

Certificate of Need and Post-Acute Care in West Virginia

Debate surrounding Certificate of Need (CON) laws is longstanding in West Virginia. What has been positioned to be an oversight mechanism for healthcare access has proved to be a statewide gatekeeping system. For many, the debates on CON have centered around hospitals. However, with one of the most restrictive CON regimes in the nation, this rigid system extends into hospice, nursing homes, and home health services in West Virginia.

Despite the national scope of CON regulation, the evidence base shaping repeal debates is disproportionately hospital-focused, resulting in a thin and uneven understanding of how CON affects post-acute and long-term care. However, in West Virginia, hospice agencies may also face contested applications and service-area restrictions, home health providers can encounter delayed approvals that affect staffing models and referral patterns, and nursing homes operate under bed-allocations that can slow modernization or prevent new entrants altogether.¹

CON oversight shapes the supply, distribution, and performance of forty-four healthcare services in West Virginia. The following analysis focuses on these competitive distortions, isolating post-acute and long-term care, to clarify how these sectors are uniquely affected and why reforms targeting hospitals alone would overlook critical bottlenecks across the continuum of care.

Hospice Care

Hospice care is designed to support comfort and quality of life for people nearing the end of life. But in many cases, regulatory and administrative hurdles make it hard for patients and families to access those services quickly.

The median length of service for hospice is around 17 days², making care requirements particularly urgent. In states and regions with narrow access to healthcare, availability of this end-of-life care is few and far between. Existing barriers based on geography and cost are only worsened by egregious regulation that prevents more providers from accessing patients asking for the minimum: a death of dignity and comfort, in the best possible way that can be achieved with the support of medical professionals.

In 2022, Washington hospice providers were overwhelmed and patients in Whitman County faced a 12-week wait list³ for the only hospice provider in the area, a cruel irony when average hospice service is under a month.

“Most people would already be dead, if they had to wait that long to be admitted,” Elizabeth Hillman, the director of social work and care coordination at Pullman Regional Hospital told⁴ Northwest Public Broadcasting.

1. West Virginia’s Certificate of Need program requires hospice and home health agencies to obtain state approval before expanding their service areas (W. Va. Code §16-2D-8(a)(11)) and links CON authorization directly to licensing submissions for hospices (W. Va. Code R. §64-54-3.2.b.6). Nursing homes must secure a CON for substantial changes in bed capacity or services (W. Va. Code §16-2D-8(a)(5), (a)(8)). The statutory framework for these requirements is established in W. Va. Code §16-2D.
2. VITAS Healthcare. “How Long Does Hospice Care Last?” VITAS Healthcare, 2023, <https://www.vitas.com/hospice-and-palliative-care-basics/when-is-it-time-for-hospice/quality-hospice-care-takes-time>.
3. Sun, Rachel. “Elusive blessing: Some Washington providers say state certificate hinders hospice care.” Northwest Public Broadcasting, 10 Oct. 2022, <https://www.nwpb.org/2022/10/10/elusive-blessing-some-washington-providers-say-state-certificate-hinders-hospice-care/>.
4. Sun, Rachel. “Elusive blessing: Some Washington providers say state certificate hinders hospice care.” Northwest Public Broadcasting, 10 Oct. 2022, <https://www.nwpb.org/2022/10/10/elusive-blessing-some-washington-providers-say-state-certificate-hinders-hospice-care/>.

Regulated by CON, the state’s Department of Health uses population and “utilization” rates, which are outdated and fail to consider provider admission rates, or lack thereof, to approve applications. Providers are also charged a \$24,666 application fee—between June 2019 and October 2022, the state approved 24 applications and denied 37.⁵ Despite evidence of clear need, bureaucratic control continues to win the day.

A nationwide study⁶ covering nearly 4,900 hospices found that CON states only performed better on 4 of 8 quality measures—hardly a sweeping endorsement. In fact, 86%⁷ of all U.S. hospices operate in non-CON states, many with strong outcomes. Quality is more closely tied to enforcement, staffing, and community engagement, not whether a provider filled out the right paperwork years earlier.

The notion that CON laws ensure access to rural care is outdated and unproven. Rural areas remain underserved nationally, with only 14% of hospices operating in rural communities in 2022.⁸ Hospice care is 44%⁹ less expensive than hospital-based end-of-life care, making it a cost-effective alternative. But under CON, even providers offering more affordable, home-based options can be blocked from entering the market.

Let’s be clear: every hospice patient will die. What varies, however, is the experience of that death. Families deserve the chance to choose the provider that meets their loved one’s emotional, spiritual, and physical needs.

CON laws force them into limited networks. They stall innovation. And they delay relief at the most painful moments in life.

Nursing Homes

Choosing a nursing home is a life transition that often carries significant emotional and financial strain for families. They are a valued piece of long-term care, providing services to those who can no longer live independently. Given the growing share of Americans over 65 who may require such care, estimated at 44% by age 65 and over half by age 85,¹⁰ access, affordability, and quality of nursing home services are a national concern.

States with CON on nursing homes have lower bed capacity, higher prices, and poorer quality of care compared to states without such regulations.¹¹ Amid the COVID-19 pandemic, these capacity limitations translated into higher hospital utilization rates and increased strain on the health system.¹²

5. Sun, Rachel. “Elusive blessing: Some Washington providers say state certificate hinders hospice care.” Northwest Public Broadcasting, 10 Oct. 2022, <https://www.nwpb.org/2022/10/10/elusive-blessing-some-washington-providers-say-state-certificate-hinders-hospice-care/>.
6. “Certificate of Need Laws May Influence Hospice Quality Outcomes.” Hospice News, 27 June 2023, <https://hospicenews.com/2023/06/27/certificate-of-need-laws-may-influence-hospice-quality-outcomes/>.
7. Gaines, Arlen G., and John G. Cagle. “Associations Between Certificate of Need Policies and Hospice Quality Outcomes.” *American Journal of Hospice and Palliative Care*, vol. 41, no. 5, May 2024, pp. 471-478. doi:10.1177/10499091231180613.
8. “Rural Hospice and Palliative Care.” Rural Health Information Hub, updated 15 Sept. 2025, <https://www.ruralhealthinfo.org/topics/hospice-and-palliative-care>.
9. Birnbaum, H. G., et al. “What Does Hospice Cost?” *Journal of Palliative Medicine*, vol. 10, no. 2, 2007, pp. 314-22. PubMed Central, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1651676/>.
10. Spillman, Brenda C., and James Lubitz. “New Estimates of Lifetime Nursing Home Use: Have Patterns of Use Changed?” *Medical Care*, vol. 40, no. 10, Oct. 2002, pp. 965-75. doi:10.1097/00005650-200210000-00013.
11. Rahman, Momotazur, et al. “The Impact of Certificate-of-Need Laws on Nursing Home and Home Health Care Expenditures.” *Medical Care Research and Review*, vol. 73, no. 1, Feb. 2016, pp. 85–105, doi:10.1177/1077558715597161. PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4916841/>.
12. Mitchell, Matthew, and Thomas Stratmann. “The Economics of a Bed Shortage: Certificate-of-Need Regulation and Hospital Bed Utilization during the COVID-19 Pandemic.” *Journal of Risk and Financial Management*, vol. 15, no. 1, 2021, article 10, <https://doi.org/10.3390/jrfm15010010>.

Studies show that in home health care, CON laws can end up doing the opposite of what they intend. States that require these approvals tend to have fewer providers, busier agencies, and sometimes lower quality scores.¹⁵ Limiting market entry reduces travel inefficiencies for providers, modestly constraining per-patient costs, but it also diminishes the incentive to compete on quality and service delivery.

CON rules for nursing homes can indirectly affect home health care. In states that limit nursing home expansion, more patients rely on home health services, creating heavier caseloads and more complex care needs. This shift shows how the two systems are linked and how changes in one area can ripple through the rest of the care network.¹⁶ This substitution effect suggests that nursing home and home health CON regulations operate as interdependent levers shaping long-term care delivery and cost structures.¹⁷ The evidence points to a system where market protection for existing agencies may come at the expense of flexibility, innovation, and timely access to home-based care.

In certain states, such as Georgia, the effects of these regulatory barriers extend even into business valuations. Because obtaining a new CON is so difficult, existing HHAs command exceptionally high acquisition prices, reflecting their protected market positions.¹⁸ CON frameworks not only shape access to care, but also create significant economic ripple effects in the healthcare market.

Cross-Sector Consequences

Over time, CON laws have created a buffer around long-established providers. That protection may help preserve stability, but it also makes it harder for new entrants to compete and for patients to find alternative care options.

In practice, these monopolistic environments stifle new entrants capable of offering lower costs or higher-quality services. The effect is particularly damaging in rural or underserved regions, where limited provider choice can translate directly into reduced access to care.

CON frameworks don't just block new entrants,¹⁹ they stand in the way of smarter, patient-centered solutions like community-based services and telehealth. When CON laws restrict the growth of new facilities or programs, they can unintentionally keep patients tied to institutional settings. This slows progress toward more integrated and community-focused care and undercuts federal cost-saving goals that rely on shifting services away from hospitals and nursing homes. CON regulations can make access to care less equitable. When states restrict new providers, patients with limited income or Medicaid coverage have fewer choices and greater barriers to care. Rural communities are often most affected, as these limits worsen the divide between urban and rural health systems.²⁰ Differences in service capacity across states highlight how these rules can unintentionally deepen inequities.

15. Ettner, Susan L., et al. "Certificate of Need and the Cost of Competition in Home Healthcare Markets." *Home Health Care Services Quarterly*, vol. 39, no. 2, Apr.–June 2020, pp. 51–64. PubMed Central, <https://www.ncbi.nlm.nih.gov/articles/PMC7166169/>.
16. Ettner, Susan L., et al. "Certificate of Need and the Cost of Competition in Home Healthcare Markets." *Home Health Care Services Quarterly*, vol. 39, no. 2, Apr.–June 2020, pp. 51–64. PubMed Central, <https://www.ncbi.nlm.nih.gov/articles/PMC7166169/>.
17. Rahman, Momotazur, et al. "The Impact of Certificate-of-Need Laws on Nursing Home and Home Health Care Expenditures." *Medical Care Research and Review*, vol. 73, no. 1, Feb. 2016, pp. 85–105, doi:10.1177/1077558715597161. PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4916841/>.
18. Stoneridge Partners. "Certificate-of-Need (CON) Laws and Their Effects on Healthcare Business Valuation." Stoneridge Partners, 9 Dec. 2024, <https://www.stoneridgepartners.com/2024/12/09/certificate-of-need-laws-and-their-effects-on-healthcare-business-valuation/>.
19. Rahman, Momotazur, et al. "The Impact of Certificate-of-Need Laws on Nursing Home and Home Health Care Expenditures." *Medical Care Research and Review*, vol. 73, no. 1, Feb. 2016, pp. 85–105, doi:10.1177/1077558715597161. PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4916841/>.
20. Grabowski DC, Angelelli JJ. The relationship of Medicaid payment rates, bed constraint policies, and risk-adjusted pressure ulcers. *Health Serv Res*. 2004;39(4 Pt 1):793–812. doi:10.1111/j.1475-6773.2004.00258.x; Caldwell, B. J. Certificate of Need Regulation in the Nursing Home Industry. MA thesis, University of South Florida, 2021. Digital Commons @ University of South Florida, <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=3469&context=etd>.

CONCLUSION

Across hospice, nursing homes, and home health agencies, the pattern is consistent: West Virginia's Certificate of Need framework restricts the growth, adaptation, and diversification of services that patients rely on at their most vulnerable moments. The result is a system where care availability depends not only on clinical needs or community demand but on regulatory permissions that often lag demographic, economic, and epidemiological realities.

These restrictions do not guarantee quality or equity. Instead, they reduce provider choice, impede innovation, and deepen disparities between rural and urban communities. They shape markets in ways that raise costs and limit flexibility exactly where the health system needs it most: end-of-life care, long-term supports, and home-based alternatives that allow people to refrain from institutional settings.

Reforming CON solely through a hospital-centric lens would miss these broader effects. The interdependence of hospice, nursing homes, and home health services means that bottlenecks in one sector reverberate across the entire continuum of care. Policymakers evaluating CON reform must therefore confront the full scope of its impact, recognizing that sustained access, competition, and patient choice require a regulatory environment capable of accommodating the evolving needs of aging and chronically ill populations.

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