Need:

Thank you for this opportunity to comment on your Task Force work. American Association of Birth Centers supports better access to birth centers in the state of Kentucky. AABC is a national organization that supports research and high quality in freestanding birth center care through the Standards for Birth Centers, and represents birth centers, physicians, midwives, business owners and consumers seeking care in birth centers.

Evidence shows that birth center care is associated with improved outcomes for mothers and newborns. Birth Center care in the Strong Start Initiative funded by CMS led to significantly decreased rates of preterm and low birth weight births, decreased cesarean sections, and a reduction in Medicaid cost of \$2,000 for every mother and baby pair that participated in this care. Birth centers located in underserved and rural areas can help to fill the gaps in access to care in maternity care deserts. The March of Dimes states that birth centers can help to alleviate perinatal care shortages in rural and other areas that are underserved.

The Certificate of Need requirement in Kentucky presents a barrier to freestanding birth centers seeking to become licensed in Kentucky to the extent that there are no birth centers in the state. Freestanding birth centers (FSBCs) are facilities caring for low risk pregnancy so the beds should not be compared to hospital beds when assessing needs being met. Other states have recently made the freestanding birth center exempt from the Certificate of Need process. These states include Tennessee, West Virginia, and Connecticut. (See attached AABC annotated documents, FAQs and Position Statement on the CON for more information).

We recommend that that the legislature exempt the freestanding birth center from the Certificate of Need process to reduce the burdens and barriers that the CON presents to freestanding birth centers seeking to become licensed in Kentucky. Please see our attached Position Statement on CON and Birth Center Regulations FAQ.

Please do not hesitate to contact us with any questions on freestanding birth centers or the attached documents.

Sincerely,

Jill Alliman, DNP, CNM, FACNM
Chair, AABC Government Affairs Committee

Kate E. Bauer
Executive Director



Metro United Way

August 30, 2023

Certificate of Need Task Force Members,

We at Metro United Way thank you for your thoughtful and thorough examination of Kentucky's Certificate of Need (CON) program and the opportunity to provide input on this important issue. We also thank policymakers for confronting Kentucky's tragic maternal mortality trends with commendable candor and attention over the past several years. These conversations intersect at an opportunity to **expand access to safe, supportive birthing care options for Kentucky parents through the elimination of unnecessary barriers to maternity care—including the CON requirement for freestanding birth centers (FSBCs).**

FSBCs are small home-like health care settings, separate from a hospital, that employ a midwifery and wellness model of childbirth for mothers with healthy, low-risk pregnancies. Currently, FSBCs must obtain a CON to operate in Kentucky. This unnecessary and burdensome stipulation has left the Commonwealth as one of only eight states without a single FSBC to serve expecting families.

Healthy pregnancies, labors, deliveries, and babies are essential for the beneficial early learning experiences and family self sufficiency Metro United Way seeks for all Kentucky families. FSBCs offer this strong start to parents by achieving better outcomes than other birth settings on quality and health measures such as the cesarean rate for low-risk women, elective delivery before 39 weeks, and breastfeeding uptake.

FSBCs also offer a sought-after care model for mothers experiencing barriers to equitable maternal care. Metro United Way helped to conduct a local qualitative prenatal care study focused on Black mothers, immigrant/refugee mothers, and mothers who have experienced substance use disorder in 2022. The study issued six strategic recommendations to remove obstacles and improve health outcomes for these mothers, including promoting options for births outside of the hospital—specifically in FSBCs—and models of care such as midwifery.

Unfortunately, Kentucky remains without practical pathways for FSBCs to open.

We ask task force members to evaluate how the CON requirement acts an impenetrable blockade to the positive maternal and infant health outcomes FSBCs provide and consider the following:

- Accredited birth centers provide distinct services unavailable in most hospitals, such as midwifery care and non-pharmacological pain management options. The need for these types of care remains objectively unmet in Kentucky. In fact, mothers are traveling—great distances at times—to bordering states including Indiana, West Virginia, and Tennessee for access to FSBC care.
- No evidence suggests that CON laws enhance safety or improve the quality of FSBC care. While the CON process is intended to determine need, safety in health care facilities is regulated through facility licensing requirements, which Kentucky has already established for FSBCs. Modernization of these conditions—not the retention of CON, which actually prohibits Kentucky from serving families seeking specialized care in this case—will ensure centers meet standards of care for FSBC-eligible mothers who should have the option to choose this high quality setting.

- Nearly all FSBCs have fewer than five beds, which are used for midwifery care, not the surgical birth or regional/general anesthesia offered in hospitals. FSBCs beds are not duplicative and should not be subject to the same regulatory process as other health care facilities.
- States that exempt FSBCs from CON requirements have increased access to their care. Texas and Florida are leading examples of strong FSBC representation.
- Not just Kentucky's families but Kentucky's resources stand to benefit from FSBCs. FSBCs produce substantial Medicaid savings—about \$2,000/birth—due to reductions in pre-term births, c-sections, low birth weights, and other outcomes.

We sincerely appreciate the opportunity to provide insight for the CON Task Force's discussions and welcome questions or requests for additional information.

In service,

Mandy Marler
Chief Policy Officer
Metro United Way

Metro United Way

For more than 100 years, Metro United Way has been improving lives and our community, which includes Bullitt, Jefferson, Oldham, and Shelby counties in Kentucky. We harness the power of donors, volunteers, thought leaders, experts, and other nonprofits to ensure thriving kids, strong households, and an equitable community.

131. Certificate of Need may not literally give St Elizabeth a monopoly in NKY, it has been used to effectively give them one. CON is not seen as a best practice anywhere else in my experience (I only moved to KY 3 years ago, in Hebron) and I don't understand why it's so entrenched here. I mean I've read some articles and I still disagree the government or the citizens have need for the government to regulate this, rather the opposite would be better, that the free market decide how many health care providers are needed, and when they're need, in NKY. Any other argument I've read seems like propaganda to protect an etherial and unjustified "dominant" status that St Elizabeth holds, which provides no benefit to the citizens and reduces their freedom of choice of alternative healthcare providers by preventing the alternatives from opening in the first place, which seems unamerican.
Dave Christy

132. Certificate of Need Task Force,
I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky. Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.
The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for profit entities DO NOT go to poor, underserved and rural areas! They simply do not!
If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.
Most people do not understand that

- There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.
- Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.
- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,
Mr. Jamie S. Reagan

133. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky. Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

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There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.

Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.

CON benefits patients by assuring access, quality and lower costs.

Kentucky has better access, lower prices, and better value than states without CON.

CON should be retained but modernized as recommended by the
Kentucky Hospital Association

We really don't want large commercial, for profit companies to move into our area and take business away from small rural hospitals and cause them to close.

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,
Glenn Proudfoot

134. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky. Those that seek to dismantle the CON process often come from adjacent states where

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The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for profit entities DO NOT go to poor, underserved

and rural areas! They simply do not

If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

Most people do not understand that

- There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.

- Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.

- CON benefits patients by assuring access, quality and lower costs.

- Kentucky has better access, lower prices, and better value than states without CON.

- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

James (Jim) R. Woody, II, MD, MBA

Burnside, KY 42519

135.

136.

137.

138.

139. 8 pages



10200 Linn Station Rd
Suite 310
Louisville, KY 40223

502.895.8167
888.825.5592

kyyouth.org

Co-Chairs Douglas and Webber and Members of the Certificate of Need Task Force,

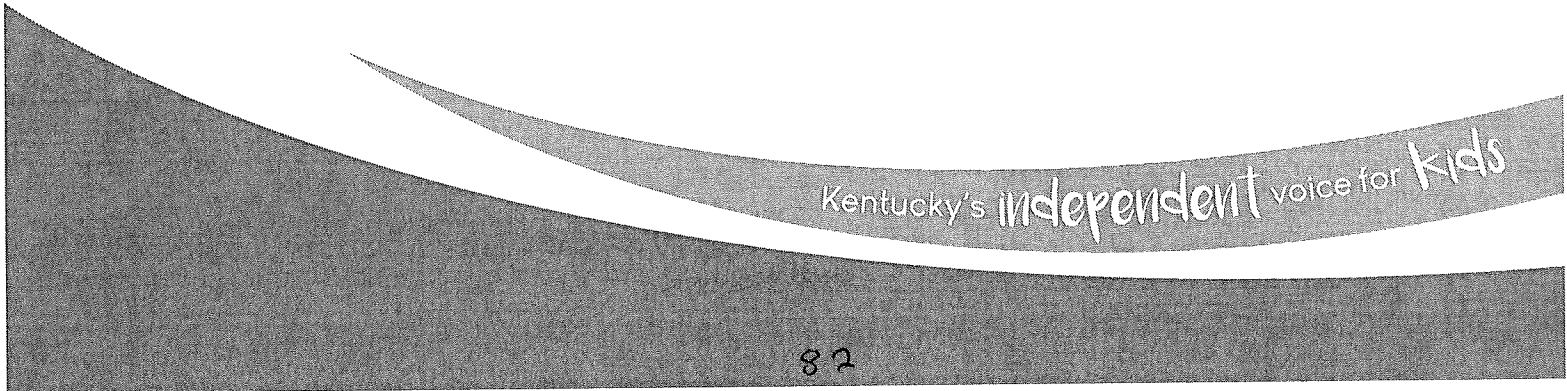
Kentucky Youth Advocates (KYA) is a bipartisan, non-profit organization and the independent voice for Kentucky kids. KYA applauds the work of the Kentucky legislature in the formation of the Certificate of Need Task Force and dedicating time and resources to explore this complex issue. Certificate of Need (CON) law in Kentucky is broad and impacts several different types of medical facilities and programs, including certified freestanding birthing centers. Freestanding birthing centers exist all over the country and have been allowable under Kentucky law for decades, however there are currently no birthing centers operating in Kentucky.

Freestanding birthing centers are licensed, accredited facilities offering prenatal and delivery services for low-risk pregnant women using the midwifery model of care. Birthing centers are currently operating in more than 40 states, boasting positive outcomes for both women and their babies. These centers see lower rates of medical intervention and c-section deliveries for low-risk pregnancies and cost significantly less than hospital settings.

Nationally, thousands of women experience pregnancy-related health complications, or death occurring during their pregnancy, delivery, and up to one year after giving birth, with more than 80% being deemed preventable. Unfortunately, Kentucky has experienced similarly negative maternal health outcomes. Data from 2016-2020 on pregnancy-related deaths in Kentucky occurring within six weeks of delivery show 34.6 deaths per 100,000 live births, the third worst rate in the nation. And, key findings from 2018 show that 91% of maternal deaths in Kentucky were potentially preventable.

Freestanding birthing centers offer a safe alternative to hospital delivery for women with low-risk pregnancies and offer a more personalized approach to prenatal and delivery care. Evidence shows that childbearing people who participate in birth center care experience better outcomes including lower rates of preterm birth, low birth weight births, and cesarean birth, and higher rates of breastfeeding. Birthing centers offer a comprehensive approach to childbirth and have been shown to produce positive maternal health outcomes.

In Kentucky, licensing regulations for freestanding birthing centers exist, however the requirement for a certificate of need in order to open a facility has historically limited availability of birthing centers in the state. Birthing centers are different than hospitals and typically serve a different population than those





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who prefer a hospital birth. These centers are small, many only housing 2-4 beds, and should not be considered competition for local hospitals that offer delivery services. Today, women across the Commonwealth choose to cross state lines to give birth in order to access a birthing center in states like Tennessee, West Virginia, and Indiana.

Maternal health is a complex issue that requires a multifaceted solution. And while Kentucky has taken critical steps in the right direction – like, passing SB 135 in 2022 – there are opportunities to further address disparities and improve outcomes. Removing the requirement for a certificate of need in order to open a freestanding birthing center would increase access to this alternative delivery setting in Kentucky. By continuing to prioritize the health and well-being of expectant and new moms, we're also ensuring that their babies have the best chance to thrive.

Sincerely,

A handwritten signature in black ink that reads "Terry Brooks". The signature is fluid and cursive, with a long horizontal line extending to the right.

Dr. Terry Brooks
Executive Director

Kentucky's independent voice for Kids



KOHR'S LONNEMANN HEIL ENGINEERS, INC
1538 ALEXANDRIA PIKE, SUITE 11
FT. THOMAS, KY 41075
800.354.9783
WWW.KLHENGERS.COM

August 31, 2023

Dear Certificate Of Need Task Force Members,

I am writing today to express my support for Kentucky's Certificate of Need (CON) process, which is meant to ensure all Kentuckians receive the high-quality care they deserve.

As a community leader and CEO of an engineering company serving the healthcare market, I am well-aware of the CON process. I liken it to the service territory regulations placed on the electric utility industry. The healthcare industry is similar to the electric utility industry in that it is highly capital intensive. The electric utility industry can invest in serving its customers in their service territory because they have the assurance they will receive a return on their investment. CON provides the same assurance for the capital intensive healthcare industry.

In my participation in the Leadership Kentucky Program and through my business relationships, I have spoken with leaders of rural healthcare systems and they have said repeal of CON will be the end of rural healthcare as we know it in the Commonwealth. Rather than providing better access for our fellow Kentuckians who live in the rural areas, they will have to deal with much longer commutes to access quality healthcare.

Repeal of CON is an issue brought on by out-of-state concerns that neither know nor CARE about the resultant healthcare climate from such an ill-conceived legislative action. They only care about the profits it will bring to their healthcare systems.

Thank you for your willingness to serve on the CON Task Force and learning more about the CON process before making recommendations that may have unintended consequences.

Sincerely,

Robert A. Heil, PE
Chief Executive Officer
Kohrs Lonnemann Heil Engineers, Inc.



Addiction Recovery Care
332 Riverbend Rd.
Louisa, Kentucky 41230

August 31, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Commission
Frankfort, KY 40601
deeann.wink@lrc.ky.gov

I am writing this letter to express my strong support for maintaining Certificate of Need (CON) regulations in the state of Kentucky. These regulations have proven to be essential in ensuring the quality, accessibility, and cost-effectiveness of healthcare services across the state.

CON regulations have a significant impact on healthcare facilities and services, promoting efficient resource allocation, preventing unnecessary duplication of services, and fostering collaboration among healthcare providers. They prevent oversaturation of the market while ensuring that underserved and rural areas have access to necessary medical services.

I strongly urge you to maintain the CON regulations in Kentucky. These regulations are crucial for promoting the accessibility, quality, and affordability of healthcare services for all residents. By doing so, we can ensure a healthier and more prosperous future for our state.

Thank you for your time and consideration.

Matt Brown
President of ARC Healthcare
332 Riverbend Road
Louisa, KY 41230

August 31, 2023

Kentucky Certificate of Need Task Force
Kentucky General Assembly

Re: Research shows that cost shifting is a choice for hospitals, not a necessity.

Dear Chair Douglas and Chair Webber and Members of the Committee:

Hello, I am Thom Walsh, a healthcare regulator serving the people of Vermont. As a member of the Green Mountain Care Board (GMCB), I oversee hospitals in the state, including issuing certificates of need, approving annual hospital budgets, and health insurance rates. The GMCB is unique in its capacity in that most states have multiple agencies to oversee these aspects of healthcare. Additionally, I teach Health Systems and Policy at the Geisel Medical School and Tuck Business School at Dartmouth College.

My career began 30 years ago as a physical therapist in private practice and hospital settings. I have studied healthcare system performance and health policy for 24 years. During the past 14 years, in addition to my teaching work, I have been a consultant for independent and integrated healthcare systems, as well as regulatory agencies such as Maine Medical Center, One Health Nebraska, Wyoming Spine Associates, Navy Medicine, the Veterans' Affairs health system, and The Joint Commission.

Even though I work to enforce Vermont's certificate of need (CON) laws, I believe they should be reformed and I am actively working to do so. Currently, they are primarily used to stifle new entrants into the healthcare market.¹ The argument that CON laws aren't harmful because most CON applications are granted is misleading. In my experience, only large healthcare systems have the time and money to go through the lengthy application process, which typically involves litigation. Incumbent providers have the resources and incentive to use the current CON system to prevent competitors from opening. As a result, newer, innovative entrants to healthcare markets give up along the process or without ever applying for a CON. This means the current CON process facilitates healthcare consolidation and restricts access to care, and this drives up costs for everyone.

I also wanted to share some important research that shows that hospitals do not rely on cost-shifting to make up for purported losses from Medicare or Medicaid payments.² CON proponents sometimes argue that CON laws are necessary to decrease competition for healthcare services to allow hospitals to cost-shift. This argument is based on the faulty assumption that hospitals must shift costs to patients with private insurance because public insurance does not reimburse sufficiently. Although it is attractive to justify hospitals' exorbitant charges using this theory, there is no serious literature that finds that this happens in modern hospitals. This is not a hypothesis. This is data based on what actual hospitals are doing. And the explanation for high

and rising prices is very simple. Hospitals in consolidated markets raise prices substantially and repeatedly because they can. There is simply no place else for their patients to receive care. The cost-shifting argument is an after-the-fact rationalization for practices that would be unthinkable in any other market.

If cost shifting were necessary for hospitals to stay open, hospitals with a greater percentage of patients with Medicare and Medicaid would charge higher prices. Yet, there is no correlation between what hospitals recoup from Medicare and Medicaid patients and the rates they charge to other patients. Moreover, when Medicare and Medicaid reimbursement rates are increased, providers do not cut their rates for treating privately insured patients. Instead, most providers raise prices. Some do not. Conversely, when Medicare and Medicaid rates are reduced, there are no uniform price increases. Uniform increases in response to cuts to Medicare and Medicaid rates would be an easily observable phenomenon and researchers have not found evidence that it's happening.

To take another example, beginning about a decades ago, states began expanding Medicaid coverage in accordance with the Affordable Care Act, but private prices did not change based on whether or not a state expanded Medicaid. Instead, they continued to rise across most hospitals.

There are certainly struggles for rural hospitals, but they are not struggles that are addressed by CON laws. Moreover, debate about CON laws and hospital prices often leaves out a large portion of the population—those that have commercial insurance through an exchange or through their employer. This majority of the population is suffering from unsustainable healthcare cost increases. According to a 2020 study by the Congressional Budget Office (CBO), the cost per enrollee for hospital and physician services under traditional “fee-for-service” Medicare rose by just 0.2 percent more than the rate of general inflation from 2013 to 2018.³ By contrast, the per-person costs in private plans rose by nearly double the rate of general inflation. Put clearly, the cost for an average insurance plan per family is nearing \$25,000, which could buy a new Toyota Corolla every year.

The data on cost shifting reveal something else. Hospitals with little competition have higher costs.⁴ The Medicare Payment Advisory Commission found that hospitals with low rates of profit from private payers had costs 9% below the national median. In other words, hospitals are good at being efficient when necessary. Hospitals with higher private pay patients also had costs 2% higher than the national median. Thus, “it is hospitals’ underlying costs, driven by competition, not cost shifting, that lead to differences in prices charged to insurers and shortfalls or profits from public programs.”⁵

I am sharing this information with you because the connection between current CON laws and the affordability of healthcare is not widely understood. The data are clear, however, in showing that current CON laws decrease competition, which propels further consolidation of healthcare

markets. And hospitals within consolidated markets have monopolistic power that results in ever rising prices, reduced access, and lower quality for all patients whether publicly or privately insured. You have an opportunity to help Kentuckians and I urge you to recommend strong reforms.

Sincerely,

Thom Walsh, PhD
The Green Mountain Care Board
The Dartmouth College Geisel Medical School and
Tuck Business School

¹ See <https://washingtonmonthly.com/2023/06/19/dont-blame-medicare-for-rising-medical-bills-blame-monopolies/>.

² See Austin Frakt. (2017). *Hospitals Don't Shift Costs From Medicare or Medicaid to Private Insurers*. JAMA. <https://jamanetwork.com/channels/health-forum/fullarticle/2760166>.

³ See <http://www.cbo.gov/publication/57422>

⁴ See *supra* note 2.

⁵ See *supra* note 2.



GARREN COLVIN
President, and Chief Executive Officer

August 31, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

RE: Certificate of Need Task Force

Dear Members of the Certificate of Need Task Force:

Thank you for the opportunity to provide comments to the Task Force. As St. Elizabeth explained during the testimony of its representatives on August 21, 2023, St. Elizabeth strongly supports retaining Kentucky’s CON program. The objective data demonstrates that the CON program provides significant benefits to Kentuckians and ensures access to care for all Kentuckians, particularly low-income and vulnerable populations.

Kentucky healthcare providers face a lot of challenges. Kentucky’s population is older, poorer, and less healthy than the populations in almost every other state. We rank sixth highest in poverty, have the third highest non-institutionalized, disabled population, and rank third highest in the percentage of adults with multiple chronic conditions. Kentucky hospitals must provide services without regard to the patient’s ability to pay, and 70 to 80 percent of hospital patients are covered by a governmental program that pays below the actual cost of care.

Most services offered by a hospital are provided at a loss and must be subsidized from the few services from which the hospital derives revenue, such as elective surgery and outpatient imaging. CON preserves access to care by ensuring that healthcare providers cannot cherry pick the profitable patients while leaving the low-income patients to Kentucky’s full-service hospitals.

The benefits of the CON program are reflected in the data. Kentucky has more hospitals per 100,000 population than non-CON states. But without the support that the CON program provides, access to healthcare in the many rural areas of Kentucky will be curtailed – multiple rural hospitals are at risk of closure right now. In addition, the CON program lowers costs. Despite the many health challenges of Kentucky’s population, Kentucky hospitals provide care at an average lower cost than hospitals in many non-CON states.

As healthcare has evolved, St. Elizabeth has supported reasonable modernization of the CON program. In 2018, St. Elizabeth supported HB 444, which added a number of exemptions from the CON program for several services/facilities. Last year, St. Elizabeth supported HB 777, which removed a CON requirement for ambulance services in many instances.

The State Health Plan, which contains review criteria for many services, has been continually modernized. In fact, in 2023 alone, the Cabinet has revised the State Health Plan to make it easier to establish inpatient psychiatric units, establish megavoltage radiation therapy programs, expand home health agencies, and add beds at pediatric nursing facilities. In addition, St. Elizabeth supports relaxing the criteria in the State Health Plan for Kentucky full-service hospitals to establish cardiac catheterization labs.

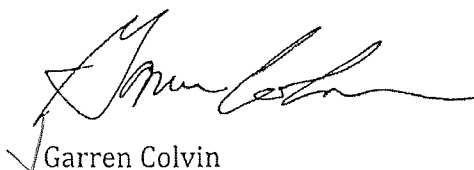
In St. Elizabeth's experience, Kentucky's CON review process operates fairly efficiently as compared to other states. We urge caution when making changes to the review process as such changes could have unintended consequences. For those reasons, we oppose drastic changes to the process such as eliminating appeal rights. However, St. Elizabeth believes that three changes to the review process could make the process work more efficiently. The first change is to eliminate batching cycles. Currently, under 900 KAR 6:060 and KRS 216B.062, the Cabinet processes CON applications in batching cycles but certain healthcare facilities and services can only be reviewed in some, but not all batching cycles. We propose to eliminate those restrictions so that any application for any service can be filed in any batching cycle.

Two other changes will result in decisions being made more quickly. Under 900 KAR 6:900, Section 1(24), the hearing officer's decision concerning a CON application is due 60 days after the filing of the parties' proposed findings of fact. We recommend halving that time period to 30 days. In addition, 900 KAR 6:090, Section 1(23), should be amended so that the hearing officer can extend the hearing review deadlines no more than 90 days, upon the agreement by the applicant. There is currently no limit as long as the applicant agrees.

In summary, the concerns of Senator Meredith and Senator Berg regarding the harm that could result from major changes to the CON program are well founded.

Please let me know if there is any other information that we can provide that would be helpful to the Task Force, and feel free to reach out to me with any questions.

Sincerely,



Garren Colvin
President and Chief Executive Officer
St. Elizabeth Healthcare

140. Comment of Moiz Bhai, PhD

Associate Professor of Economics and Health Policy, UALR

Senior Research Affiliate, Knee CSOR, WVU

Kentucky General Assembly Special Committee: Certificate of Need Taskforce

August 27th, 2023

To Members of this Committee:

My name is Moiz Bhai and I am a health economist with a PhD in economics from the University of Illinois at Chicago, and now currently serve as an Associate Professor of Economics at the University of Arkansas at Little Rock. I am a policy expert in health economics and have published multiple studies and policy pieces on improving healthcare and health outcomes by reforming state policies. Recently, I am an author of a study on Certificate of Need (CON) laws and their impacts on the health care labor force notably of physicians. I write to you regarding CON laws.

The main takeaways from my comments are as follows:

(1) Based on my research, Certificate of Need (CON) laws have adverse effects in the labor markets leading to wage suppression.

(2) The wage suppression supports previous research that shows CON also results in restricted provision of health care services.

(3) Overall, CON laws hurt patients, providers, and society.

The policy implications surrounding CON laws have garnered much attention, especially as healthcare reform remains a priority for many governments. The primary argument for CON laws has been to control healthcare costs and to ensure that services are equitably distributed. However, an expanding body of research, including my latest study on the impact of CON laws on physician labor markets, raises serious questions about these objectives.

My study, employing data from the American Community Survey (a 1% sample of the U.S. population conducted annually), provides robust evidence that CON law not only depress physician earnings but also impose a broader economic cost without delivering discernible benefits in healthcare provision. In a sector already plagued by access issues and high costs, CON laws exacerbate these challenges by serving as a barrier to market entry. They restrict the supply of healthcare services, create artificial scarcities, and as the data suggests, depress physician earnings. Importantly, they also grant healthcare employers a form of monopsony power, skewing the labor market against physicians and other high-level healthcare providers like nurse practitioners. These distortions have wider societal implications, particularly because physicians constitute about 20% of overall healthcare spending.

Moreover, the study indicates that CON laws do not affect the number of hours physicians work, suggesting that while physicians may be paid less, they are not necessarily redistributing their labor in ways that might compensate for lower wages. This observation is essential in understanding the multiple layers of inefficiency embedded in CON regulations.

They not only misallocate resources but also deter potential market entrants—be it new healthcare facilities or professionals—thus magnifying healthcare access issues.

Now, the study further paves the way for a multi-dimensional understanding of healthcare policy. While the ACA has made strides in improving healthcare access from the demand side, there is a complementary necessity for supply-side interventions. One promising avenue is the expansion of scope for physician substitutes like nurse practitioners and physician assistants, as discussed in my recent article in the Southern Economic Journal. Given that the study indicates an increased demand for healthcare providers in the absence of CON laws, it becomes doubly important to explore how the removal of such regulations may synergize with other reforms aimed at increasing the healthcare labor supply, such as scope-of-practice expansions for nurse practitioners and physician assistants.

To summarize, improving access to care remains an overarching policy goal that cannot be fully realized unless we address the supply constraints imposed by laws like CON. The demonstrated wage penalties on physicians, the misallocation of labor and capital, and the subsequent economic inefficiencies compel us to reconsider the efficacy of such regulatory frameworks. As an academic economist aiding policy research, it becomes increasingly critical for us to rigorously assess not just the immediate impact of such laws but also their cascading effects on healthcare costs, access, and even the potential for innovation in healthcare services.

Given what we know about CON laws, the General Assembly should consider removing these laws that restrict the movements of physicians, and harms patients, consumers, and providers in the Bluegrass state.

Sincerely,

Moiz Bhai

Associate Professor of Economics

Department of Economics

University of Arkansas at Little Rock

Associate Professor of Health Policy (by Courtesy)

Department of Health Policy and Management

University of Arkansas for Medical Sciences

Senior Research Affiliate

Knee Center for the Study of Occupational Licensing

West Virginia University

141. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky.

Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for profit entities DO NOT go to poor, underserved

and rural areas! They simply do not!

If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

Most people do not understand that

- There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.

- Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.- CON benefits patients by assuring access, quality and lower costs.

- Kentucky has better access, lower prices, and better value than states without CON.

- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

Candasia Ann Bell, R.T.(R)(CT)

Materials Manager

Wayne County Hospital

Monticello, KY 42633

142. I live in a small rural community in Wayne Co Ky and we've only a very, very small limited hospital. I've been to this hospital unfortunately many times as I've a chronic and sometimes critical illness that impacts me and my family greatly! The hospital doesn't have an ICU facility & I've been shipped out, away from my support several times! It's interesting why every hospital can't be equipped to care for a critically ill person in this day and time of technology. I understand it takes Drs of many specialties to staff a large hospital but why can't this be done via Internet... of course there's times when pts need to be assessed by hands on but many illnesses could be handled by monitors & on line help with a few staff to monitor 24/7 like in the bigger hospitals... I was shipped out to Vanderbilt alone...hours away from my family or anyone else...I was critically ill & thought I was dying alone...it could've been tragic with the needle swinging a little more to the left! I'd been alone! Why...because Somerset refused me, UK, UL, the bigs didn't have a ICU renal bed ANYWHERE in KY! What happened to me shouldn't happen to anyone dying! Why couldn't my hosp monitored my labs like the RN I had did, she'd phone in the results to a dr & he'd adjust accordingly to the labs... Vandy watched over

me like anyone at my hospital could've done. Why oh why can't this be accomplished? We're small, prob in danger of closing but IT WOULD BE DETRIMENTAL to many, many residents here & the nursing homes...I understand ALL emergencies couldn't be handled like this however there are some that absolutely could be & families could stay home with them. Please don't ever close small rural hospitals...this is very important to citizens in our town!

I am a CKD pt and have various needs! When 2025 rolls around, hopefully I'll still be hanging on...medical cannabis will be made available then, however I am in need NOW! Why can't my drs go ahead and approve critical pts now? I've checked w my drs and they tell me they've not been notified of any movement of cannabis being legalized meaning they'd like to go ahead and get certified so when it rolls around they'll be up and running, ready to go...where will dispensaries be, how many, I will not be the only pt to use cannabis...is there progress or will it be more waiting...

Rural areas have little choice when you need transportation and there's NONE! Many times my husband has had to take a day off work to take me to a drs appt because I can't qualify for Rtech, so I've no way to dialysis or to an appt to any of my drs. How can rural communities have help with transportation? This prob not only affects myself but many, many people. I am willing to pay for a cab or a ride but there's NONE! How can this be helped? If I were alone, what would be my alternatives? I'd have to try to find someone to give me a ride for a day salary...it'd cost me \$75 for a couple hours! As much as I'd like to be able to do that, I sadly cannot...I am at the mercy of a hired driver! Please help...I can't get RXs refilled, groceries, mail, because I am a non driver due to illness! I am not alone, I know this...I've discussed it with people in our community...please help! I unfortunately have an Ostomy. There is no where locally that stocks my supplies...if I happen to run out unexpectedly, I am sunk! Trust me, this IS something I cannot do without. Why in this day and time can this need not be meet...do people just ignore they need an Ostomy pouch yet there's not one available & you have to go all over yourself & everyone! Can these supplies not be made available to me from my local hospital in times of extreme emergency? What is a non driver supposed to do? What if another pandemic hits and I've none & can't find any...who am I supposed to turn to? My drs are in Lexington...I can't get to them...where am I to turn...is there an emergency center and people to help me with my emergencies? Living in a rural area has its perks IF you're young! It's hell when you get older.

Senior citizens in rural communities are at the mercy of their families... enough help is not provided in many, many instances. If people are trying to take care of their elders, help is always appreciated! Help in the rural towns is essential... Kentucky has lagged far behind in many areas. We must value people, even the aged. I can already feel the "you're just old" comments as my needs become more apparent & I search for help in areas...sometimes we're non treated very fairly or seriously...when we get older we don't loose our minds...we loose the ability to physically function.

Thanks for Listening to an old ladies ramblings I hope they may provide insight to your quests in making life better for Kentuckians!

Jane L.

143. Certificate of Need Task Force,

I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky.

Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

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If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

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- Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.
- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

David Mayer, D.O., F.A.C.O.S.

144. My name is Sriparna Ghosh. I am an Assistant professor of Economics at University of Cincinnati Blue Ash and a research affiliate at the KNEE Center for Occupational Licensing at the West Virginia University. Today I will talk about the effect of Certificate of Need Laws (CON) on Kentucky residents.

CON laws are designed to decrease healthcare costs, improve access to care, long term access to care and ensure quality care to underserved communities. The objective of the states behind imposition of CON law is to limit overspending on healthcare facilities and equipment, by restricting healthcare costs. By minimizing competition in the healthcare market, the original goal was to increase the cost for some, and the medical providers would use the profit to provide discounted health care to rural areas and underserved communities.

According to the literature, overall, CON laws do not achieve the desired goals. On the contrary, CON law mostly have opposite effects on healthcare access, quality, and cost of care. In those states that have repealed their Certificate of Need laws, patients enjoy greater access to care, higher quality care, and lower cost care. Research finds that in non-CON states, controlling for other factors: there are approximately 30% more hospitals per capita, more rural hospitals and more rural ambulatory surgery centers. In Kentucky there is CON law requirement for 16 types of healthcare facilities categorized under six broad categories—hospital beds, beds outside hospitals, equipment, facilities, services and emergency medical transportation. Additionally, Kentucky has a catch-all provision, that is, any healthcare project exceeding the designated cost limit will require a CON, even if it doesn't fall into one of the 16 predefined facility types. Secondly, on average, patients tend to receive higher-quality care in non-CON states. A report by Mercatus mentions that there are approximately 131 fewer hospital beds per 100,000 persons in Kentucky due to its CON program. With a total population of approximately 4.4 million in Kentucky, this could lead to 5,782 fewer hospital beds in Kentucky. Moreover, in Kentucky there is restrictions on hospitals' capital expenditures (above a certain threshold) such as on MRI machines and other equipment, the number of hospitals that offer MRIs will reduce by 9 to 18. The state's CON program also affects the availability of CT services. Overall, CON regulations are associated with a 37 percent decrease in these services. In Kentucky, this implies between 22 and 31 fewer hospitals offering CT scans.

In 2019, Dipendra Tiwari decided to open a home health care, named Grace Home Care which will provide care to the 10,000 Nepali refugees in Louisville, using Nepali language for communication. However, Kentucky's CON laws were used to deny Dipendra's application for a home health care agency, arguing that there is no need for new home health care as there are already 9 existing health care agencies. This example underscores the ongoing discussion about the role of CON laws in the healthcare system, instead of ensuring access and quality of care, CON Laws end up restricting new businesses and preventing care for the underserved communities disproportionately. Thank you for considering my testimony. Let me know if you have any questions.

Sincerely,

Sriparna Ghosh, Ph.D.

145.

146.

147. 10 pages

August 31, 2023

Kentucky Certificate of Need Task Force
Kentucky General Assembly

Re: Research shows that cost shifting is a choice for hospitals, not a necessity.

Dear Chair Douglas and Chair Webber and Members of the Committee:

Hello, I am Thom Walsh, a healthcare regulator serving the people of Vermont. As a member of the Green Mountain Care Board (GMCB), I oversee hospitals in the state, including issuing certificates of need, approving annual hospital budgets, and health insurance rates. The GMCB is unique in its capacity in that most states have multiple agencies to oversee these aspects of healthcare. Additionally, I teach Health Systems and Policy at the Geisel Medical School and Tuck Business School at Dartmouth College.

My career began 30 years ago as a physical therapist in private practice and hospital settings. I have studied healthcare system performance and health policy for 24 years. During the past 14 years, in addition to my teaching work, I have been a consultant for independent and integrated healthcare systems, as well as regulatory agencies such as Maine Medical Center, One Health Nebraska, Wyoming Spine Associates, Navy Medicine, the Veterans' Affairs health system, and The Joint Commission.

Even though I work to enforce Vermont's certificate of need (CON) laws, I believe they should be reformed and I am actively working to do so. Currently, they are primarily used to stifle new entrants into the healthcare market.¹ The argument that CON laws aren't harmful because most CON applications are granted is misleading. In my experience, only large healthcare systems have the time and money to go through the lengthy application process, which typically involves litigation. Incumbent providers have the resources and incentive to use the current CON system to prevent competitors from opening. As a result, newer, innovative entrants to healthcare markets give up along the process or without ever applying for a CON. This means the current CON process facilitates healthcare consolidation and restricts access to care, and this drives up costs for everyone.

I also wanted to share some important research that shows that hospitals do not rely on cost-shifting to make up for purported losses from Medicare or Medicaid payments.² CON proponents sometimes argue that CON laws are necessary to decrease competition for healthcare services to allow hospitals to cost-shift. This argument is based on the faulty assumption that hospitals must shift costs to patients with private insurance because public insurance does not reimburse sufficiently. Although it is attractive to justify hospitals' exorbitant charges using this theory, there is no serious literature that finds that this happens in modern hospitals. This is not a hypothesis. This is data based on what actual hospitals are doing. And the explanation for high

and rising prices is very simple. Hospitals in consolidated markets raise prices substantially and repeatedly because they can. There is simply no place else for their patients to receive care. The cost-shifting argument is an after-the-fact rationalization for practices that would be unthinkable in any other market.

If cost shifting were necessary for hospitals to stay open, hospitals with a greater percentage of patients with Medicare and Medicaid would charge higher prices. Yet, there is no correlation between what hospitals recoup from Medicare and Medicaid patients and the rates they charge to other patients. Moreover, when Medicare and Medicaid reimbursement rates are increased, providers do not cut their rates for treating privately insured patients. Instead, most providers raise prices. Some do not. Conversely, when Medicare and Medicaid rates are reduced, there are no uniform price increases. Uniform increases in response to cuts to Medicare and Medicaid rates would be an easily observable phenomenon and researchers have not found evidence that it's happening.

To take another example, beginning about a decades ago, states began expanding Medicaid coverage in accordance with the Affordable Care Act, but private prices did not change based on whether or not a state expanded Medicaid. Instead, they continued to rise across most hospitals.

There are certainly struggles for rural hospitals, but they are not struggles that are addressed by CON laws. Moreover, debate about CON laws and hospital prices often leaves out a large portion of the population—those that have commercial insurance through an exchange or through their employer. This majority of the population is suffering from unsustainable healthcare cost increases. According to a 2020 study by the Congressional Budget Office (CBO), the cost per enrollee for hospital and physician services under traditional “fee-for-service” Medicare rose by just 0.2 percent more than the rate of general inflation from 2013 to 2018.³ By contrast, the per-person costs in private plans rose by nearly double the rate of general inflation. Put clearly, the cost for an average insurance plan per family is nearing \$25,000, which could buy a new Toyota Corolla every year.

The data on cost shifting reveal something else. Hospitals with little competition have higher costs.⁴ The Medicare Payment Advisory Commission found that hospitals with low rates of profit from private payers had costs 9% below the national median. In other words, hospitals are good at being efficient when necessary. Hospitals with higher private pay patients also had costs 2% higher than the national median. Thus, “it is hospitals’ underlying costs, driven by competition, not cost shifting, that lead to differences in prices charged to insurers and shortfalls or profits from public programs.”⁵

I am sharing this information with you because the connection between current CON laws and the affordability of healthcare is not widely understood. The data are clear, however, in showing that current CON laws decrease competition, which propels further consolidation of healthcare

Kentucky Certificate of Need Task Force
Public Comments from Thom Walsh
August 31, 2023
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markets. And hospitals within consolidated markets have monopolistic power that results in ever rising prices, reduced access, and lower quality for all patients whether publicly or privately insured. You have an opportunity to help Kentuckians and I urge you to recommend strong reforms.

Sincerely,

Thom Walsh, PhD
The Green Mountain Care Board
The Dartmouth College Geisel Medical School and
Tuck Business School

¹ See <https://washingtonmonthly.com/2023/06/19/dont-blame-medicare-for-rising-medical-bills-blame-monopolies/>.

² See Austin Frakt. (2017). *Hospitals Don't Shift Costs From Medicare or Medicaid to Private Insurers*. JAMA. <https://jamanetwork.com/channels/health-forum/fullarticle/2760166>.

³ See <http://www.cbo.gov/publication/57422>

⁴ See *supra* note 2.

⁵ See *supra* note 2.



**PACIFIC LEGAL
FOUNDATION**

September 1, 2023

**Statement before Kentucky General Assembly
Special Committee Certificate of Need Task Force**

**Re: Opportunity for Public Input—Consideration of Kentucky’s Certificate of Need Law
Testimony of Joshua Polk, Attorney, Pacific Legal Foundation**

**To: Chairs Douglas and Webber and to the honorable members of the Certificate of Need
Task Force:**

My name is Joshua Polk, and I am an attorney at Pacific Legal Foundation (PLF), a national public interest law firm dedicated to protecting the constitutional and individual rights of American citizens. In pursuing that mission, PLF attorneys have brought constitutional challenges to Certificate of Need (CON) laws across the country, including successfully striking down Kentucky’s CON law limiting moving servicesⁱ and ongoing representation for ambulance providers who are being prevented from offering lifesaving services due to CON requirements.ⁱⁱ

Certificates of Need do Not Meet Needs

By imposing CON laws, Kentucky forces healthcare service providers to obtain a government-issued permission slip before they are allowed to offer needed medical services. The application process requires prospective providers to demonstrate that their services are “needed” in a particular area. Unlike many licensure programs, which focus on a prospective provider’s qualifications to provide a licensed service, Kentucky’s CON requirement excludes even the most qualified providers, on the whims of state agency staff. Kentucky’s CON law was explicitly constructed to limit the number of healthcare service providers in the state with the hope that it might lower healthcare costs and expand access to rural areas.ⁱⁱⁱ Unfortunately, it has done precisely the opposite.



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The overwhelming majority of research studying the issue shows that requiring Certificates of Need results in fewer healthcare options and a greater number of unmet needs. In general, patients become victims of decreased service quality, increased healthcare costs, reduced access to care, and a crippling of the market's ability to provide emergency—often lifesaving—services. Kentuckians recently experienced the devastating effects of their government's CON restrictions when ambulance services suffered severe shortages during the COVID pandemic. Due to the CON-created barrier, new or out-of-state services were prevented from stepping in and meeting real needs, leading to sharp decreases in service availability and even patient deaths.^{iv}

PLF client Phillip Truesdell operates a medical transport service that has been denied the chance to serve rural Kentucky. His story illustrates the real-world harms of CON laws.

Phillip Truesdell's Legacy

Phillip Truesdell grew up on the Kentucky-Ohio border. It's where he raised his children and where he spends time with his grandchildren today. He and several members of his family worked at a local coal power plant that shut down in 2017. The shutdown threatened to break up the family, sending them all over the state looking for scarce job opportunities. Undaunted, Phillip searched for a way to start a business that would keep his family employed and close to home. He bought an ambulance and founded his own medical transport company in Aberdeen, Ohio—just across the river from Maysville, Kentucky. He named it “Legacy” as a nod to both his entrepreneurial accomplishments as someone who grew up in a poor household in Lewis County, Kentucky, and to the legacy he sought to leave for his children and grandchildren.

Legacy has become a true family business, where Phillip's son and daughter have significant roles in the company. Over the years, they have continued to expand and completed thousands of successful trips—helping residents of rural areas access medical appointments or hospital care. Headquartered less than a mile from the Kentucky border, Legacy's clients often need transport from one state to the other. Unfortunately, Kentucky's CON law allows Legacy to take patients into the state from Ohio but forbids it from taking the same clients back home without a Certificate of Need that is nearly impossible to obtain.

Kentucky requires applicants like Phillip to prove that their new service is “needed,” but “need” is not defined in statute or regulation. Rather, defining “need” is left to the state agency staff who review applications. Service providers are typically forced to endure a burdensome, trial-like administrative hearing and pay thousands of dollars for legal representation to prove “need” before they are allowed to compete in



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the marketplace. The process can take anywhere from several months to multiple years. Local competitors are invited to protest applications, are allowed to argue and present evidence against new services, and are not even required to demonstrate that they are actually meeting the community's needs. Naturally, the existing businesses do their best to keep out new entrants. In Kentucky nearly every protested application is denied. For ambulance services particularly, only two applicants since 2009 have been able to surmount a protest and provide services in the state. Kentucky government should not be in the business of awarding monopolies to favored businesses and denying its citizens choices about their healthcare.

Unfortunately, Phillip's story is no exception. His application to provide ambulance services to rural residents of Kentucky was denied in 2018, with strong opposition from existing services. There is no doubt that Legacy would provide safe, high-quality services to Kentuckians just as it has been doing for Ohioans for years. But because Kentucky CON laws protect local monopolies at the expense of Kentucky citizens, Legacy has been prohibited from lending a hand. Phillip has taken his fight for fairness to federal court, but the Kentucky General Assembly does not have to wait to see the right thing done. The Assembly should repeal the CON law and protect businesses and patients from limited services and red tape.

CON Laws are Not Constitutional

Kentucky's CON law harms patients and flies in the face of the economic freedom guaranteed under the U.S. Constitution's 9th and 14th amendments. By shutting out new, qualified service providers based on the opinions of existing competitors and agency staff, Kentucky treats providers as if they are interchangeable cogs in the healthcare market. Lack of competition stifles innovation and limits availability of services—particularly for those in rural areas. The CON scheme fails to recognize how new providers may distinguish themselves by providing higher-quality individualized services, lowering prices, or innovating service delivery. It also prevents current providers from expanding services to meet the needs of the patients in their communities. This arbitrary exclusion from the healthcare marketplace violates entrepreneurs' right to due process and equal protection under the law.

Research unambiguously shows that CON laws do not achieve their stated goals and only work to protect the profits of existing providers at the expense of patients. As such, CON laws like Kentucky's cannot pass muster even under the lowest standard of constitutional review. There is simply no rational basis for maintaining a program that demonstrably harms public health while providing no benefit to the state's citizens.



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FOUNDATION

Conclusion

PLF respectfully requests that this task force recognize the harm imposed and rights violated by Kentucky's Certificate of Need law and use its legislative authority to recommend repeal.

Sincerely,

A handwritten signature in black ink that reads "Joshua Polk".

JOSHUA POLK
Attorney, Pacific Legal Foundation



PACIFIC LEGAL FOUNDATION

Citations

ⁱ *Bruner v. Zawacki*, 997 F.Supp.2d 691 (E.D. Ky. 2014): <https://casetext.com/case/bruner-v-zawacki-2>.

ⁱⁱ <https://pacificlegal.org/case/legacy-medical-transport-v-adam-meier/>.

ⁱⁱⁱ K.R.S. § 216B.010.

^{iv} Alex Acquisto, 'We've got problems': Ky. bill seeks to alleviate ambulance wait times, Lexington Herald-Leader (March 22, 2022), <https://www.emsl.com/response-times/articles/weve-got-problems-ky-bill-seeks-to-alleviate-ambulance-wait-times-fUaj5oHj1hPpJp5s/>; Al Cross, *Short staffing of Kentucky ambulance services leads to deaths*, Kentucky Health News (November 3, 2021), <https://cdev.uky.edu/kentuckyhealthnews/2021/11/03/short-staffing-of-kentucky-ambulance-services-leads-to-deaths/>.



T.J. Regional Health position on the Certificate of Need (CON) program

T.J. Regional Health, along with other rural healthcare systems in Kentucky, takes a strong stance on the CON program, because the health and safety of our patients is always our highest priority.

Community-based, rural hospitals and healthcare systems are facing financial instability partly because 70% - 80% of patients in Kentucky hospitals are covered by Medicare or Medicaid, which do NOT cover the cost of services. Most services offered by a hospital are provided at a loss and must be subsidized by the few services from which the hospital derives revenue, such as elective surgery and outpatient imaging. The fact is that rural community hospitals have only few actual profit centers. The Certificate of Need (CON) program makes it possible to offer those necessary, but money-losing services.

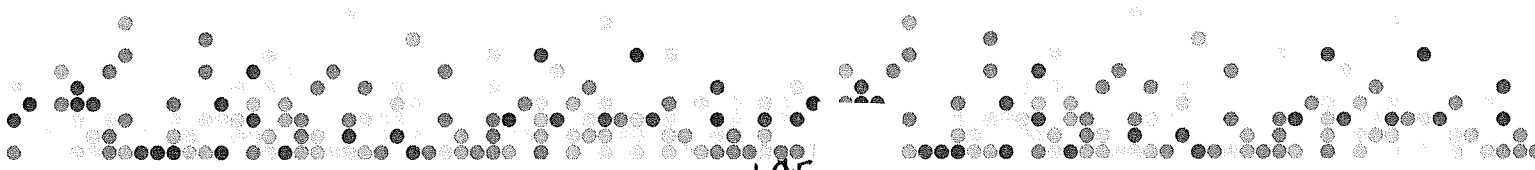
The impact of an open CON program could result in market saturation of healthcare services by for-profit and large non-profit health systems that would cherry-pick patients until they eliminated the community based health system. Unlike rural community hospitals, these larger health systems generally minimize their reinvestment in their communities because their shareholders demand limited spending other than for the health system.

T.J. Regional Health would support the modernization of the CON process to remove unnecessary restrictions and reduce administrative bureaucracy so that established healthcare providers can meet the needs of the community in a timely manner and to allow for reasonable adjustments that empower Kentucky hospitals to better serve their communities. However, some services should remain under close scrutiny including the construction of new hospitals, ambulatory surgical centers, and freestanding imaging centers, as well as freestanding birthing centers, with a specific rubric to determine demand and need.

While we understand and appreciate the desire of pregnant mothers to have a variety of services and amenities surrounding their labor and delivery (L&D) experiences, a freestanding birthing center is not required for that type of environment. Hospitals are not opposed to patients having options, but our first concern is always with the patient's health and safety. Excluding free-standing birthing centers from CON would create new safety risks in a state with some of the highest infant and maternal mortality rates in the country.

Many rural hospitals like T.J. Samson Community Hospital offer spaces, services, and staff to create a home-like environment and to allow the natural process and family-friendly birthing experience they choose. These offerings are safely located within the walls of the hospital where emergency care by experts and resources, such as blood, are available at a moment's notice. We have grave concerns about the ability to provide this higher level of care at an undefined distance from a hospital setting. When it comes to childbirth, life-threatening emergencies occur with only minutes to respond.

Two recent studies by well-respected organizations support this argument. Neonatal outcomes of births in freestanding birth centers and hospitals in the United States, 2016-2019 - PubMed (nih.gov) found that "Births in United States freestanding birth centers are associated with an increased risk of adverse neonatal outcomes such as neonatal deaths, seizures, and low 5-minute Apgar scores.



The study Planned Out-of-Hospital Birth and Birth Outcomes, published in the New England Journal of Medicine, found that “Planned out-of-hospital birth was associated with a higher rate of perinatal death than was planned in-hospital birth (3.9 vs. 1.8 deaths per 1000 deliveries). Therefore, when counseling women about the location of birth, it should be conveyed that births in freestanding birth centers are not among the safest birth settings for neonates compared with hospital births attended by either midwives or physicians.

The number one cause of maternal death worldwide is life-threatening hemorrhage. Thankfully, this is not currently true in the United States because America’s hospitals can treat hemorrhage. Birthing centers cannot. Post-partum hemorrhage cannot be predicted but it must be anticipated in all deliveries.

While we are aware there is intended attention by the freestanding birthing centers to exclude complicated deliveries, there is no clear statement of prenatal disqualifiers for out-of-hospital delivery. As stated before, there are situations for which there are no indications ahead of a sudden onset of complications during the L&D process. The decision to transfer, even if made appropriately and timely, inevitably takes additional time and is dependent on factors possibly out of control of the birthing center (e.g., ambulance availability and proximity). That extra time could mean the difference between life and death.

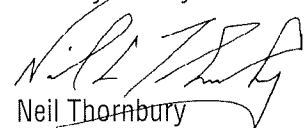
The birthing center standards require only BLS (Basic life support or CPR) certification, which is wholly inadequate to ensure maternal safety. Additionally, these standards do not require a collaborative oversight agreement in place with an appropriately trained MD/DO, but rather give the choice of that OR referral for consultation.

If a complication during birth arises, a quick transfer from the birthing center to the hospital will be critical to the health and life of mother and child. Without those written transfer agreements in place, a complicated birth could easily lead to the death of the mother or baby or both. The proposed legislation does not require such an advanced written transfer agreement. A birth center must only notify the hospital of the impending transfer, mode of transport, expected time of arrival, and upon arrival the birth center midwife gives a verbal report and a legible copy of relevant prenatal and labor health records.

Maternity services are often the first to be eliminated when finances erode. The number of rural hospitals discontinuing obstetrics care has increased 9% from just 2019 to 2020, according to the Chartis Center for Rural Health. Rural hospitals simply can’t be left to treat only high risk patients and births, including patients who are opiate addicted, and be expected to serve as the back- up for deliveries gone bad at a birthing center. Allowing birthing centers to be established in a vacuum, outside of the CON process, and without consideration of the impact to the local health system, could cause more maternity deserts if rural hospital maternity services can no longer be maintained.

While we understand that some healthcare organizations in the state support sweeping changes of the CON program that would be to their benefit, we would respectfully argue that the issues in those organizations can and should be dealt with individually, with tremendous thought into how changes could negatively impact community medicine in rural Kentucky. Given the government-driven nature of the healthcare marketplace, CON is crucial for continued patient access to care.

Thank you for your consideration.



Neil Thornbury

Sources:
Chartis Center for Rural Health
New England Journal of Medicine
NIH



149

~~148.~~

I have been in long term care for over 30 years and have worked in other states both with and without a CON program. I am sending this email to request that the legislation continue to support the CON process in our state. Thank you,
Londa Knollman,
Executive Director
Rosedale Green & Emerald Trace

150

~~149.~~

I am reaching out to you today to discuss the Certificate of Need (CON) for long-term care setting in Kentucky. In all honesty, I do believe that removal of the CON for some settings would be very welcomed. There are extremely limited options for in-patient mental/behavioral health facilities in KY, as well as only one option for stretcher transportation. LTC facilities face many challenges with arranging transportation and our only outlet for an in-patient mental health stay is limited to accepting patients that are able to provide all activities of daily living care (ADL) for themselves. 99% of residents in the LTC setting are here because they need assistance with 1 or more of their ADLs, so when looking for a mental health provider to assist with a behavioral health stay to attempt medication changes all of our residents automatically do not meet the criteria for acceptance.

When looking at the CON for long-term care facilities, do believe that a CON is still necessary. In Northern KY there are roughly 13 competing facilities in Boone/Campbell/Kenton County that are all options for residents to choose from. The Northern KY market is already saturated with multiple different types of businesses and health care providers, and we are already competing with each other for the same staff. The long-term care setting is very limited by reimbursement, the larger "national" companies have the resources to pay top dollar to compete and draw staff; those providers that are only in 1 or 2 states are at the mercy of each state's Medicaid reimbursement to set their pay scales. Families have options to choose from, but the providers are getting more and more strapped and unable to provide care and services; introducing more facilities will only further stress the already fractured LTC setting.

Thank you for the opportunity to be heard, I appreciate your time and willingness to listen. Thanks,

Amber Reilly, MBA, LNHA
Administrator
Villaspring of Erlanger

151

~~150.~~ My name is Jason Gumm and I'm a nursing home administrator. I'm also the immediate past chair of the KAHCF and KCAL, a trade organization that represents long term care and assisted living facilities. You heard from our President, Betsy Johnson on Monday at the Task Force meeting. You also should have received our one pager. I'm sure that you know where my position is with CON, but I just want to make a few comments. I was born and raised in Glasgow, Kentucky and currently live in Bowling Green. The vast majority of my long term care career has been in Glasgow, my hometown. I take care of the people who I knew in church as a child and the parents and grandparents of my classmates and friends. I have a vested interest in the care of the people that are at my facility. After 27 years, the pandemic and the aftermath has almost put me "over the edge" but I continue to show up every day to make a difference. You may be asking yourself, what does this have to do with CON? Honestly, I'm not 100% sure, but I want you to know who I am and where I'm coming from before my comments.

The CON process is essential to the current and continued investment of capital into our long term care system. I understand the concepts of a freemarket system and trying to use these principles to "fix" the healthcare system in our state. But those principles don't exist in our market because you have to be able to set "the price" in order to be a system that is defined as a free market. As we've testified and you are aware, we don't set our price in long term care, and so we do not operate in a free market. And btw, I have an BS degree in Economics. And an MBA as well.

Il don't want to see Kentucky's Long Term Care end up like Indiana, when years ago they repealed their CON, including their LTC, and they opened up a "can of worms" which ended up doing nothing to improve the LTC environment or their quality, it simply ran owners and facilities out of business. The state had new providers and old providers, neither one with the market share to survive and both trying to hire a limited workforce especially in a rural setting where there's limited resources and workforce. Indiana's answer to the disaster, to reimplement CON for LTC.

At least South Carolina learned from the disaster of Indiana, and stopped short of totally eliminating CON and kept it for LTC. Long term care is tied to CON, and if you look at the reasons that are being discussed, long term care doesn't have those issues.

Long term care capacity and the number of open beds across the state let us know that there's not an access issue. Also, long term care doesn't have an issue with one type of provider or one dominant organization. We have for profit and nonprofit, we have small and large organizations, we have state companies and multinational corporations. We have a diversity of providers, unlike other healthcare categories, we also have the ability to adjust and move beds around as our percentages change or if there's growth in area of the commonwealth without compromising the capital investments of current providers. There are no hurdles to people getting into the long term care market in Kentucky, if you have the money to invest then there are beds to be purchased. Again, the reasons that people bring up to support the elimination of CON, just doesn't make sense for LTC.

I'm sure the term, don't throw the baby out with the bath water is familiar to most of you. I hope that applies here, because I can't think of a better analogy than that for this situation. LTC needs CON to remain intact.

Thank you for allowing me to comment.

Jason Gumm

Administrator

Barren County Nursing and Rehab

152

~~151~~. I would like to send a quick email requesting that CON for nursing homes is not changed. I work with 7 nursing homes in the state and can tell you that without CON it would impact our industry in a negative way. There are plenty of open beds for residents to go to (all payers) and you can also buy and transfer beds that are on the market already within the parameters of our current CON.

If you would like to speak further on this matter, do not hesitate to call me at the number below.

Thank you for your consideration.

Best,
Trevor Davis HSE, NIHA
Regional Vice President of Operations

153

~~152~~. I am writing this letter in support of keeping the CON regulations in place for the state of Kentucky. Our organization would support the modernizing of the CON regulations per the KHA recommendations.

As we all know there is no free market in health care and repealing the Kentucky CON regulations Will Not create a free market. CON benefits the patients by assuring access, quality and lower costs. Today, Kentucky offers better access, lower prices and better value than states without a CON.

Hospitals are the only entities required to treat all patients, regardless of the ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat all with Medicare, Medicaid and uninsured patients. Hospitals are the only business models that accept on the average a quarter on every dollar that is billed via Medicare and Medicaid for services. I respectfully ask that the Committee consider the KHA modernization proposal to ensure the long term viability of Ky hospitals across the state.

Tim A. Hatfield
ARC Hospital Division Market
President 99 Cedar Trace Drive
Prestonsburg 41653

154

~~153~~. I would very much like to express my support for keeping the CON process in place to assure that safety net hospitals, like St. Elizabeth Healthcare, can continue to serve the needs of our community.

I can personally speak about the impact St. E has had on our community, not only in terms of delivering the highest quality care to all those who need and deserve it, but also about the economic stimulus that St. E has provided that has spurred growth in communities across our region.

I have been active in helping the St. Elizabeth Foundation raise funds for their programs in Cancer and Heart Care and have the opportunities to speak to patients whose lives have been saved by the compassionate and coordinated care they deliver these "grateful patients" are at times so moved by the personal care they received that they in turn donate (invest) funds to the very programs that helped them through difficult moments in their lives.

Although I don't fully understand the complexity of the healthcare industry, what I do know is that St Elizabeth has been an incredible steward with the resources they have been given and have looked for ways they can support the community in improving their health.

From my career in banking, I can tell you that companies focused on the bottom line make decisions differently than those with a community view. IF CON is repealed, I am concerned that for profit companies will enter the market and target those who can pay or provide only services that make a profit. This could really impact the support that we receive today from a healthcare partner that has been with us through good times and bad.

Thank You for your consideration of keeping the CON process in place so that safety net hospitals can continue to serve their communities.

Sincerely,

Daniel R. Groneck

~~154~~ 155

It is extremely important to get treatment for people in need, that is why I would like to express my support of keeping the Certificate of Need (CON) program in place in Kentucky. Certificate

of Need plays a significant role in our state's healthcare system, and patients and providers alike would immediately be impacted negatively if it is repealed.

I know the commitment and investments St. Elizabeth Healthcare has made in our community to address the healthcare needs of our community. St. Elizabeth is a safety net hospital delivering quality care to all community members, regardless of their ability to pay.

St. Elizabeth has proudly served Northern Kentuckians for 160 years providing millions of dollars in uncompensated care and community benefit. The loss of these safety-net services would be majorly detrimental to some of our most vulnerable citizens. Without safety-net care, their health issues may go unaddressed, leading to even more costly interventions and community impacts down the road.

St. Elizabeth provides much needed support to our community through partnerships with community organizations and agencies to prevent illness, enhance health and/or address social determinants of need which impact health outcomes. Through these contributions, St. Elizabeth is helping our community be one of the healthiest in the nation.

I appreciate the Task Force's continued attention to this important issue. Thank you for your time and consideration.

Sincerely,

Anthony and Geraldine Zembrodt

Anthony and Geraldine Zembrodt

156

155. I am writing this letter to urge you to RETAIN CERTIFICATE OF NEED in Kentucky, Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to STAY IN KENTUCKY and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for-profit entities DO NOT go to poor, underserved and rural areas! They simply do not!

If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

Most people do not understand that

.. There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.

Hospitals are the only entities required to treat all patients, regardless of ability to pay. No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.

CON benefits patients by assuring access, quality and lower costs. Kentucky has better access, lower prices, and better value than states without CON. CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,

David Phillips

156:

157:



Life Learning Center

20 West 18th Street
Covington, KY 41011

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Daniel Meyer

President

Alecia Webb-Edgington

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August 31, 2023

To the Kentucky Certificate of Need Task Force,

As you continue to develop recommendations regarding Kentucky's Certificate of Need process, I urge you to maintain this important program that leads to more accessible, quality, cost-effective care and better health outcomes.

Certificate of Need has allowed healthcare providers like St. Elizabeth to reinvest in the community they serve. There is perhaps no better example of this than their Journey Recovery Center, which supports individuals with substance use disorder (SUD).

The Journey Recovery Center was established in 2015 and has served more than 2,600 unique patients since 2021. Patients receive comprehensive, evidence-based care and support services to get them on the road to recovery and address any other medical conditions that may be impacting their wellbeing.

Recognizing the critical wraparound services needed to support recovery, St. Elizabeth is partnering with the Life Learning Center to bring recovery treatment onsite at our center. Life Learning Center believes that permanent self-sufficiency begins with a transformational change that permits long-term success. The Center is building a caring and serving community by helping people learn, secure, and sustain a better way of living through gainful employment. The people we serve become healthier, happier, and more productive individuals working to change their future.

Certificate of Need allows St. Elizabeth to partner with community partners like the Life Learning Center provide these life-saving services to the community, and we certainly would like them to continue doing so.

With that in mind, I request that you and your colleagues maintain Certificate of Need and develop recommendations for the program that put patients and communities first.

Thank you for your consideration,

Alecia Webb-Edgington

President

Life Learning Center



900 Hospital Drive

Office: 270-825-5100

Fax: 270-825-5204

August 31, 2023

DeeAnn Wenk, Committee Staff Administrator Health Services and Families
& Children Committees Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

Re: Public Input for Certificate of Need Task Force

Members of the Certificate of Need Task Force:

Baptist Health Deaconess Madisonville fully supports the plan to modernize Certificate of Need as presented by Nancy Galvagni, Kentucky Hospital Association, at the July 17, 2023, meeting of the task force. We strongly support retaining the Certificate of Need program, which is critical to ensuring access to health care for ALL Kentuckians, particularly low income and vulnerable populations. Kentucky's population is older, poorer, and less healthy than the rest of the nation. We rank sixth highest in poverty, have the third highest non-institutionalized disabled population, and rank third highest in the percentage of adults with multiple chronic conditions.

Kentucky hospitals have made significant investments in facilities and services to provide care to their communities so patients can receive care close to their home. Kentucky hospitals, unlike other providers of healthcare, provide services without regard to ability to pay, and 70 to 80 percent of hospital patients are covered by a governmental program that pays below the actual cost of care. Most services offered by a hospital to meet community needs are provided at a loss and must be subsidized from the few services from which the hospital derives revenue, such as elective surgery and outpatient imaging. "Cherry picking" only the most profitable patients by entities without the mission to serve all Kentuckians would harm patients by reducing access to needed hospital services, and potentially could close some hospitals entirely. Reductions in services and closure would cause jobs to be eliminated, costs to rise, and thousands of patients would be forced to travel further for hospital and emergency care, worsening the health status of Kentuckians and patient outcomes.

We support reasonable, thoughtful changes to the process, which include deleting batching cycles; reducing the length of hearings; making the CON decision final, with limitations on appeal rights; and streamlining administrative processes for completion of hearings and final decisions. We also request minor updates to the certificate of need requirements to provide flexibilities for existing hospitals to improve patient services.

Our support of the certificate of need program in Kentucky recognizes that those requirements benefit all of Kentucky by providing access to healthcare services throughout the state, ensuring quality and safety, and helping to keep costs down.

We look forward to continuing to work with the General Assembly to retain the certificate of need program in Kentucky, with those requested modernizations. Please let me know if you have any questions or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Alisa Coleman".

Alisa Coleman
President
Baptist Health Deaconess Madisonville

🗑 Delete 📁 Archive 🛡 Report ▾ ↩ Reply ⏪ Reply all ➡ Forward ▾ 📧 Read / Unread ▾

RE: Certificate of Need Action Needed before September 1st



Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601

Certificate of Need Task Force,

I am writing this letter to urge you to **RETAIN CERTIFICATE OF NEED** in Kentucky.

Those that seek to dismantle the CON process often come from adjacent states where external healthcare systems seek to access the DOLLARS that our State and our Citizens use to support the healthcare resources in Kentucky. We need these dollars to **STAY IN KENTUCKY** and not go to corporations and healthcare systems based in Ohio, Indiana or Tennessee. Largely these dollars stay in Kentucky and turn over an average of 7-10 times in the state.

The healthcare system in Kentucky is a good one, albeit fragile, especially in underserved and rural areas. External providers and for profit entities **DO NOT** go to poor, underserved and rural areas! They simply do not!

If CON is abandoned, there will be fierce competition in the more affluent and profitable sectors of urban areas... with absolutely no benefit to the aforementioned underserved, poor and rural areas. And... by weakening our larger system's bottom lines and diluting their ability to grow and build, the entire referral system in the state is thereby weakened.

Most people do not understand that

- There is no free market in health care, and repealing CON will not create a free market. We are required to see those who walk through our doors. And we will all be weakened by others taking the precious little profit that we do occasionally make and plow back into our own facilities and communities.
- Hospitals are the only entities required to treat all patients, regardless of ability to pay. **No ambulatory surgery center, imaging center, or other type of provider is required to treat Medicare, Medicaid, and uninsured patients.**
- CON benefits patients by assuring access, quality and lower costs.
- Kentucky has better access, lower prices, and better value than states without CON.
- CON should be retained but modernized as recommended by the Kentucky Hospital Association

Should you have any additional questions, please feel free to contact me at your leisure.

Sincerely,



August 31, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

RE: Certificate of Need Task Force

Dear Members of the Certificate of Need Task Force:

Med Center Health appreciates the opportunity to provide comments to the Task Force. As the operator of six hospitals, including three critical access hospitals serving rural regions of Kentucky, Med Center Health strongly supports retaining Kentucky's CON program. We have seen that the CON program provides significant benefits to Kentuckians and ensures access to care for all Kentuckians, particularly low-income and vulnerable populations.

It can be challenging to be a healthcare provider in the Commonwealth. Kentucky's population is older, poorer, and less healthy than the populations in almost every other state. We rank sixth highest in poverty, have the third highest non-institutionalized, disabled population, and rank third highest in the percentage of adults with multiple chronic conditions. Kentucky hospitals must provide services without regard to the patient's ability to pay, and 70 to 80 percent of hospital patients are covered by a governmental program that pays below the actual cost of care.

Most services offered by a hospital are provided at a loss and must be subsidized from the few services from which the hospital derives revenue, such as elective surgery and outpatient imaging. CON preserves access to care by ensuring that healthcare providers cannot cherry-pick the profitable patients while leaving the low-income patients to Kentucky's full-service hospitals.

The benefits of the CON program are reflected in the data. Kentucky has more hospitals per 100,000 population than non-CON states. But without the support that the CON program provides, access to healthcare in the many rural areas of Kentucky will be curtailed. In addition, the CON program lowers costs. Despite the many health challenges of Kentucky's population, Kentucky hospitals provide care at an average lower cost than hospitals in many non-CON states.

Along with other Kentucky hospitals, Med Center Health has supported reasonable modernization of the CON program. We supported HB 444, which added a number of exemptions from the CON program for several services/facilities in 2018. Moreover, the State Health Plan, which contains review criteria for many services, has been continually modernized. In fact, in 2023 alone, the

Our mission is to care for people and improve the quality of life in the communities we serve.

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Cabinet has revised the State Health Plan to make it easier to establish inpatient psychiatric units, establish megavoltage radiation therapy programs, expand home health agencies, and add beds at pediatric nursing facilities. Med Center Health also supports relaxing the criteria in the State Health Plan for Kentucky full-service hospitals to establish cardiac catheterization labs as well as removing MRI from the State Health Plan entirely.

Although Kentucky's CON review process operates fairly efficiently as compared to other states, Med Center Health supports additional changes to further streamline it. We support eliminating CON batching cycles so that any CON application for any service can be filed in any batching cycle.

We support reducing the time the hearing officer has to issue a decision under 900 KAR 6:900, Section 1(24), from 60 days to 30 days. We also support amending 900 KAR 6:090, Section 1(23), so that the hearing officer can extend the hearing review deadlines no more than 90 days.

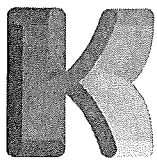
We are aware that KHA has proposed some additional changes to the review process, but we believe those changes are unnecessary and would be counterproductive. The additional changes proposed by KHA such as eliminating appeal rights would make the process more complicated, less fair, and would raise constitutional issues. We are strongly opposed to the adoption of such measures.

Please let me know if there is any other information that we can provide that would be helpful to the Task Force, and feel free to reach out to me with any questions.

Sincerely,



Wade R. Stone
Executive Vice President
Med Center Health



LEADING FROM THE FRONTIER TO THE FUTURE

September 1, 2023

Dear Certificate of Need Task Force Members,

I am writing today with some thoughts, as a community leader, about the Certificate of Need system in the Commonwealth of Kentucky.

As you are well aware, the free market nature of healthcare was significantly altered when the federal government created Medicare and Medicaid in 1965.

For many reasons, hospitals in Kentucky, more so than in other parts of the country, see a high percentage of patients on Medicare and Medicaid. These two programs have significantly lower reimbursement rates than private insurance, but are part of the safety net designed to ensure broad access to healthcare for all.

I am a strong advocate for our free market economy; however, free market principles cannot be applied when the government dictates what a provider is paid and what customers they must serve.

If the Certificate of Need system is dismantled, our safety net hospitals that serve indigent residents will be significantly impacted and our communities will pay the price.

St. Elizabeth Healthcare is the safety net hospital for Northern Kentucky. They provide uncompensated care and preventative healthcare services that address real and otherwise unmet community needs.

The Certificate of Need system causes St. Elizabeth Healthcare to provide these services to the region. It is of great financial value to the Commonwealth of Kentucky, local governments, and the community that they do so, as there is no present alternative means by which to fund these needs.

Thank you for your service to the Commonwealth, and for your work in analyzing how best to meet the healthcare needs of our citizens.

Sincerely,

Kris A. Knochelmann
Kenton County Judge/Executive



DeeAnn Wenk, Committee Staff Administrator
 Health Services and Families & Children Committees
 Legislative Research Commission
 700 Capital Avenue
 Frankfort, Kentucky 40601

September 1, 2023

Members of the General Assembly Certificate of Need Task Force:

Subject: Support for Retaining the Certificate of Need (CON) Program in Kentucky

I am writing to you today on behalf of Owensboro Health to strongly advocate for the retention of the Certificate of Need (CON) program in our state. Therefore, I urge you to support the continuation of the CON program for the sake of patient health and access to essential healthcare services, particularly those residing in our vulnerable and rural region.

As you may know, Owensboro Health reaches an 18-county area, serving nearly 500,000 in Western Kentucky and Southern Indiana that includes your constituency. Our system includes:

- Owensboro Health Regional Hospital; Owensboro Health Muhlenberg Community Hospital; Owensboro Health Twin Lakes Medical Center;
- The Owensboro Health Medical Group comprised of over 350 providers at more than 30 locations;
- Three outpatient Healthplex facilities, a certified medical fitness facility, the Healthpark; a surgical weight loss center and program, and the Mitchell Memorial Cancer Center;
- Having on average each year, more than 19,000 inpatient admissions and delivering 2,000 babies and providing the region's only Level III NICU (Neonatal Intensive Care Unit);
- Our physicians performing over 23,000 surgical procedures, including nearly 150 open-heart surgeries; and,
- Our physicians and staff attend to 90,000 Emergency Department visits and more than 1.25 million outpatient visits annually.

With this in mind, the CON program plays a vital role in creating a level playing field among healthcare providers, especially for Owensboro Health that focuses on serving a more rural and vulnerable regional population. Through this regulatory mechanism, Owensboro Health has been able to provide needed access to healthcare services that may not otherwise be available or sustainable.

Based on a comprehensive research and impact analysis conducted by a national CON expert for the Kentucky Hospital Association, it was found that CON states consistently outperform non-CON states in terms of access to healthcare services and the affordability of those service. These findings demonstrate

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 Owensboro, KY 42303

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the program's success in controlling costs and maintaining affordability for patients not just in our western Kentucky region, but in the state as a whole.

And while we continue along the access journey, Owensboro Health is pleased to be able to provide better access to most healthcare services than other rural areas of the country. CON has allowed us to expand our services based on need, while still providing other necessary services that may not be the most cost-effective.

I worked in Pennsylvania when the certificate of need (CON) law expired in December of 1996. Pennsylvania was one of the few states at that time that collected robust health data that was made available to the public. Through reports from the Pennsylvania Health Care Cost Containment Council (PHC4) we tracked impacts/performance before and after the sunset of the certificate of need law.

What we found:

- Pennsylvania hospital operating margins that had averaged 2.5% over the prior four years before CON sunset dropped to 1.05% in 1998, a **negative** (0.27)% in 1999, to 0.89% in 2000, and 2.00% in 2001. It wasn't until 2005 that the operating margins recovered to pre-CON sunset levels.
- In 2004 there were 182 general acute care hospitals in Pennsylvania. 120 of these hospitals (or 66%) had a 3-year negative average total margin at some point from 1998 through 2004.
- There were multiple hospital closures during the same time period including St. Francis hospital in Pittsburgh. St. Francis was a safety net tertiary hospital in the city and had served the residents for 137 years with 2,350 employees when it closed in 2002.
- There were significant wage impacts in the Pittsburgh region. Wages were either frozen or had minimal increases in the years immediately following the sunset of CON. Health systems increased spending on capital to establish programs and services that were no longer regulated. The Medicare wage index, which is a measure of the relative cost of labor in different geographic areas, for the Pittsburgh area was 1.0 or equivalent to the national average prior to the CON expiration. After the CON sunset it dropped to .85 or 85% of the national average wage rate. This means wage rates for healthcare workers in Pittsburgh declined in comparison to the national average wage rates. In addition, because Medicare payments are adjusted by the Medicare wage index it also meant that Medicare payments coming into the health systems in Pittsburgh were also reduced. The Pittsburgh wage index in 2023 is currently .8336. The region still has not been able to overcome the impact it experienced in the wage index after CON was sunset.
- Uncompensated care (charity and bad debt) to gross patient revenue was 4.69% in 1997 and dropped to 2.15% by 2004.
- Charge levels and charges billed to patients, employers, and payors increased dramatically. In 1997 the ratio of charges to operating expenses was 215%. By 2004 this had ballooned to 337%.
- There were 21 hospitals that converted from not-for-profit to for-profit status through acquisitions from 1999 through 2005.
- There were also service impacts seen post CON.
 - In 1995, Pennsylvania had 43 hospitals that offered open heart surgery. The volume averaged 600 cases per center annually. Average charges per case ranged from \$27,500 to \$106,000.

- In 2003, Pennsylvania had 63 hospitals that offered open heart surgery. The volume averaged 390 cases with the lowest center completing 98 cases. Average charges per case ranged from \$39,000 to \$369,000.
- In 2003, PHC4 findings showed that surgeons who performed higher numbers of procedures (200+) had patients twice as likely to survive after open heart surgery when compared to surgeons with less than 100 procedures per year. In 2003, 65 physicians were listed as performing less than 100 open heart procedures in Pennsylvania.
- There were seventeen hospital programs that were under the number of benchmark cases set (at the time) by the American College of Surgeons for programs to be efficient and have quality outcomes.

We are also concerned about changes in CON and how it may impact the employers in our region. We have first hand experience with a surgery center that was established in Indiana roughly 13 miles from Owensboro by physicians in our region. The center employed an out of network payment strategy when it opened meaning it did not enter in contractual arrangements with commercial insurers and billed the cases as out of network. In our own employee health plan we experienced numerous claim payments at significantly higher amounts than if they would have been paid at in network rates or completed at an in-network provider.

As has been conveyed by the Kentucky Hospital Association, Owensboro Health concurs with retaining CON for new beds, ambulatory surgery centers, expensive technology, or where sufficient volume is needed for positive patient outcomes, as recommended by national guidelines. This has allowed us to provide investments in these services where necessary, without the concern of unneeded expansion by primarily profit-driven healthcare providers.

In conclusion, the retention of Kentucky's Certificate of Need (CON) program is crucial for patient health and access to care in our region. The program has consistently demonstrated its effectiveness in creating a level playing field among healthcare providers, controlling healthcare costs, and ensuring access to essential services, especially for those in our rural and vulnerable communities. I respectfully request your support in preserving the CON program for the greater well-being of our region.

Thank you for your attention to this critical matter. Please don't hesitate to contact me at 270-685-7180 or russ.ranallo@owensborohealth.org if you have any questions.

Sincerely,



Russ Ranallo
Chief Financial Officer

cc: Members of Owensboro Health General Assembly Legislative Caucus

House Majority Caucus Chair Suzanne Miles
Senator Gary Boswell
Representative DJ Johnson
Representative Scott Lewis
Senator Stephen Meredith
Senator Robby Mills

Senate President Pro Tempore David Givins
Senate Majority Whip Mike Wilson
Senator Matthew Deneen
Senator Whitney Westerfield
Representative Samara Heavrin
Representative Rebecca Raymer



1901 Campus Place
Louisville, KY 40299

September 12, 2023

DeeAnn Wenk, Committee Staff Administrator
Health Services and Families & Children Committees
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601
Email: deeann.wenk@lrc.ky.gov

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Sincerely,

Gerard Colman, PhD
Chief Executive Officer

BaptistHealth.com