

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 1st Meeting of the 2024 Interim

June 20, 2024

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on June 20, 2024, at 11:00 AM in Room 154 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel Co-Chair; Representative Matthew Koch Co-Chair; Senators Donald Douglas, Denise Harper Angel, Jimmy Higdon, Amanda Mays Bledsoe, Christian McDaniel, Michael J. Nemes, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Mike Clines, Jonathan Dixon, Patrick Flannery, Samara Heavrin, Keturah Herron, Thomas Huff, Kevin Jackson, Nima Kulkarni, Amy Neighbors, Phillip Pratt, and Killian Timoney.

Guests: State Senator Stephen Meredith; State Representative Marianne Proctor; Jaimie Cavanaugh, Legal Policy Counsel, Pacific Legal Foundation; Mark Schroer, MD, Jim Schroer, Private Citizen, Mark Boyd, MD, and Alasdair Whitney, General Counsel, Institute for Justice.

LRC Staff: Bryce Amburgey, Carabell Preece, Jasmine Williams, and Lisa W. Moore.

Discussion of Certificate of Need

State Senator Stephen Meredith said the Certificate of Need (CON) program is a state regulatory tool that controls the number of health care resources in an area. CON laws require a health care provider to demonstrate a need in the community before establishing or expanding a health care facility or service. Rural hospitals provide a much-needed economic benefit, and greater access to health care, for 40 percent of Kentucky's rural population. The US is spending \$13,000 per capita on healthcare costs, almost double other industrialized nations, including China only spending \$855 per person annually. Repealing CON is not a sustainable path to reducing inflated healthcare costs. Rural communities tend to have 75-80 percent of patient volume on Medicare/Medicaid. Rural hospitals are facing nursing shortages and cannot compete with hospitals offering high dollar signing bonuses. Administrative costs tend to drive up healthcare costs by 30 percent, but lack of competition is a minuscule factor. Tort reform and drug addiction are

also significant factors in rising healthcare costs.

Responding to a question from Chairman Schickel regarding access and healthcare choices, Senator Meredith said Northern Kentucky residents have choices in healthcare and hospitals. It is determined by the service area and CON does not limit choices.

Responding to a question from Representative Bratcher, Senator Meredith said 60 percent of Kentuckians are on Medicare/Medicaid, which vastly reduces the free market. Other states have experienced various results with restrictive CON policies. Kentucky's CON law applies to more than 30 different services and technologies. In 2019, the General Assembly made modest reforms to the CON program, including removing skilled nursing facilities, primary care centers, retail clinics, rehabilitation facilities, rural health clinics, and certain mobile services. The 2019 amendments increased the expenditure minimums that trigger CON requirements in some cases.

Responding to a question from Senator Douglas regarding the Certificate of Need Task Force, Senator Meredith said more information needs to be collected in the interim before continuing the task force. Task forces are expensive to staff and operate, especially when outcomes and recommendations are ignored. Senator Douglas noted that CON affects the entire healthcare system, but its effects on healthcare providers can vary tremendously.

Responding to a question from Senator Thomas, Senator Meredith said the rural market can extend to disadvantaged communities in urban areas. One of the biggest threats to America is the corporatization of healthcare, which threatens to put an emphasis on the financial deliverables over a provider's desire to deliver optimal care. CON remains important to minimize the problems of increasing costs and diminishing quality of services. The only replacements to CON would be the elimination of Medicare/Medicaid, or fair and equitable payments to all healthcare providers. Underserved communities face a challenge because they are making 25-30 percent less than their urban counterparts. Parity is essential for a strong, primary healthcare base in every community.

State Representative Marianne Proctor said there is conflation between reimbursement and CON. Since 2005, four rural hospitals have closed with CON laws intact. Her constituents are demanding healthcare choices, and want better hospital selections without lengthy travel. She noted dominant or not-for-profit providers can close rural hospitals. The application process to obtain CON certification through the Cabinet for Health and Family Services can be time-consuming and costly. Kentucky still struggles to provide adequate mental health services, chemical dependency treatments, and hospice care for its citizens even with CON laws. Representative Proctor filed legislation in the 2023 Regular Session of the General Assembly addressing that issue as well as legislation to eliminate competitor veto. She said Kentucky does not limit or scrutinize any other industry in the same manner

as CON and this is not fair to the healthcare industry.

Jaimie Cavanaugh, Legal Policy Counsel, Pacific Legal Foundation, said CON laws were adopted to decrease government spending in healthcare and increase the quality of healthcare services. The experiment with CON laws failed, and 90 percent of peer-reviewed tests show that CON laws are associated with negative or neutral outcomes for healthcare users. Since 1986, every federal administration has called for states to repeal CON laws. Every administration since the Reagan Administration has said that CON laws increase costs and harm patients. No administration has found evidence that CON laws achieve their goals of decreasing cost or increasing quality. This is a bipartisan issue, and both Republican and Democrat administrations agree that states should repeal CON laws.

Hospital expenditures are 20.6 percent higher per capita in states with CON laws. Restrictive CON laws increase hospital expenditures per admission. Hospital charges in states without CON laws are 5.5 percent lower five years following repeals. Medicare reimbursements for knee replacement surgery are five to 10 percent lower in states that have already repealed CON laws.

CON laws have higher mortality rates for common conditions like pneumonia, diabetes, influenza, as well as heart attacks, sepsis, and Covid-19. Hospitals in states with CON laws were 27 percent more likely to run out of beds during pandemic surges. Con laws are not working in Kentucky as evidenced by Governor Beshear issuing emergency regulations to address dangerously low levels of services in 2023. Eighteen percent of adults in Kentucky have medical debt, five percent higher than the national average. Nearly 63 percent of Kentuckians have private health insurance, and 12 percent of adults in Kentucky report avoiding care because of cost.

Responding to questions from Representative Herron, Representative Proctor explained how a dominant provider sued a company applying for CON in Northern Kentucky. Ms. Cavanaugh said it is usually a procedural issue that the dominant provider will use for grounds to sue. Competitors will sue and some applicants will drop their application to avoid costly and time-consuming court proceedings.

Responding to a question from Senator Thomas, Ms. Cavanaugh said CON is not working. She supports an exception that decreases CON laws and allows hospitals to open in rural areas without CON issuance like the exceptions provided in Tennessee, Alabama, and other states.

Responding to a question from Representative Neighbors, Ms. Cavanaugh said states are concerned about costs as they pay the most for long-term care. Some states have maintained CON laws for long-term care, while repealing them for healthcare. Other states

have repealed CON laws for both long-term care and healthcare.

Chairman Schickel said Secretary Friedlander with the Cabinet for Health and Family Services could not be in attendance to explain the Cabinet's CON application process. There is a cabinet handout in the members' folders. He said interim committees are available for vetting issues and task forces need to be limited.

Representative Timoney said this issue is affecting the 40 percent of Kentuckians not relying on Medicaid and Medicare. Kentucky is unique and should not be driven by national issues and have a varied response. The theory of a free market and the reality sometimes clash. Kentuckians need flexibility to choose healthcare providers that insurance will cover.

Responding to a question from Representative Flannery, Ms. Cavanaugh said Nevada is the only state that has a common law for hospitals applicable to rural areas, and not urban areas. Most states have exceptions for the rural area, because they need more providers and services. Representative Flannery said CON is a complex issue and there is a rural and urban divide. New laws should be implemented to avoid universities having a complete monopolization of controlling healthcare in a certain region.

Senator Douglas said the COVID-19 pandemic exacerbated shortages in personnel. A shortage of hospital beds is not the problem, but the lack of hospital staffing. Higher mortality rates could be related to CON, or they could be related to the lack of insurance coverage and access to healthcare. He has not seen the studies that show a decrease in Medicaid reimbursement results in a higher quality of care.

Responding to questions from Representative Kulkarni, Ms. Cavanaugh said five decades of research show that CON laws have not delivered on creating a cost-efficient health delivery system for Kentuckians, while improving quality and increasing access to healthcare services. Instead, incumbent providers use CON laws to block and delay their competitors from entering the market. Research shows that patients in states with CON laws have less access to care, the quality of the care is diminished, and the costs of care are higher. Those states that repealed CON laws have more hospitals and more healthcare facilities per capita.

Representative Proctor said COVID-19 exposed weaknesses in Kentucky's healthcare system. She said there is pressure from some industries to discourage new legislation to repeal CON laws. Many people in Kentucky communities are not even aware of CON. Her constituents have identified repealing CON laws as a top issue, and want healthcare choices.

Responding to a question from Representative Jackson, Ms. Cavanaugh said fewer people will pick a career if there are limited job choices. Representative Jackson said rural hospitals no longer have the finances to meet their needs and are reaching out to larger hospitals to provide services and offer administrative support. Adequate staffing would remain an issue for new hospital facilities.

Alasdair Whitney, Legal Counsel, Institute for Justice, Chicago, Illinois, spoke in favor of CON reform. The Institute for Justice advocates and helps states reform their CON laws around the country. They support the full repeal of CON, or if that is not possible, the repeal of the most detrimental parts.

Mark Schroer, MD, said Eastern Kentucky citizens are not happy with their healthcare. He supports CON law reform, while protecting rural hospitals. He feels insurance and obtaining prior authorizations hinder medical services.

Adjournment

With no further business before the committee, the meeting adjourned at 12:15 p.m.