

LET IT BE: MAKING COVID-19 DEREGULATION PERMANENT

INTRODUCTION: TIMES OF TROUBLE

In 2020, Tennessee has experienced multiple rounds of deadly tornadoes, a global pandemic, and economic upheaval as a result. And that's just the last three months. In response to these challenges, the General Assembly passed a reduced budget in March and gave flexibility and support to schools and local governments before recessing. Over the next two months, Gov. Bill Lee issued numerous executive orders granting wide regulatory flexibility to empower the medical community and select industries to better combat the pandemic. Gov. Lee created an Economic Recovery Group to formulate guidelines for businesses to safely reopen and get Tennesseans back to work.

As May turns to June, there is one other group coming back to work: the General Assembly. State lawmakers have a unique opportunity to build on Gov. Lee's overall deregulatory approach by codifying many of the reforms from his recent executive orders. If these regulations, often implemented in the name of public health and safety, are waived in the biggest public health crisis of our lifetime, what (or whose) purpose do they really serve? By making these temporary reforms permanent, lawmakers will enhance the state's ability to manage and fight the ongoing pandemic, prevent spikes of the outbreak as society continues to reopen, and better prepare Tennessee for future challenges.

Eliminate and Reform Certificate of Need Requirements

The goal of the "safer at home" orders and social distancing was to reduce the spread of the virus and preserve the capacity of the healthcare system by "flattening the curve." While there is certainly merit in looking at the demand side of capacity, why not increase the supply side by permanently removing limitations on healthcare services and capacity? Certificate of need (CON) laws raise the price of healthcare, lead to worse health outcomes, and reduce the number of facilities and overall capacity.¹ With one of the most extensive CON schemes in the country, Tennessee already faced capacity issues at the onset of the crisis.² In order to increase hospital bed capacity, Gov. Lee waived the CON requirement for hospital beds if the increase was related to treating COVID-19 patients.³ Reforming the state's CON laws was already being discussed before

1. Thomas Stratmann, et al., "Certificate of Need Laws-Tennessee State Profile." Mercatus Center. August 29, 2017. https://www.mercatus.org/system/files/tennessee_state_profile.pdf.

2. Christopher Koopman, Anne Philpot, and Gregory Burns, "Regulated Services By State, 2016." Mercatus Center. September 27, 2016. https://www.mercatus.org/system/files/con_table_2_regulated_services.pdf.

3. TN. Exec. Order No. 36. May 12, 2020. <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee36.pdf>.

state lawmakers recessed the legislative session in March. Upon returning in June, the General Assembly should look to permanently remove this CON and as many others as feasible. For those remaining, the process should be streamlined by reducing fees and moving from a presumption of denial to a presumption of approval to add new healthcare services.

Empower the Use of Telemedicine

Telemedicine has never been more popular. In fact, Blue Cross Blue Shield of Tennessee, the state's largest insurance provider, has now gone on record saying it will permanently cover telemedicine visits. The company has already processed 70,000 claims since March, 18 times more than it did last year.⁴ Similarly to CON reform, the General Assembly was already considering reforming the state's telemedicine laws prior to recessing in March. However, the House and Senate passed two different versions of the legislation; thus, it must be reconciled before becoming law. Soon after the legislature recessed, Gov. Lee expanded the list of professions eligible to utilize telemedicine from solely those who can diagnose to all licensed practitioners, including those from out of state. He also allowed pre-licensed mental health providers to conduct teletherapy while under supervision of a licensed clinician.⁵

The General Assembly should be applauded for already making efforts to expand access to innovative services like telemedicine that can drive down costs and increase access. State lawmakers should work to resolve the differences in the proposals, codify the deregulation in the governor's various orders, and expand telemedicine access to the greatest extent possible.

Streamline the Licensure Process

Tennessee has long faced a shortage of licensed healthcare workers. In fact, according to the U.S. Department of Health and Human Services, only four of the state's counties (Williamson, Rutherford, Sumner, and Maury) have an adequate number of healthcare professionals for the entire county.⁶ This already existing shortage of professionals could have caused severe problems combatting the pandemic. When it struck, Gov. Lee allowed licensed professionals in other states to treat COVID-19 patients without obtaining a Tennessee license. He also streamlined the licensure process for recent graduates, renewals, and retired practitioners. While we certainly expect a return to mandating a Tennessee license to practice in this state soon, the General Assembly should look to reduce these barriers to facilitate the growth of our healthcare workforce.

Additionally, with high levels of unemployment, the General Assembly should look to streamline non-medical licenses as well. This could include reducing educational requirements, creating additional pathways to licensure such as on-the-job training and reductions in licensing fees. Taking these steps would open additional employment opportunities to the hundreds of thousands of Tennesseans who have lost their jobs as a result of the pandemic.

4. Brett Kelman, "Spurred by Coronavirus, BlueCross BlueShield of Tennessee pledges to cover telehealth from now on." *The Tennessean*. May 13, 2020. <https://www.tennessean.com/story/money/industries/health-care/2020/05/14/blue-cross-blue-shield-tn-telehealth-health-insurance-coverage/5184036002/?fbclid=IwAR1kKRYdFSSFSgw7TzscngIMkTwSqNvUWizujHojhLPKXgDpWvr5ti6JnXo>.

5. TN. Exec. Order No. 36. May 12, 2020. <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee36.pdf>.

6. Tennessee Dept. of Health, "Federal Shortage Areas." <https://www.tn.gov/health/health-program-areas/rural-health/federal-shortage-areas.html>.

Enact Pre-trial Reform to Prevent the Spread of COVID-19 and Ease Local Budgetary Pain

Arguably the largest incubator for COVID-19 in Tennessee has been the jail and prison population. The Trousdale Turner Correctional Center saw one of the largest outbreaks in the nation when over 1,300 tests came back positive. The outbreak ultimately led to testing in all of the state's correctional facilities.⁷ Additionally, COVID-19 has led to a multitude of reforms, particularly at the local level, after the Tennessee Supreme Court ordered judges to attempt to reduce jail and prison populations.⁸ State lawmakers should seek to build on these initiatives when they return in June. Pre-trial reform for low-level, nonviolent charges would help prevent any future outbreaks by reducing jail populations without compromising public safety. Additionally, at a time when many local budgets are strained as a result of the economic shutdown, safely reducing pre-trial populations could ease pressure on both the state and local governments' budgets.

CONCLUSION: WORDS OF WISDOM

Through numerous executive or judicial orders by Gov. Lee and the Supreme Court, Tennessee has waived or relaxed dozens of regulations and statutory requirements to reduce and combat the spread of COVID-19. When a regulation or statute must be relaxed to better protect public health, it is not well designed. Upon returning, the General Assembly should seek to codify many of the deregulatory actions already in effect. By permanently repealing the state's archaic CON laws and expanding access to telemedicine, we can increase the capacity of our healthcare system, drive down prices, expand access, and be better prepared for future health crises. Additionally, by streamlining and reducing licensing barriers, we can relieve our shortage of healthcare professionals and create more job opportunities as our economy recovers. Finally, by pursuing sensible pre-trial reforms, we can mitigate future outbreaks in our jails and relieve pressure on local budgets.

7. Natalie Allison and Mariah Timms, "Tennessee to test all inmates, prison staff after massive COVID-19 outbreak at Trousdale Turner." *The Tennessean*. May 1, 2020. <https://www.tennessean.com/story/news/politics/2020/05/01/tennessee-testing-all-inmates-prison-staff-after-multiple-outbreaks/3067388001/>.

8. Jamie Satterfield, "Knox judges issue 'extraordinary' book-and-release order amid coronavirus outbreak." *Knox News Sentinel*. March 30, 2020. <https://www.knoxnews.com/story/news/crime/2020/03/30/coronavirus-covid-19-knox-judges-try-stem-flow-inmates-into-jails-book-release-order/5088923002/>.

Ron Shultis • Director of Policy and Research
ron@beacontn.org • 615-383-6431

BeaconTN.org | f/BeaconTN | @BeaconTN | @Beacon_TN