Delaware’s health care certificate of need system needs modernization and reform, but it provides important value for our community, and should not be eliminated.

Delaware health care policies must always ensure access to affordable, high-quality care to everyone in our state. The Certificate of Public Review process (Delaware’s CON) is an important tool that shields the most vulnerable Delawareans from being left without care.

It ensures that the public has a say in health care investments in our state — helping to ensure that we grow our health care system in ways that improve — and don’t harm — quality, cost and access to care.

We’re fortunate in Delaware. All of our general acute care hospitals, including our pediatric hospital, are non-profits and serve as safety net hospitals. Unlike other states, Delaware does not have publicly funded hospitals or uncompensated care pools of funding.
Delaware hospitals provide a full range of services, including many services that lose money but are needed by the public. We serve Medicaid patients and government insurance programs that pay less than cost.

Detractors of the certificate of need process claim that eliminating it will increase competition and reduce costs. Their analysis is built on a false assumption. Health care does not behave like a typical business. It is highly regulated with a third-party insurance payment system that drives consumer behavior.

We all experience this every time we need to find a doctor or a medical service. We first look to our insurance plan to determine what providers nearby accept our insurance. And government insurers like Medicare pay the same no matter how many providers are in the state.

Without the certificate of need process, any health care facility, including for-profit, could open their doors in our state without consideration of how it might impact Delawareans. They might take only patients with the highest paying insurance and only provide the most profitable services, possibly forcing full-service non-profit hospitals or other health care facilities to close, leaving Medicare, Medicaid, and uninsured patients without access to care.

At the same time, the services that we critically need, like behavioral health and substance use disorder treatment, would not benefit. These types of services are not highly remunerative and would not attract providers necessary to ensure their delivery should certificate of need be eliminated.

The Certificate of Public Review protects the most vulnerable Delawareans. However, the system in which it operates has outdated processes and deficiencies that do need to be addressed.

The Health Resources Board administers our Certificate of Public Review system, making determinations on whether or not facilities, projects and services meet approval criteria. Unfortunately, the board has several challenges: consistent lack of quorum, canceled meetings that delay projects, non-transparent (and often inconsistent) analysis and decisions and lack of adequate staff support.

Simple changes would improve the effectiveness of the board and the Certificate of Public Review Process:

1. Provide funding for independent staff or consultants with expertise in health policy and planning help guide board analysis and determinations.

2. Allow dialogue among applicants, impacted parties and the board to facilitate real-time to inform the HRB’s deliberations.

3. Allow members to participate remotely to improve meeting attendance.
4. Convene a working group for the purpose of updating the review criteria and application process.

5. Update the list of health care expenditures that require a Certificate of Public Review.

6. Require facilities to care for the underserved in Delaware by taking governmental insurers — Medicaid, Medicare and Tricare — and enforce violations.

7. Improve quorum by accepting more at-large members; allowing recused members to count toward quorum; and basing quorum on the number of sitting members, with at least five members required.

8. Explore models from other states or evaluating capacity and demand.

9. Optimize administrative support to assure transparent and effective communications about activities, applications, meetings and agendas.

The board is scheduled to be reviewed by the Joint Legislative Oversight and Sunset Committee on Wednesday, March 11. I encourage the committee to incorporate these changes into their final recommendations to improve the board and Delaware’s Certificate of Public Review.

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