

CERTIFICATE OF NEED IN WEST VIRGINIA

What is a Certificate of Need?

A Certificate of Need, also known as “CON,” is a regulatory review process that requires healthcare providers to obtain state approval before (1) adding or expanding health care services, (2) obtaining medical equipment or (3) developing or acquiring new health care facilities. Originally implemented in 1977, with the goal of improving cost, care, and access, CON laws have historically been shown to do the exact opposite—increasing cost, reducing quality care, and limiting access. **To create a patient-centered healthcare model, West Virginia must repeal Certificate of Need laws.**

Chokepoints in the Process

- **Public Review & Competitor Objections:** Existing providers can leverage regulatory hearings to challenge new entrants.
- **Subjective Need Determination:** The evaluation process often lacks clear, objective standards for applicants, leading to inconsistencies.
- **Appeals & Legal Challenges:** Prolonged appeals can delay projects indefinitely, discouraging new investments.
- **Political Influence:** Decision-making can be swayed by lobbying from entrenched healthcare providers.

How the CON Process Works in West Virginia:

1. **Letter of Intent:** Any new healthcare service or facility must first submit a Letter of Intent to the WV Healthcare Authority (WVHCA) at least 10 days before applying. This must include project details like cost, scope, location, and timeline.
2. **Public Notice:** Within five days of receiving the Letter of Intent, WVHCA notifies the public, allowing competing providers to intervene.
3. **Application Submission:** Providers must submit an extensive application, including board resolutions, financial statements, state health plan compliance, need assessments, and a nonrefundable fee of up to \$35,000.
4. **Insurance Review:** The application is also reviewed by the Office of Insurance Consumer Advocacy.
5. **Completeness Determination:** WVHCA has 10 days to determine if the application meets all requirements.
6. **Competitor Veto:** Any competing provider can request a formal administrative hearing within 30 days to challenge the proposal.
7. **Hearing Process:** If a hearing is granted, WVHCA must hold it within 15 days. Competitors can present arguments, evidence, and cross-examine the applicant.
8. **Decision Timeline:** WVHCA must issue a decision within 45 days if a hearing is held. If uncontested, a decision must be made within 60 days.
9. **Appeal Process:** If denied, the applicant has 30 days to appeal to the WV Office of Judges.

How is need determined?

Determined by the WVHCA’s “CON Standards,” which “generally include population-based quantifiable need methodologies.” The WVHCA also examines “financial feasibility,” reviewing the “evaluation of the reasonableness of proposed charges to patients and the determination as to whether the expense and revenue projections demonstrate fiscal viability for the proposed project.”

Competitor’s Veto: When Does It Happen?

- During the public review phase, competitors can formally oppose applications, arguing that the new facility is unnecessary.
- In West Virginia, competitor opposition often results in denials or long legal battles.

GLOSSARY OF FACILITIES REGULATED BY CON:

Ambulatory Health Care Facility: Provides outpatient services to non-homebound individuals on an outpatient basis.

Ambulatory Surgical Facility: Independent facility offering surgical treatment without hospitalization.

Bed Capacity: The number of beds licensed to a facility, or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

Behavioral Health Services: Inpatient or outpatient care for mental illness or developmental disabilities.

Community Mental Health and Intellectual Disability Facility: Offers emergency, outpatient, inpatient, and educational services for mental health and intellectual disabilities.

Diagnostic Imaging: Uses radiology, ultrasound, and other imaging techniques for diagnosis.

Drug & Alcohol Rehabilitation: Inpatient or outpatient treatment for substance dependency.

Health Care Facility: Public or private entity providing medical services, licensed or unlicensed.

Health Care Provider: Licensed individual authorized to provide medical care.

Health Services: Preventive, diagnostic, treatment, or rehabilitative care.

Home Health Agency: Provides nursing and therapy services to patients at home.

Hospice: Home and inpatient palliative care for terminally ill patients.

Hospital: Licensed facility offering inpatient medical treatment under physician supervision.

Intermediate Care Facility: Provides health services beyond basic room and board but below hospital-level care.

Skilled Nursing Facility: Offers inpatient nursing and rehabilitation for injured, disabled, or sick individuals.

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