Health Issues Brief

FLORIDA HOSPITAL
Government & Public Affairs

September 2013

Competition and Health Care Costs

Florida Hospital strongly supports the state's "Certificate of Need" (CON) law that requires hospitals to undergo a review process before they build new facilities or add certain specialty services.

Some policymakers have proposed repealing the CON law, saying that competition lowers health care costs. However, states that have terminated CON have seen the opposite. New specialty and physician-owned hospitals have driven up costs and restricted access to patients without insurance. The most infamous example is McAllen, Texas, where Medicare costs per patient are more than twice the national average.

History

A 1960s effort to control health care spending led many states to create community-based planning programs to stem the over-construction of hospitals. These were called "Certificate of Need" (CON) laws. In 1974, the federal government mandated CON laws for all states. The federal mandate was repealed in 1986, allowing states to determine their own processes. Today, 36 states including Florida have CON laws.

CON Laws

Certificate of Need (CON) laws are designed to contain health care costs by reviewing the creation of new health care facilities and services. CON laws require applicants to show sufficient need for the proposed services. Considerations include the availability, quality, and accessibility of existing and potential services.

CON in Florida

When Florida instituted CON in 1973, it managed most major health care expenditures, including mental health services, inmate health care facilities, and any capital expenditure of more than $1 million for inpatient services. The current CON process only regulates hospitals, nursing homes and hospices as well as certain services including neo-natal intensive care, organ transplants, open heart surgery, and psychiatric services.

Debate and Outcomes

Opponents of CON laws argue that the process stifles the market by restricting new construction and protecting existing health care facilities from competition. They also believe that health care costs will keep rising because the market is not competitive.

CON proponents argue that competition for the most up-to-date facilities and technology – without regard to duplication or need – has the opposite effect. They say that saturated markets can lead to a rise in hospitalizations, aggravate physician and staffing shortages[i], and create price increases across the market. Proponents cite other states' experience in repealing CON laws, saying repeals:

- Drive up health care costs and encourage duplicate services
- Push facilities to compete over a limited number of nurses and physicians
- Impact quality of care by driving down volumes. A study of open-heart surgery programs found that hospitals in states with CON laws had 84% higher program volumes and better outcomes than those without regulations. Non-CON states had a higher mortality rate.

The Impact of CON Repeals

The elimination of the CON process can mean that more hospitals compete for individuals with insurance. This "cherry picking" can impede access for people without insurance while driving up costs.

Further, over-building and an oversupply of high-cost services can lead to higher prices and unnecessary demand.[ii] Following the repeal of Texas' CON law, the state saw a surge of new "boutique" and physician-owned hospitals that spawned a dramatic rise in costs. In 2006 in McAllen, Texas, Medicare spent over $15,000 per enrollee – twice the national average.[iii] The state of Ohio experienced explosive growth in ambulatory surgery and diagnostic imaging centers under similar conditions.[iv]

Average Cost per Procedure by CON Status

Procedure	CON State	Non-CON State
Back Surgery (Lumbar Discectomy)	$13,493	$16,819
Tumor Removal (Acoustic Neuroma Resection)	$46,353	$60,993
Neurological Surgery (Microvascular Decompression)	$27,729	$37,741

Clinical Investigative Medicine, 2008

Why Competition Does Not Work

The U.S. health care system does not operate in a true free market. In a free market, the price of an item or service is determined by supply and demand, and the government plays a limited role. Consumers make direct decisions about the utility and value of a service.

At best, health care is a mixed economic model. Decisions are split among three parties – the patient, the doctor and a third-party payor (insurers and the government). Through Medicaid and Medicare – the nation's largest payors – state and federal governments mandate payments, regardless of cost, to hospitals and physicians. In most cases, government reimbursement is lower than the actual cost of care.

The obligation to provide care extends beyond Medicaid and Medicare. In 1986, the Emergency Medical Treatment & Labor Act (EMTALA) required all hospitals to provide care to anyone needing emergency services. This essential, mandated service can have little or no reimbursement. As a result, hospitals shift the costs of uncompensated care – and government losses – to the insured, creating a hidden tax on businesses.

Conclusion

Elimination of CON laws does not lower health care costs. Florida Hospital supports Florida's current CON law as a way to help contain health care costs, prevent unnecessary duplication of services, and provide access to care through community planning.

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i The U.S. projects a shortage of 90,000 physicians in the next 10 years. Florida is especially at risk; 35% of its physicians are over age 56 and Florida's elderly population is expected to grow to 26% by 2020. AAMC. "Recent Studies and Reports on Physician Shortages in the US." May 2011.
ii Studies released by the country's three largest automakers found that health care costs are significantly higher in non-CON states than in CON states, with outpatient services up to 21% higher in CON states. Referenced in "Socioeconomics of Neuroimaging Certificate of Need," 2012.
iii Atul Gawande, "The Cost Conundrum," New Yorker, June 1, 2009, http://www.newyorker.com/reporting/2009/06/01/090601fa_fact_gawande
iv Indu Rekha Meesha, Robert A. Meeker, and Suresh K. Mukherji, "Socioeconomics of Neuroimaging Certificate of Need," Neuroimaging Clinics of North America, 22 (2012).

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