

WVHA

LEGISLATIVE UPDATE

February 11, 2025

Below is an update on the action from today's interim Joint Health Committee Meeting on Certificate of Need (CON). Thank you to WVHA presenters Skip Gjolberg, President, WVU Medicine St. Joseph's Hospital and WVHA Board of Trustees Chair; and David Goldberg, President & CEO, Mon Health, and Executive VP, Vandalia Health, and Vice Chair of the WVHA Board. An archived video stream of the Meeting is available [here](#).

- WVHA remarks focused on the importance of hospitals serving as access points of care for patients across the state and economic drivers as large employers in West Virginia. WVHA emphasized that West Virginia health care is not a free market and noted that 75% of patients are covered by governmental programs that pay below the costs of care. Our payer mix presents a series of challenges including recruiting and retaining providers. WVHA leaders also expressed that CON is not a barrier to expanding health care services and pointed to several hospital investments and future expansion projects from around the State. Further, West Virginia's CON law is achieving its goals of cost-containment, access, and quality: 5th highest number of hospital beds per 1,000; 6th lowest hospital expense per inpatient day; and 13th lowest private insurance spend per covered life. We pointed out that policymakers have helped modernize the program over the last several years with more diagnostic care and that significant changes were made in 2023 exempting from CON "hospital services" provided on a hospital's campus. Also discussed: the evolution of health care to outpatient settings which leads to more efficient care across the State. A link to the WVHA's presentation is available [here](#). Also, please be sure to check out our special [CON Resource Page](#). If you have questions about the resources or need additional information, please contact [me](#).
- The committee heard from Justyn Cox Executive Director of the West Virginia Healthcare Authority, the state regulatory body overseeing the Certificate of Need program. Some of the topics covered included the process, timeframes, and length of the CON approval process. It was noted that the typical processing timeline for a CON application is roughly 60 days from the batch date for the application. Requests for determination of reviewability have a requirement of 45 days; and exemptions are processed as they are received, pending no need for additional information, on a goal of 14 business days or less. Cox

noted that in 2024, there were 36 applications for determination of reviewability and 239 exemptions granted. A link to the Authority's presentation is [here](#).

- Matthew Mitchell Senior Research Fellow, Knee Regulatory Research Center at WVU provided his analysis of the CON program. At the onset, Mitchell provided a disclaimer and said his presentation is based on his own scholarship and research and he is *not* representing the WVU John Chambers College of Business and Economics, WVU or its HealthCare System. He explained that the original goal of CON was to prevent over-providing services such as ambulance services, radiation, hospice, substance abuse treatment services, psychiatric care, and burn care. He claimed the CON process can take months and cost thousands of dollars. According to Mitchell, data from 448 tests associate negative results in CON states, including higher spending per service, diminished availability of services, and diminished quality of service. He stated that hospitals do not close with the repeal of CON. Mitchell's presentation is [here](#).
- Jamie Cavanah, Legal Policy Counsel, for the Pacific Legal Foundation presented her perspective on CON and noted that in the last five years South Carolina, Oklahoma, and Montana have all repealed CON. This year several bills have been introduced across the country to repeal CON and that states are struggling with an aging population and restrictive health care. The Foundation stated that repeal has enabled more hospitals to open and stay open and has allowed for more clinics, which has allowed nurses to complete clinical hours. Follow-up questions from legislators challenged this statement. The Foundation claimed that "cost-shifting" in health care is a myth and that it assumes everyone who needs care is already getting care.
- Finally, Jessica Dobrinsky, Chief of Staff, Cardinal Institute said that CON requires patients to travel farther for care and causes rural areas to struggle with access to care. Patients may travel out of state because it is closer than an in-state hospital. The presenter noted that without CON, hospitals saw higher ratings and that there were lower post-surgery complications. Dobrinsky inaccurately stated that the capital expenditure minimum was \$5 million but in reality, the Legislature increased that to \$100 million in 2023. She also said that CON restricts drug and alcohol rehab but those organizations providing that service are now exempt from CON, except for opioid treatment. Dobrinsky said that there's a lack of behavioral health services due to CON, but the development of behavioral health facilities and services are now exempt. There were also statements about the current birthing center exemption, licensing structure, and staffing needs. The Cardinal Institute presentation is [here](#).

The 2025 Regular Session of the West Virginia Legislature will begin tomorrow. Lawmakers in the West Virginia Senate and House will gavel in for this year's 60-day session at noon, with Governor

Morrissey's *State of the State Address* scheduled for 7 p.m. We can expect to hear the Governor talk about "right-sizing" government through efficiency measures and cost-cutting and it's very likely he'll talk about his support for repealing the Certificate of Need Program. He is also expected to talk about the projected budget shortfall of more than \$400 million for FY 2026. The Governor is attributing the gap to a reliance on one-time revenues and rising costs in health care and education. We'll hear more about these and other priorities tomorrow.

If you have any questions or comments, please contact me at tgregory@wvha.org or 304-545-0128.



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