

CERTIFICATE OF NEED REDUCES ACCESS TO RURAL HEALTH



Despite their intent to ensure equitable healthcare access, **Certificate of Need (CON) laws leave many rural patients without care.** A growing body of research shows that patients who live in states with CON laws have less access to healthcare services, especially in rural areas.¹

In fact, states with CON Laws have:²

- » 30% fewer rural hospitals
- » 13% fewer rural ambulatory surgical centers compared to states without these regulations.

This is because, contrary to what proponents claim, CON laws artificially restrict the establishment and expansion of health facilities, effectively limiting care access for rural populations.

Rural Hospital Closures

WV by the numbers³

- » Total rural hospitals closed since 2005: 5 (one in small or isolated rural communities)
- » Total beds lost: 196

Risk of Closures⁴

- » 21% of rural hospitals — 6 — are at immediate risk of closure in the next 2-3 years
- » 36% of rural hospitals — 10 — are at risk of closure in the next 6-7 years

The harmful effects of CON laws are particularly evident in West Virginia, where the approval process for new healthcare facilities is highly restrictive. Former West Virginia Supreme Court of Appeals Justice Larry Starcher, dissenting in a 2005 case, *Family Medical Imaging, LLC v. West Virginia Health Care Authority*, highlighted the detrimental impact of CON laws:

“The decision of the majority affirming the West Virginia Healthcare Authority’s rejection of appellants’ certificate of need application is sure to have a chilling effect on healthcare-related investment and innovation in West Virginia. This is an example of the powerful and wealthy wielding their influence over government regulation. Reading between the lines of technicalities and legalese, this case is simply about protecting the financial interest of Raleigh General Hospital - nothing more, nothing less.”

Moreover, the 2017 Legislative Audit Report on West Virginia’s Health Care Authority highlights the inefficiency of the CON process. Between excessive application fees and delays, the process costs providers and potential providers an estimated \$2.3 million in fees and requires an average of 3.5 months per application. Despite this bureaucratic burden, the growth in healthcare costs continues to outpace the national average, offering no measurable benefit to West Virginians.

“Over the scope of this review, the Legislative Auditor finds that the

CON process has cost providers and potential providers an estimated \$2.3 million in application fees, and an average of three-and-a-half months per application. Meanwhile, the growth in the per capita cost of health care services in West Virginia continues to exceed the national average and rank among the highest rates in the U.S...

Therefore, the Legislative Auditor concludes that West Virginia’s CON program is ineffective in restraining health care costs, and is an unnecessary regulatory burden to providers of health care services in West Virginia. The Legislative Auditor recommends that the Legislature should consider repealing West Virginia’s Certificate of Need Law.”

This is because CON laws restrict access by artificially limiting⁵ the establishment and expansion of health facilities.



CON Withdrawn After Competitor Opposition: \$43.7 million
2017-2020

Proponents of CON laws often claim that these regulations protect providers from competition, allowing them to use revenue from profitable services to offset the costs of charity care or indigent services. **Yet, the evidence contradicts this argument.**⁶

Studies from the U.S. Department of Health and Human Services, Federal Trade Commission, and U.S. Department of Justice Antitrust Division have found no

REPEALING CON LAWS WOULD:

- » Foster innovation
- » Reduce healthcare costs
- » Expand access to care for underserved populations, particularly in rural communities



empirical support for the cross-subsidization claims. In some cases, CON schemes prevent providers from offering low-cost alternatives to hospital care, including birthing centers.

A detailed analysis⁷ of hospital-level data confirms that **CON laws have no significant effect on the provision of uncompensated care**. Even in the 13 states with charity care requirements in place, the reported levels of uncompensated care remained unchanged. Additionally, while Medicaid inpatient days increase slightly in CON states, the effect is minimal and not statistically significant. Rather than fostering access to care for low-income populations, CON regulations hinder innovation and limit cost-effective care options such as birthing centers and ambulatory surgical facilities.

Restrictive need calculations and moratoria on adding new facilities and services exacerbate these issues, particularly in rural areas. For example, West Virginians face limited access to opioid addiction treatment services and other critical care options due to these regulatory barriers.

By preventing providers from addressing urgent healthcare needs, **CON laws ultimately harm the very populations they were intended to protect.**

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About the Cardinal Institute

Mission

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.

For more information, please visit our website: <https://cardinalinstitute.com/>

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