

SB 5920, to lift the state's Certificate of Need requirement for psychiatric hospitals and beds

By Elizabeth Hovde, Director, Center for Worker Rights and Center for Health Care

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Key findings

1. **Washington state has a strict regulatory process that restricts people's access to health services called "certificate of need," administered by Washington state's Department of Health.**
2. **States with certificate of need (CON) laws have higher health care costs and fewer medical services per capita.**
3. **CON laws and regulations are harmful to patients. Congress repealed its CON law decades ago. A dozen states have followed suit.**
4. **CON requirements reduce psychiatric services, and Washington state fails to meet a standard of having a minimum of 50 public psychiatric beds for every 100,000 people. A study from the Treatment Advocacy Center shows Washington state had just 13.3 beds per 100,000 people in 2023.**
5. **Senate Bill 5920, as originally constructed, would have lifted the CON required by the state to add psychiatric hospitals and beds.**
6. **The bill was amended. It would now only extend exemption legislation that was in place through June 2023.**
7. **Even in its watered-down form, a continued exemption of CON law on psychiatric hospitals and beds would improve troubling limitations on psychiatric services and help patients suffering from mental illness.**

Introduction and background

Washington state has a limiting regulatory process that controls increased access to health services called "certificate of need." It is administered by Washington state's Department of Health (DOH).

A hospital, health facility or nursing home that wants to expand or build to provide better services for patients must first apply for permission from the state and receive a certificate of need (CON) or exemption from DOH before proceeding, subject to certain exceptions and limitations. DOH charges a healthy fee for reviewing CON applications and applications for exemptions. The process can take months, delaying patient access to needed medical services.

Federal and state officials originally thought that CON laws would cut the number of health care facilities in a specific area, avoid duplicative services and hopefully help control health care costs. States with CON laws, however, have higher health care costs and fewer medical services per capita. An overwhelming body of medical evidence shows that CON laws are a policy failure.¹

Due to the harm they pose to patients, Congress repealed its CON law decades ago. As of 2022, a dozen states also had fully repealed their CON programs or allowed them to expire. Washington is not among those states.²

One area in which CON law harms Washington state residents is CON related to its psychiatric services. Experts say a minimum of 50 public psychiatric beds are needed for every 100,000 people. Washington state fails to

1 "Conning the competition: A Nationwide Survey of Certificate of Need laws," Institute for Justice, April 19, 2020: <https://ij.org/report/conning-the-competition/>

2 "Certificate of Need State Laws," National Conference of State Legislatures, Updated Jan. 1, 2023: <https://www.ncsl.org/health/certificate-of-need-state-laws>

meet that standard. A study from the Treatment Advocacy Center shows Washington state had just 13.3 beds per 100,000 people in 2023.³

Given the demonstrable need for more psychiatric services in the state, the Legislature allowed exemptions from the CON requirement for increasing psychiatric beds within a hospital in 2014. The one-year exemption allowed was extended by the Legislature in 2017. It was also expanded to include construction, development, or establishment of psychiatric hospitals. Similar extensions were enacted in 2019 and 2021. The Department of Health's ability to grant new CON exemptions related to these psychiatric services expired on June 30, 2023.⁴

Senate Bill 5920

Senate Bill 5920 is being considered by the 2024 Legislature.⁵ If it was advancing as originally constructed, it would have lifted the CON required by the state to add psychiatric hospitals and beds in Washington state.

It was amended, however, to simply extend exemption legislation.

A summary report of the first substitute bill says, "DOH authority to grant certificate of need exemptions which expired on June 30, 2023, is reinstated until June 30, 2028, allowing DOH to grant exemptions for: adding new psychiatric beds to a hospital; changing the use of beds within a hospital to increase the number of psychiatric beds; or constructing, developing, or establishing a new psychiatric hospital. This authority is subject to the same limitations and restrictions as the authority which expired in 2023."⁶

Policy analysis

Washington state needs more psychiatric beds for people suffering with mental illness, and our state's CON requirement is an unnecessary barrier getting in the way. CON laws should be removed completely, in all areas, to increase access and competition to Washington state's system of health care. This compassionate policy has been followed with success in other states, to the benefit of patients in need of care.

A CON requirement is a costly, time-consuming permission slip from the government, influenced by players in the current health care market. It decreases competition while limiting access to health care services.

Legislative leaders in the 2024 legislative session say addressing behavioral health is one of their main priorities. SB 5920 offers lawmakers a chance to make progress toward this goal.

California, Texas and the other states that have repealed their CON laws have not witnessed the dangers predicted by the special interests that currently benefit from CON laws. States with remaining CON regulation continue to deprive patients access to health care choices. They deprive some patients of access altogether. They restrict normal competition and the creation of new services that can help with health care cost containment.

Even in its watered-down form, a continued exemption of CON regulation on access to psychiatric hospitals and beds would improve the state's troubling limitations on psychiatric services.

The anti-competitive and harmful nature of a CON regulation on a vulnerable population is short-sighted and uncaring — especially in a state where leading lawmakers stress that behavioral health is a legislative priority.

Elizabeth Hovde is the Director of the Center for Worker Rights and Center for Health Care.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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3 Treatment Advocacy Center, Washington state numbers, accessed in January and February 2024: https://www.treatmentadvocacycenter.org/map_directory/Washington/#state-psychiatric-hospital-beds-in-washington

4 Senate Bill Report, SB 5920, January 25, 2024: <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bill%20Reports/Senate/5920%20SBR%20HLTC%20OC%2024.pdf?q=20240205110618>

5 Senate Bill 5920, "Lifting certificate of need requirements for psychiatric hospitals and beds," Feb. 5, 2024: <https://app.leg.wa.gov/billsummary?BillNumber=5920&Initiative=false&Year=2023>

6 Ibid.