

CASE STUDY: HOW CERTIFICATE OF NEED LAWS DELAY CARE AND PROTECT MONOPOLIES



A Battle Over Cardiac Surgery in Southern West Virginia.

In September 2021, **Raleigh General Hospital (RGH)** applied for a **Certificate of Need (CON)** to establish a **cardiac surgery program in Beckley, West Virginia**. The goal was to **increase access to life-saving procedures** for patients in southern West Virginia, where travel distances can be a barrier to timely cardiac care.

However, **Charleston Area Medical Center (CAMC)**—a larger regional provider—challenged the application, arguing that the new program would **reduce patient volume at its own facility** in Charleston. This challenge set off a **multi-year legal battle**, highlighting the deep flaws in CON laws.

Key Issues:

1. Bureaucratic Delays in Approving Needed Services

RGH's application required approval from the **West Virginia Health Care Authority (HCA)**, a government body tasked with determining whether new medical services are "needed."

- Instead of a straightforward approval process, the case turned into a drawn out regulatory fight, delaying service expansion.

- CAMC, an existing provider, leveraged CON laws to block competition, rather than allowing market demand to dictate service availability.
- The legal battle delayed access to cardiac surgery for two years, leaving patients with fewer options for critical care.

Impact: Instead of quickly expanding services, RGH was forced to spend time and resources on legal proceedings while patients continued to travel long distances for surgery.

2. CON Laws Protect Incumbents at the Expense of Patients

One of the central arguments from CAMC was that a new cardiac surgery program at RGH could reduce CAMC's patient volume, threatening its financial stability. However, this argument highlights the anti-competitive nature of CON laws:

- CON regulations allow existing providers to act as gatekeepers, preventing new entrants from entering the market.
- The case was not about whether patients needed better access—it was about whether an existing hospital could stop a competitor from offering services.
- Instead of fostering innovation and access, CON laws were weaponized to maintain a monopoly.

Impact: CON laws do not protect patients—they protect hospital profits by restricting competition.

3. Lack of Transparency in Decision-Making

The **HCA** ultimately ruled in favor of RGH, approving the cardiac surgery program. However, the lack of substance in the ruling is highly problematic:

- No HCA board members attended the hearings, showing a disinterest in the processes of the regulations they claim are important.
- The final decision lacked proper findings of fact and was issued without providing a clear rationale, making it both vulnerable to additional legal challenges and lacking precedent for future decision making.
- The process demonstrated how bureaucratic decision-making is arbitrary and unhelpful for future prospective healthcare providers.

Impact: Decisions about healthcare expansion should be based on market demand and patient outcomes, not on the subjective rulings of a government board with no firsthand knowledge of the case.

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4. Delays in Critical Care Access

While this legal battle played out, patients in southern West Virginia continued facing barriers to cardiac surgery:

- Many patients had to travel over an hour to reach a cardiac surgery center.
- In emergencies, such delays increase mortality rates for heart attack and cardiac arrest patients.
- Had CON laws not been in place, RGH could have implemented the program years earlier, saving lives.

Impact: Regulatory delays in healthcare expansion cost lives. Patients should not have to wait years for access to critical care due to bureaucratic red tape.

Conclusions and Policy Implications

This case illustrates why **Certificate of Need (CON) laws should be eliminated**. Instead of improving healthcare access, CON laws:

- **Protect existing hospital monopolies instead of fostering competition.**
- **Delay the introduction of new medical services, harming patient care.**
- **Create arbitrary and non-transparent decision-making processes.**

If West Virginia did not have CON laws, RGH could have introduced cardiac surgery services immediately, based on patient demand—not government approval.

Policy Recommendation

To promote better healthcare access and innovation, West Virginia should **eliminate Certificate of Need (CON) laws** to allow hospitals to expand based on market demand and encourage competition among hospitals, which leads to lower costs and better services for patients.

This case is a clear example of how **CON laws do more harm than good**. Repealing them would allow hospitals to expand freely, **improving access to care and saving lives**.

About the Cardinal Institute:

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Founded in 2014, the Cardinal Institute for West Virginia Policy, Inc. is a 501c(3) non-profit dedicated to researching, developing, and communicating effective free-market public policies for West Virginia.

Vision - The West Virginia Miracle

The Cardinal Institute envisions an economic turnaround that will transform West Virginia into a beacon of prosperity and hope. For this miracle to occur, it must be built on four pillars: economic freedom, education freedom, worker freedom, and a culture of freedom encapsulated in the state's motto and founding ethos, *Montani Semper Liberi* — Mountaineers Are Always Free.

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