

About Americans for Prosperity Foundation

Americans for Prosperity Foundation is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.

About The Authors

<u>Kevin Schmidt</u> is Director of Investigations at Americans for Prosperity Foundation. His work focuses on health care, veterans' issues, corporate welfare, and immigration. He is also a cofounder and contributor to <u>FOIA Advisor</u>, a forum designed to help the public learn more about the federal Freedom of Information Act. His work has been featured in the Wall Street Journal, New York Post, Arizona Republic, and Washington Examiner.

<u>Thomas Kimbrell</u> is an analyst on the Legal and Judicial team at Americans for Prosperity Foundation whose work focuses on health care, criminal justice reform, and government transparency. Previously, Thomas worked as an investigative analyst at Cause of Action Institute, where he utilized oversight tools such as the FOIA to limit the administrative state's power and check government overreach.

September 2022

"CON laws have failed to produce cost savings, higher quality healthcare, or greater access to care, whether in underserved communities or in underserved areas... the evidence suggests CON laws are ineffective. There is no compelling evidence suggesting that CON laws improve quality or access, inefficiently or otherwise... Evidence also fails to support the claim that CON programs would increase access to care for the indigent, or in medically underserved areas."

[–] Reforming America's Healthcare System Through Choice and Competition. A joint <u>report</u> by the U.S. Department of Health and Human Services, U.S. Department of the Treasury, and U.S. Department of Labor (December 3, 2018)

Executive Summary

Certificate of need ("CON") laws in West Virginia are harming patients who need medical care while deterring new jobs and health care investment in the state. It's a bad deal.

Health care entrepreneurs in West Virginia face serious barriers to entry: thousands of dollars in application fees, potential litigation from their competitors, moratoriums on specific sectors, and the burden of navigating the process to gain approval. The CON statute empowers competing providers to challenge other providers' CON applications, driving out health care investment. From 2017–2020, healthcare entrepreneurs withdrew at least 20 applications totaling \$43.7 million in proposed capital expenditures after competing providers filed for "affected person" status to oppose the CON application.

While providers parry opposition to gain CON approvals, patients pay the price. Research indicates West Virginia's CON laws increase costs for patients and decrease quality of care. Restrictive need calculations and moratoria on adding new facilities and services, such as opioid addiction treatment, leave many West Virginians with reduced access to critical care, especially in rural areas.

"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."

- Former West Virginia Supreme Court of Appeals Justice Larry Starcher's <u>dissent</u> in a 2005 case in which the majority affirmed the denial of a CON application. In re Family Med. Imaging, LLC v. W. Va. Healthcare Auth., 624 S.E.2d 493, 500 (W. Va. 2005). Imagine rushing to the closest hospital with a heart attack and being told you need to be transferred to another facility because the State of West Virginia has not authorized that hospital to treat cardiac emergencies. But the other facility cannot see you because they are full—or you cannot get there because an emergency medical vehicle is not available to transport you. For some patients in West Virginia, this scenario became reality due to little-known certificate of need ("CON") laws.

West Virginia's CON program requires health care providers to receive permission from the state Health Care Authority ("HCA") before adding or expanding health care services, building or acquiring new facilities, or incurring capital expenditures with a value of \$5,803,788 or more. The HCA claims CON is a "regulatory element" to "control care costs, improve the quality and efficiency of the health care system, encourage collaboration and develop a system of health care delivery which makes health services available to all residents of the State."

Americans For Prosperity Foundation's ("AFPF") review of West Virginia's CON program, including an analysis of CON applications submitted from 2017–2020,³ finds West Virginia's CON program fails to meet the HCA's stated goals. In fact, CON is a scheme to protect incumbent care providers from competition by limiting the supply of health care in the state at the patients' expense.

Providers Fight for Government Favor

Rather than "encourage collaboration," CON laws pit providers against each other to fight for the government's favor. The CON statute empowers providers to challenge others' CON applications, delaying or preventing approval. This competitor's veto drives out health care investments that would have happened without CON.

Wielding "affected person" status, competing health care providers can oppose other providers' CON applications, potentially adding years of litigation, arduous discovery requests, and thousands of dollars in fees for attorneys, consultants, and expert testimony. For example, the HCA approved West Virginia University's CON application to open a mobile lung cancer screening program known as "LUCAS." The service was set up so "donations would cover a significant portion of the operating costs, allowing WVUH

to screen individuals who have no insurance and are unable to pay for the services." However, a competitor <u>litigated</u> the decision, putting operations in limbo for years.⁵

Similarly, one hospital applied to add cardiac care services to its offerings. West Virginia has the highest prevalence of heart attacks of any state in the nation.⁶ A competing hospital that already received transfer patients for cardiac emergencies opposed the application even though evidence showed the competitor was often unable to accept patients in a timely manner.⁷ Cardiac patients have a much higher chance of survival if they receive treatment in the first "golden hour" following a cardiac event.⁸ Here again, the CON program needlessly delayed the provision of critical care services for West Virginians, potentially putting lives at risk.

The HCA evaluates CON applications based on several criteria, including "the determination of need, consistency with the State Health Plan, and financial feasibility." One would think that an "affected person" would have to oppose a CON application based on those same criteria. However, two incumbent home health agencies' recent objection to a competitor's CON applications was much pettier.

The incumbent providers argued that a section of text in the home health standards did not apply because the conclusion—the threshold for unmet need for home health services—was indented further left than the preceding text. ¹⁰ The litigation, taken all the way to the Supreme Court of Appeals, pushed final approvals of the challenged projects nearly three years for one and four years for the other.

4.	CALCULATION OF THE THRESHOLD (ADJUSTMENT FACTOR) (This calculation is done only if there are agencies in the proposed county which received CON approval in the previous 12 months.)
	Formula a - b = c a. List the current county home health recipients below state rate (3.c) b. Subtract adjustment factor for agencies receiving CON approval in previous 12 months. c. Number above threshold adjustment.
Conclusion: If the	: threshold is at least 229 projected home health recipients, an unmet need exists.

In many cases, aspiring providers conclude the costs of overcoming opposition are too great. From 2017–2020,

¹ Certificate of Need, W. V. Health Care Auth., https://hca.wv.gov/certificateofneed/Pages/default.aspx (last visited June 23, 2022).

² *Id*.

 $^{^3}$ Id

⁴ Charleston Area Med. Ctr. v. W. Va. Health Care Auth., No. 19-AA-166 (Cir. Ct. Kanawha Cty. Mar. 15, 2022), available at https://bit.ly/3OxGKGQ.

⁵ *Id*.

⁶ Raleigh Gen. Hosp. v. W. Va. Health Care Auth., No. 20-AA-35 (Cir. Ct. Kanawha Cty. Sept. 17, 2020), available at https://bit.ly/3yfULUg.

⁷ Id.

⁸ Id

⁹ Supra note 1.

¹⁰ Amedisys W. Va., LLC v. Personal Touch Home Care of W. Va., Inc., 859 S.Ed.2d 341 (W. Va. 2021).

healthcare entrepreneurs withdrew at least 20 CON applications totaling \$43.7 million in proposed capital expenditures after rival providers filed for "affected person" status.

\$43.7 MILLION

health care investment withdrawn after opposition from competing providers

And just last year, at least three more applications were withdrawn after competitors filed for "affected person" status. CON application fees are non-refundable, so these companies decided it was better to forfeit thousands of dollars than continue through the CON process when faced with competitor opposition.

Indeed, applying for a CON is an expensive and time-consuming process. Application fees range up to \$35,000. That does not include the cost of hiring consultants and lawyers to navigate all the red tape to gain approval. While costly for providers, fees generate a lot of revenue for the state. AFPF's analysis of CON applications submitted from 2017–2020 estimates that the state raked in over \$1 million in CON application fees.

"Winning approval for a CON application is often a time consuming and difficult undertaking."

 A <u>consulting firm</u> that advertises assistance with CON applications in West Virginia

Patients Pay the Price

While providers parry opposition to offer services, patients pay the price. The HCA claims CON programs "are often associated with cost containment measures," but scholarly research shows otherwise. Numerous studies find higher costs for health care in states with CON laws, while costs have fallen in states that repealed their CON laws. The Mercatus Center estimates that West Virginians would spend about \$232 less per person per year on health care in the absence of CON. 13

Certificate of need schemes try to control health care spending by limiting the supply. However, doing so drives up costs while reducing access to and quality of care. Mercatus also estimated that without CON laws the Mountain State would have 26 additional hospitals and approximately half of those would serve rural areas. ¹⁴ Research also indicates patients in West Virginia would experience lower mortality and readmission rates after heart attacks and heart failure. ¹⁵

West Virginia has 44 CON requirements regulating health care services and facilities, which is among the most of any state in the nation. On top of that, the state maintains five moratoria. With few exceptions, the state does not allow:

- adding intermediate care beds,
- adding beds in an intermediate care facility for individuals with an intellectual disability,
- adding skilled nursing beds,
- developing, constructing, or replacing a skilled nursing facility, or
- opening opioid treatment programs.

In fact, West Virginia is the only state with a CON moratorium for opioid treatment facilities, despite being the epicenter of the opioid epidemic.¹⁷ Since 2010, West Virginia has had the highest drug overdose death rate of any state in the nation, by far.¹⁸ In 2020, 81.4 people per 100,000 in the state died from drug overdose, which is 65% higher than the state with the next highest death rate.¹⁹

 $^{^{11}}$ Supra note 1.

¹² James Bailey, Can Health Spending Be Reined In through Supply Constraints? An Evaluation of Certificate-of-Need Laws (Mercatus Ctr. at George Mason Univ. Working Paper, 2016), available at https://www.mercatus.org/system/files/Bailey-CON-v1.pdf.

¹³ Matthew D. Mitchell, West Virginia's Certificate-of-Need Program: Lessons from Research (Mercatus Ctr. at George Mason Univ. Policy Brief, 2021), available at https://www.mercatus.org/system/files/mitchell - policy brief - con reform in west virginia - v1.pdf.

¹⁴ Id.

¹⁵ Id

¹⁶ Inst. for Justice, Conning The Competition: A Nationwide Survey of Certificate of Need Laws at 189 (Aug. 2020), *available at* https://ij.org/wp-content/up-loads/2020/08/Conning-the-Competition-WEB-08.11.2020.pdf.

¹⁷ Rachel Merino et al., The Opioid Epidemic in West Virginia, 38 The Health Care Manager 187 (2020), available at https://journals.lww.com/healthcaremanagerjournal/Abstract/2019/04000/The Opioid Epidemic in West Virginia.12.aspx.

¹⁸ A Public Health Emergency: State Efforts to Curb the Opioid Crisis: Hearing Before the H. Comm. on Energy & Commerce Subcomm. on Oversight & Investigations, 116th Cong. (2020) (testimony of Christina Mullins), available at https://www.congress.gov/116/meeting/house/110367/witnesses/HHRG-116-IF02-Wstate-MullinsC-20200114.pdf.

¹⁹ West Virginia Key Health Indicators, Ctr. for Disease Control & Prevention, https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning. htm (last visited June 28, 2022).

²⁰ A. Toni Young, *Overturning Opioid Treatment Moratorium a Must*, Charleston Gazette-Mail (Feb. 8, 2022), https://www.wygazettemail.com/opinion/op_ed_commentaries/a-toni-young-overturning-opioid-treatment-moratorium-a-must-opinion/article_0874452b-ed44-5313-a3c2-913fcf4bca29.html.

The moratorium is especially harmful to rural residents. CON proponents commonly argue that CON laws are necessary to ensure rural residents have access to care but the reality is CON laws reduce rural access.

As a result of the legislative moratorium, the state allows only nine opioid treatment centers throughout our entire state. For people living in most rural areas, this has become a massive barrier to treatment and recovery.

The average person may have to drive hours to access treatment. The moratorium is counter to what is needed to treat people and heal people with active addiction while keeping families and communities intact. 20

 A. Toni Young, founder and executive director of the Community Education Group

In addition to moratoria, the HCA's restrictive need-calculations—*i.e.*, arbitrary formulas, some dating back to the early 1990s, the state uses to determine whether more facilities, beds, or services are *needed*—also hamper smaller communities in need of other services, like behavioral therapy. Preston County is in "dire need of therapists for mental behavioral health" with a "six-month-plus waiting list to see therapists" but the <u>time and cost</u> to obtain a CON is slowing down efforts to add more therapists in the county.²¹

CON is Inefficient and Monopolistic

The HCA has argued that the agency denies few CON applications;²² however, the true value of forgone health care investment is hidden. The costs of application fees, lawyers, and consultants, combined with moratoria, restrictive and arbitrary need calculations, and the threat of opposition preclude many providers from even applying for a CON to begin with.

A <u>recent report</u> from the Cardinal Institute notes that West Virginia's CON law allows a few providers to dominate the health care market, keeping costs high.²³ The Antitrust Division of the U.S. Department of Justice has long criticized certificate of need laws across administrations from both political parties.²⁴ The agency notes that "incumbent providers have sometimes entered into anticompetitive agreements that were facilitated by the CON process."²⁵

In fact, two such cases of anticompetitive corruption from the CON process happened right here in West Virginia.

In one case, "a hospital in Charleston, West Virginia weaponized the threat of objection during the CON process, and the potential ensuing delay and cost, to induce another hospital seeking a CON for an open-heart surgery program not to apply for it at a location that would have well served Charleston consumers." ²⁶

In the other, "two closely competing hospitals agreed to allocate certain health care services among themselves. The informal urging of state CON officials led the hospitals to agree that just one of the hospitals would seek approval for an open-heart surgery program, while the other would seek approval to provide cancer treatment services." ²⁷

In these cases, West Virginia hospital providers joined in anticompetitive agreements rather than endure the time and costs of CON challenges and litigation. Both cases ended with the offending hospitals entering consent decrees with the Antitrust Division prohibiting anticompetitive conduct in the future.

In 2017, Alecto Healthcare Services ("Alecto") filed for a CON to purchase Ohio Valley Medical Center ("OVMC"). The 200-bed facility in Wheeling, West Virginia was in financial distress and in danger of going under. Alecto withdrew its CON application after Wheeling Hospital filed for affected person status. Later that year, the governor signed legislation passed by the state legislature exempting OVMC—and other "financially distressed" hospitals—from CON laws so Alecto could complete the purchase. ²⁸

Also in 2017, the state legislature passed a law allowing school nurses and other authorized personnel to administer opioid antidote to students and staff who overdose,²⁹ despite leaving in place the moratorium on opioid treatment facilities.

These piecemeal exemptions highlight the inefficiencies inherent to CON programs. In both cases, the state legislature had to pass special laws to circumvent harmful outcomes from CON restrictions.

²¹ Kathy Plum, *County resident asks commissioner to help bring therapists to Preston*, The Preston County News & Journal (Mar. 11, 2022), https://www.wvnews.com/prestoncountynews/news/county-resident-asks-commissioners-to-help-bring-therapists-to-preston/article_617cd712-a08b-11ec-9004-ab43a0b7f011.html.

²² Steven Allen Adams, *House committee votes against Certificate of Need repeal*, The Parkersburg News & Sentinel (Feb. 2, 2022), https://www.newsandsentinel.com/news/local-news/2022/02/house-committee-votes-against-certificate-of-need-repeal/.

²³ Jessica Dobrinsky, Cardinal Inst. for W. Va. Pol'y, Convicting Con: Putting West Virginia's Certificate of Need Laws on Trial at 18 (2022), available at https://www.cardinalinstitute.com/app/uploads/2022/01/Convicting-CON.pdf.

²⁴ See, e.g., Press Release, Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250, U.S. Dep't of Justice & Fed. Trade Comm'n (Jan. 11, 2016), available at https://www.justice.gov/att/file/812606/download (detailing the lengthy application, hearing, and appeal process in South Carolina).

²⁵ Press Release, Joint Statement of the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission Before the Illinois Task Force on Health Planning Reform, U.S. Dep't of Justice & Fed. Trade Comm'n (Sept. 15, 2008), available at https://www.justice.gov/archive/atr/public/press_releases/2008/237153a.pdf.

²⁶ Id.

²⁷ Id

²⁸ Metronews Staff, California company completes purchase of Wheeling's Ohio Valley Medical Center, Metronews (June 2, 2017), https://wvmetronews.com/2017/06/02/california-company-completes-purchase-of-wheelings-ohio-valley-medical-center/. Note, Ohio Valley Medical Center closed in 2019.

²⁹ West Virginia law authorizes opioid antidotes at school, EMS1 (Apr. 15, 2017), https://www.ems1.com/opioids/articles/wva-law-authorizes-opioid-antidotes-at-schools-nZ9aX-mX5mXuUzYdL/.

Conclusion

In 1974, Congress mandated states establish CON laws to receive federal health care funds. Along with 48 other states, West Virginia complied. Congress later repealed the federal mandate in 1986 after CON laws proved ineffective at achieving their goals. Since then, 14 states have revoked their CON laws completely. Recently, in the face of mounting evidence against CON, multiple states have made changes to deregulate or eliminate CON programs:

- Tennessee exempted several services from CON in a reform bill signed in 2021.
- Montana <u>reformed its CON law</u> in 2021 to only cover long-term care facilities.
- Florida <u>eliminated CON requirements</u> for numerous services in 2019.
- New Hampshire legislation from 2012 <u>phased out</u> the state's CON program in 2016.

West Virginia's CON laws harm patients and health care providers. Health care entrepreneurs face serious barriers to entry: thousands of dollars in application fees, political and public opposition from competitors, and the burden of navigating the arduous approval process. All while patients in West Virginia pay higher costs for reduced access and lower quality care. Not only is West Virginia losing jobs as a result of CON, it may also be losing lives.

"[T]he 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."

- 2017 Report from the Legislative Auditor's Office

Fact-Checking the West Virginia Health Care Authority on Certificate of Need

HCA says: "The CON program does not cause inappropriate delays."

FALSE. The CON program allows competitors to draw out the process for years through appeals and litigation.¹

HCA says: "CON protects rural health safety net hospitals"

FALSE. According to the <u>University of North Carolina Sheps Center for Health Services Research</u>, the number of rural hospitals in West Virginia declined by five since January 2005 despite the CON law being in place.² No scholarly research indicates that CON laws protect rural hospitals and the few studies that look at the issue conclude CON is associated with fewer rural hospitals and medical facilities.³

States are beginning to acknowledge that CON laws harm rural areas and are moving to exempt them from CON requirements. According to the National Conference of State Legislatures: "Maine and Oregon exempted rural hospitals from their CON laws, and Georgia waived the requirement that rural hospitals pay a fee when applying for CON approval. Washington enacted legislation in 2020 removing rural health clinics from the list of facilities under CON purview."

HCA says: "The CON program helps control health care costs."

FALSE. According to a joint study from the Federal Trade Commission ("FTC") and the Antitrust Division of the Justice Department: "The evidence to date, however, suggests that CON laws are frequently costly barriers to entry for healthcare providers rather than successful tools for controlling costs or improving healthcare quality. Based on that evidence and their enforcement experience, the

two federal antitrust agencies—the FTC and the Antitrust Division of the Justice Department—have long suggested that states should repeal or retrench their CON laws."5

Further, Mercatus Center's Matthew Mitchell finds, "By limiting supply, CON regulations increase per-service and per-procedure healthcare costs. Even though CON regulations might reduce overall healthcare spending by reducing the quantity of services that patients consume, the balance of evidence suggests that CON laws actually increase total healthcare spending. James Bailey's research suggests that a West Virginia without CON laws would spend about \$232 less per person per year on healthcare."

HCA says: "Denials of CON applications are rare, with only one denial being offered in the last couple of years."

MISLEADING. The CON program inherently precludes applications and artificially decreases health care investment in the state by:

- 1. Maintaining a moratorium on adding new facilities or services in five areas—meaning the applications won't even be considered (with some exceptions).⁷
- 2. Allowing competitors to shut down competition by threatening appeals and litigation. From 2017– 2020, health care entrepreneurs withdrew 20 applications totaling \$43.7 million in proposed capital expenditures after incumbent providers filed for "affected person" status to oppose the CON application.⁸

So, while the official rate of denials on *submitted* CON applications is small, the program itself actively discourages—or outright bars—attempts to expand health care services for West Virginians.⁹

¹ Kevin Schmidt & Thomas Kimbrell, Ams. for Prosperity Found., Permission to Care: How West Virginia's Certificate of Need Laws Harm Patients and Stifle Health Care Innovation (2022).

² Rural Hospital Closures, UNIV. OF N.C. SHEPS CTR. FOR HEALTH SERV. RESEARCH, https://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/ (last visited June 13, 2022).

³ Matthew D. Mitchell, Certificate-of-Need Laws: How They Affect Healthcare Access, Quality, and Cost, Mercatus Ctr. at George Mason Univ. (May 21, 2021), https://www.mercatus.org/Certificate-of-Need-Laws-How-They-Affect-Healthcare-Access-Quality-and-Cost.

⁴ Jack Pitsor & Anna Parham, Repeal or Retool? States Assess Certificate of Need Laws, Nat'l Conf. of State Leg. (Jan. 12, 2022), https://www.ncsl.org/research/health/repeal-or-retool-states-assess-certificate-of-need-laws-magazine2022.aspx.

⁵ Dep't of Health & Human Servs. *Et al.*, Reforming America's Healthcare System Through Choice and Competition at 50 (2018), *available* at https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf.

⁶ Matthew D. Mitchell, West Virginia's Certificate-of-Need Program: Lessons from Research at 6 (Mercatus Ctr. at George Mason Univ. Policy Brief, 2021), available at https://www.mercatus.org/system/files/mitchell - policy brief - con reform in west virginia - v1.pdf; see James Bailey, Can Health Spending Be Reined In through Supply Constraints? An Evaluation of Certificate-of-Need Laws (Mercatus Ctr. at George Mason Univ. Working Paper, 2016), available at https://www.mercatus.org/system/files/Bailey-CON-v1.pdf.

⁷ W. VA. Code § 16-2D-9.

⁸ Supra note 1.

⁹ *Id*.

CON CASE STUDY: LUCAS' Four-Year Saga to Screen for Lung Cancer

West Virginia's certificate of need ("CON") program actively hinders the development of health care options, in some cases causing delays of more than four years, for residents suffering from terrible, often fatal ailments for which early detection through testing is vital. Early detection makes lung cancer "easier to treat and cure, thereby decreasing the human and economic impact of lung cancer for West Virginians." According to 2021 American Lung Association data, West Virginia is last among all states with significantly higher rates of smoking and cases of lung cancer. An estimated 1,190 West Virginians will die from lung cancer in 2022. Despite this obvious and growing need, the CON process makes gaining approval to provide testing and care for lung cancer an arduous and drawn out endeavor, during which competitors can add years and thousands of dollars in unnecessary costs.

In 2018, the West Virginia University Cancer Institute announced its intent to launch "LUCAS," a mobile lung cancer screening program for the "42 West Virginia counties that do not currently have access to a Medicarecertified lung cancer screening provider." LUCAS' purpose is to detect lung cancer earlier, when it's easier to treat. The project is partly funded by donations so "[n]o eligible West Virginian will be turned away due to lack of insurance or inability to pay. Grant funds and donations are available to pay for lung cancer screening for those without insurance coverage."

The HCA granted a CON for the project in 2019 over two competitors' objections. One competitor then embroiled the project in appeals before the Office of Judges and the Circuit Court of Kanawha County. Ultimately, the Circuit Court affirmed the CON in March 2022. But, because of the monopolistic nature of the CON process, the launch of the LUCAS project was unnecessarily in limbo for three years and saddled with thousands of dollars in legal costs.

FEBRUARY 2018 HCA receives initial CON application **MARCH 2018** HCA deems the application complete WVUH withdraws application **APRIL 2018** HCA receives a letter of intent **JULY 2018** from WVUH **JULY 2018** WVUH announces mobile lung cancer screening program HCA receives CON application **JULY 2018** OCTOBER 2018 HCA deems the application complete November 2018 Charleston Area Medical Center ("CAMC") requests to be recognized as an "affected party" and asks for an administrative hearing November 2018 Parties engaged in discovery **MARCH 2019** Hearing held **May 2019** HCA grants a CON for WVUH

MAY 2019

JUNE 2019

HCA grants a CON for WVUH

CAMC files a Request for Review with the Office of Judges

NOVEMBER 2019

Office of Judges affirms HCA decision

CAMC appeals to the Circuit Court of Kanawha County

SEPTEMBER 2021 LUCAS begins screening patients for lung cancer despite ongoing litigation

MARCH 2022 Circuit Court of Kanawha County affirms the Office of Judges' decision

LUNG CANCER SCREENING UNIT

