



## Kentucky Certificate of Need – FAQs

### CON Overview & Background

#### **What is Certificate of Need?**

[Kentucky's Certificate of Need process](#) ensures only the highest quality, most experienced healthcare providers can provide care in our communities. [More than 30 states currently have CON laws.](#)

#### **Why is there support for maintaining Certificate of Need?**

Eliminating or repealing Certificate of Need would severely limit the ability of our safety-net hospital providers like St. Elizabeth to continue delivering quality care to all community members, regardless of their ability to pay.

#### **What is a safety-net hospital?**

Safety-net hospitals aren't legally defined, but in practice, they serve as a last source of healthcare for those who don't have the ability to pay.

#### **What services are required to go through the Certificate of Need process?**

Kentucky requires a CON application for 21 services: inpatient and acute care hospital beds, physical rehab beds, neonatal intensive care, open heart surgery programs, organ transplant programs, nursing home beds, home health agencies, hospice services, residential hospitals, intermediate care for people with disabilities, cardiac catheter labs, PET scans, MRI, ambulance services and ambulatory care services.

#### **What services do not require a Certificate of Need?**

In Kentucky, not all healthcare services require a Certificate of Need. Primary care offices, specialty care offices and urgent care centers are some of the services that do not have to go through the CON process.

#### **Who determines whether to grant a Certificate of Need?**

The Kentucky Cabinet for Health and Family Services carefully reviews each CON application and makes a decision based on community need, quality and other important factors.

If the application is not contested, the Cabinet can decide to approve or reject the application without a hearing. If contested, the application is presented at a hearing before an independent administrative judge with both sides present.

Judges in CON hearings are employed by the Cabinet for Health and Family Services and are not elected or appointed. Appeals of CON decisions go to Franklin County District Court.

#### **Who oversees the CON process?**

The Kentucky Cabinet for Health and Family Services oversees development of the State Health Plan, which independent hearing officers use when reviewing Certificate of Need applications.

The State Health Plan determines which healthcare services are governed by CON and is updated annually based on public input.

*Learn more at [kyforqualitycare.org](http://kyforqualitycare.org)*



### **What criteria is considered as part of the CON application process?**

CON applications look at five criteria:

1. Consistency with the [State Health Plan](#), which is updated annually based on public input
2. Community need
3. Interrelationships and linkage with other healthcare providers
4. Costs, economic feasibility and resource availability
5. Quality

### **Are CON decisions based on population?**

Yes, demographics of the area served are considered.

### **Which services should maintain a Certificate of Need?**

Healthcare services that are complex in nature and require minimal volumes to maintain quality and competency should remain regulated by CON to ensure quality care and better patient outcomes.

## **Non-CON States**

### **How do other states without CON like Indiana and Ohio still manage to have profitable and equitable hospitals?**

Costs for care in other states are higher, and many don't have the ability to invest in services that benefit the entire community such as addiction treatment.

### **Cincinnati's healthcare system seems to work fine without CON – why?**

Three of the health care systems in Cincinnati—TriHealth, Christ and Mercy—do not serve as many people with Medicare, Medicaid or no insurance as St. Elizabeth does. Those patients are referred to UC Health or Cincinnati Children's, who are supported by a county-wide tax levy to care for the underserved. In Northern Kentucky, St. Elizabeth provides that safety-net service.

### **What has happened in states that have repealed/eliminated Certificate of Need?**

Florida dropped the Certificate of Need requirement in 2019 and, [as reported by USA Today](#), now has too many healthcare facilities popping up in the same areas, particularly in affluent communities, while people in more rural areas must travel hundreds of miles for care. This disparity impacts health care staffing and leads to higher healthcare costs.

Kentucky's Certificate of Need process helps to protect our communities against these problems.

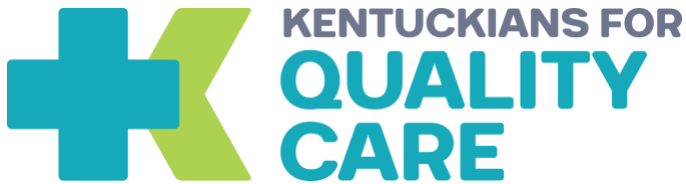
## **The Facts About CON**

### **Why would it be a bad thing to let other providers enter the Northern Kentucky market?**

Certificate of Need doesn't prevent other providers from entering the market. However, without Certificate of Need, outside operators could come into our communities, cherry pick only the most profitable services with the highest reimbursement rates and offer them only to individuals with private, commercial insurance.

When this happens, as we've seen in states without a CON process, it creates an unlevel playing field that leads to excess medical capacity and higher healthcare costs, while hurting access to critical, lifesaving care.

*Learn more at [kyforqualitycare.org](http://kyforqualitycare.org)*



**You've said that if CON goes away, other providers could enter the market and cherry pick only the most profitable services. Could another safety-net hospital come in?**

While that is possible, it's unlikely. Healthcare systems typically aren't going to launch new services unless they foresee them being profitable. Providing safety-net services is not profitable.

**Northern Kentucky used to have several hospitals in the area. How did it work back then?**

Northern Kentucky had multiple hospital systems as recently as 2008, when St. Luke operated in Fort Thomas and Florence as part of the Health Alliance. This arrangement led to a lack of investment in services in Northern Kentucky. Ultimately, the St. Luke board decided to exit the Health Alliance and approached St. Elizabeth about a merger.

Similar scenarios played out in Grant County and Dearborn County, Indiana, where local leaders found that the needs of the community would be best served as a part of St. Elizabeth.

**If CON increases quality, why does our state continually rank among the worst states for health?**

Health outcomes don't always reflect the quality of care delivered. Kentucky's poor health outcomes are largely due to lifestyle choices (e.g., tobacco use and obesity) and are not necessarily a reflection of care quality.

**What percentage of Northern Kentucky patients go to Ohio for care?**

About 20 percent. Often those decisions are based on existing relationships with providers. People in NKY do have a choice for healthcare.

**Of the 12 to 14 hospitals that are anticipated to close if CON is repealed (per the Ascendient report), are any operated by St. Elizabeth?**

No, but St. Elizabeth would be impacted in other ways.

**How do you propose "modernizing" or reforming CON?**

St. Elizabeth has committed to Senate and House leadership to work together with the Kentucky Hospital Association over the interim period to continue modernization efforts, which could include further simplification of the process and reduction of the number of services governed by CON.

**Why do outside interest groups care about this issue?**

Outside interest groups have misleadingly framed CON as a free market issue and a matter of choice in healthcare. However, healthcare providers don't actually operate in a free market, as most of our revenue is determined through fixed reimbursement rates determined by the federal government.

We encourage lawmakers to look past the misguided and misinformed rhetoric being pushed by outside groups and learn how CON impacts Kentucky healthcare from an organization that truly understands it.

**Why is the CON issue being taken up at the city council level?**

To try and generate momentum, outside interest groups have taken the CON issue to city councils in Northern Kentucky and urged them to pass resolutions supporting the repeal of CON. These are nonbinding resolutions, and city councils don't have legal jurisdiction over the CON process.

This is part of an effort to try and show state legislators, who *can* make legislative decisions over CON, that there is support for repealing CON and to garner attention for the issue.



**Is there broad support for repealing Certificate of Need?**

No. In fact, the majority of Northern Kentuckians are not familiar with Certificate of Need, which is why St. Elizabeth has launched the Kentuckians for Quality Care initiative to help educate them and ensure they know the facts.

**Are proponents of Certificate of Need opposed to competition in healthcare?**

No, but competition only works when all elements of a “free market system” are present. When the federal government determines most of your revenue through fixed reimbursement rates, that’s not a free market. As a CMS 5-star rated hospital, St. Elizabeth competes every day to be the best in the region, state and nation in terms of quality and patient experience, and the results are evident.

**How does Certificate of Need impact choice in healthcare?**

Northern Kentuckians have many choices today when deciding where to receive their healthcare. The vast majority of care is delivered in an office or outpatient setting, and there are dozens of independent and Cincinnati hospital-affiliated physician offices, imaging services and surgery centers located throughout our region.

As of April 2023, Northern Kentucky counties (Boone, Kenton and Campbell) have 109 healthcare service locations offering at least one service requiring a Certificate of Need. Just 19 of these service locations are associated with St. Elizabeth. A map of service locations can be found on our website: [kyforqualitycare.org](https://www.kyforqualitycare.org).

**Does St. Elizabeth have a monopoly over the NKY healthcare industry?**

No, Northern Kentuckians have many choices on where to receive their care. As of April 2023, Northern Kentucky (Boone, Kenton and Campbell counties) has 109 healthcare service locations, 19 of which are associated with St. Elizabeth, that offer at least one of the 21 services requiring a CON.

The healthcare services in Northern Kentucky requiring a CON that only St. Elizabeth provides are acute care hospitals, emergency departments, open heart surgery, neonatal intensive care, PET, radiation therapy and cardiac catheterization. These are complex services that should be more closely regulated to ensure safe, quality care.

**Does CON create barriers to new jobs?**

No. There are currently thousands of unfilled healthcare jobs in the Greater Cincinnati market and not enough people to fill them. Any new provider in Northern Kentucky would be challenged to hire the staff for a new facility. Labor costs would also increase due to the need to take staff from existing providers.