



# Certificate of Need in West Virginia Healthcare

*Our State & People Depend on it*



WEST VIRGINIA  
HOSPITAL ASSOCIATION

[WVHA.org](http://WVHA.org)

The West Virginia Legislature is again discussing the future of West Virginia's Certificate of Need laws. While some special interest groups champion the idea of repealing CON laws altogether, they do not understand the unique and very real challenges of caring for the citizens of West Virginia. Doing so in a primarily rural setting further complicates the issue. Nor do those encouraging a full repeal of our State's Certificate of Need program fully appreciate the unfortunate realities and complexities of the patchwork of healthcare payments that providers must navigate. **The State's Certificate of Need laws provide some balance to these two stark realities, and its repeal would be a blow to patients across the Mountain State.**

Several healthcare providers outside of West Virginia would welcome the opportunity to enter West Virginia and cherry pick by developing only profitable lines of service at the expense of rural healthcare in WV. These organizations will not roll into West Virginia to build new, full-service hospitals in our most economically depressed areas—they will build same-day surgery centers in more affluent areas that simply cherry-pick the highest-margin surgical procedures catering only to those with the highest-paying health insurance plans. They will also open ambulatory care and "feeder" facilities with the ultimate goal of pushing West Virginia patients out of the state to get more complex healthcare services in their out-of-state facilities. We should not enable these interests to cannibalize this small, yet critically important, patient population or export advanced healthcare services to our border states. In the case of for-profit providers, that margin will go to their shareholders; for other out-of-state providers, that margin will help underwrite their missions in faraway cities and states. Those dollars should remain in West Virginia and flow back into health programs and services for West Virginians.

More traditional hospitals, on the other hand, have a fundamentally different business model, one that is based on mission and meeting the needs of the communities they serve. These West Virginia community-based hospitals provide a full range of services, primarily those operating at a loss. Our hospitals provide those services based on need without regard to the payment source or their standalone economic viability. However, those hospitals can only remain financially viable in our communities by relying on higher-paying services and commercial insurance plans outside of Medicaid, Medicare, and PEIA—all of which pay at or well below the cost of providing those critical services—to help offset the cost. Opening the door to those whose interests are financially motivated and whose focus is on a discrete subset of patients and services undermines the ability of our West Virginia-based hospitals to build

a homegrown system of care that ultimately improves the State's health outcomes and grows services available right here in West Virginia.

West Virginia providers are the best suited to care for our West Virginians and make decisions to support our local communities. We've all seen the disastrous results of out-of-state healthcare entities entering West Virginia without checks and balances— a company based on the West Coast, bought two financially troubled hospitals in West Virginia between 2014 and 2017. One of those acquisitions was able to occur without Certificate of Need review under an exemption added to the CON laws in 2016, and there were no checks and balances in place to confirm their ability to operate and maintain these facilities for the communities they served. By 2020, both hospitals were closed, and thousands of West Virginia jobs were lost in these communities.

Thankfully, one has since reopened due to a West Virginia-based hospital stepping up to the plate, even though the economics and finances suggested otherwise.

I hope this information helps inform your thinking on this critical issue. Our hospital members and I stand ready to meet with you to discuss it in detail. Thank you.

Sincerely,

**Jim Kaufman**

*President and CEO  
West Virginia Hospital Association*





# Healthcare in West Virginia depends on Certificate of Need Laws.



## *What future will we create?*

West Virginia's Certificate of Need laws are essential in protecting local hospitals from being undermined by for-profit, out-of-state providers, ensuring that underserved, rural areas continue to have access to vital healthcare services tailored to community needs.

Without Certificate of Need laws, West Virginia's rural healthcare services face the risk of being overrun by out-of-state, for-profit entities focused on high-margin procedures, potentially leaving local hospitals struggling to serve vulnerable populations and losing access to critical care.



There's a lot of confusion and misunderstanding surrounding Certificate of Need (CON) laws and their impact on healthcare in our state. **Let's break down the facts and set the record straight.**

# Myth vs. Fact

## Regulation & The Free Market

**MYTH:** Eliminating CON will create a free healthcare market.

**FACT:** West Virginia's healthcare system is not a free market, as 75% of hospital payments come from government programs that pay below the cost of care. Removing CON could lead to unintended consequences, such as an influx of for-profit providers focused on high-paying patients while essential services suffer.

**MYTH:** A free market ensures fair access to care.

**FACT:** Under federal law (EMTALA), hospitals must treat all emergency patients regardless of their ability to pay.

## Cost of Care

**MYTH:** Eliminating CON will lower costs and add hospital beds.

**FACT:** Under current CON laws, a hospital in our state can already add inpatient beds without CON review or even filing anything with the West Virginia Health Care Authority. West Virginia already has one of the lowest hospital costs per inpatient day and one of the highest bed counts per capita. Adding beds without demand would drive up costs—each new hospital bed costs around \$1 million to build. Staffing additional hospital beds is one of the most significant challenges for hospitals in West Virginia.

**MYTH:** CON laws raise healthcare costs.

**FACT:** West Virginia ranks 6th nationwide for the lowest hospital expenses per inpatient day.





## Workforce & Quality of Care

**MYTH:** CON laws lower healthcare worker wages.

**FACT:** Low wages are due to the payer mix (Medicare, Medicaid, PEIA), which reimburses below the cost of care, limiting hospitals' ability to offer competitive salaries.

**MYTH:** CON laws lead to worse health outcomes.

**FACT:** West Virginia has high rates of obesity, smoking, and diabetes, which contribute to poorer health outcomes—this is unrelated to CON laws.

## Access to Care

**MYTH:** CON laws limit patient access to necessary services.

**FACT:** Insurance coverage, not CON laws, determines a patient's access to care. Prior authorization requirements are one of the most significant barriers to timely treatment.

**MYTH:** Eliminating CON will expand healthcare services.

**FACT:** Without CON, new providers may focus only on commercially insured patients, pulling resources away from essential services like emergency care, labor and delivery, and rural clinics.

**MYTH:** Removing CON will improve rural healthcare.

**FACT:** Sustainable services require a sufficient patient base. Many rural EMS agencies, which CON does not regulate, struggle financially due to low populations.

**MYTH:** CON laws restrict access to care.

**FACT:** The real issue limiting access to care is a nationwide healthcare worker shortage. Also, private practice physicians in West Virginia can already offer lab and imaging services without CON approval.







## The West Virginia Legislature is considering changes to or possibly repealing the state's Certificate of Need (CON) laws.

These laws regulate establishing and expanding healthcare facilities to ensure services are distributed fairly and sustainably across all areas of our state.

Some policymakers advocate for full repeal, believing it will encourage competition and lower costs. However, they may not fully grasp the complexities of West Virginia's healthcare challenges.

### Risks of Full Repeal

- A repeal could weaken hospitals' ability to plan for West Virginians' long-term healthcare needs and maintain essential but costly services, such as maternity care and mental health services.
- West Virginia has one of the unhealthiest populations in the U.S., with high rates of chronic illness, opioid addiction, and poverty.
- Repealing CON laws could lead to instability, where essential but less profitable healthcare services—such as emergency care, maternity services, and mental health treatment—become harder to sustain.
- The state's largely rural landscape makes it challenging to provide widespread, accessible healthcare.
- A repeal could jeopardize the critical access status of many hospitals in our state. West Virginia has 21 critical access hospitals in the state. For background, critical access status is a designation the federal government gives to ensure that hospitals in the most rural areas receive sufficient funding from the federal government to operate despite the area's

small population, which is known as cost-based reimbursement. One of the primary criteria these hospitals have to meet is that no other hospital is nearby. Without CON laws, our state would not be able to protect these critical access hospitals from having another hospital built within the area. As a result, all of our critical access hospitals would risk losing their current reimbursement from Medicare.

### Threat of Out-of-State Providers

- If CON laws are eliminated, out-of-state, for-profit providers will likely enter West Virginia but not to serve its most vulnerable communities.
- Instead, these companies will target wealthier areas and establish same-day surgery centers focusing on high-revenue procedures, such as orthopedic and cosmetic surgeries.
- Additionally, new ambulatory care facilities could siphon West Virginia patients to out-of-state hospitals for complex care, taking valuable revenue away from in-state providers.
- This would fragment care and divert critical healthcare funding that should be reinvested in West Virginia communities.



## Impact on Local Hospitals

- West Virginia's hospitals operate on a community mission, providing a full spectrum of care, including unprofitable but essential services.
- These hospitals rely on revenue from higher-paying procedures and private insurance to offset losses from Medicaid, Medicare, and PEIA (Public Employees Insurance Agency), which often reimburse below cost.
- If new for-profit competitors cherry-pick the most lucrative services, community hospitals will struggle to stay financially viable, jeopardizing services like trauma care, neonatal intensive care, and behavioral health treatment.
- Losing these hospitals would devastate many rural and low-income communities that depend on them for care.

## Historical Lessons

- The past missteps of out-of-state healthcare companies demonstrate the dangers of eliminating oversight.
- A West Coast-based for-profit healthcare company, acquired two struggling West Virginia hospitals between 2014 and 2017.
- Due to a 2016 exemption from CON laws, this company was able to purchase and operate these hospitals without undergoing a proper review process.

- By 2020, both hospitals were forced to close, leading to massive job losses and leaving thousands without access to critical care.
- Fortunately, one hospital was later reopened thanks to a West Virginia-based healthcare provider stepping in, despite the financial risks.
- This example underscores the importance of maintaining oversight to prevent financially driven entities from exploiting the state's healthcare system.

## Keeping Healthcare Dollars in West Virginia

- Repealing CON laws would allow profits from West Virginia patients to flow to shareholders and healthcare systems in other states instead of reinvesting in local services.
- Locally controlled and community minded hospitals ensure that healthcare dollars stay in West Virginia, funding programs directly benefiting residents.
- Strengthening local healthcare systems support economic stability, provides jobs, and ensures comprehensive care remains accessible.

## Conclusion

### Protecting West Virginia's Healthcare System

- Local healthcare providers are best equipped to understand and serve the needs of West Virginians.
- Removing CON laws could weaken West Virginia's healthcare infrastructure, making essential services harder to sustain.
- Policymakers must carefully consider the long-term impact of repealing Certificate of Need to ensure that all residents—especially those in rural and underserved areas—continue to have access to high-quality healthcare.





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*The West Virginia Hospital Association (WVHA) is a not-for-profit statewide organization representing hospitals and health systems across the continuum of care.*

*The WVHA was founded in 1925 to serve as the collective voice of the state's hospital community. Today, the mission of the WVHA is to support its members in achieving a strong, healthy West Virginia. Members of the Association envision a strong health care system that supports optimizing the health status of West Virginians served by hospitals and improving the economic condition of the state.*