Eliminate Certificate of Need Laws

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In light of all of the recent discussion about reducing healthcare costs, there has been no mention about eliminating Certificate of Need laws in states that still require them.

As of 2011, 36 states still retain some form of Certificate of Need laws. CON laws were initially imposed by the federal government by the passage of the "Health Planning Resources Development Act" of 1974 to require states to focus on controlling healthcare costs for health facilities and services. The federal law was repealed in 1987, and since then 14 states discontinued the requirement for CON.

I recently discovered that there are still many states that are living in the dark ages, with the erroneous or fraudulent belief that CON programs help to control healthcare costs. They don't. They increase costs by eliminating competition and preventing lower cost providers from entering the market place. They perpetuate monopolies and allow them to raise prices to indecent levels for both insured and uninsured alike.

They also add considerable cost to the act of acquiring equipment or adding new services. In some states where CONs can be purchased, usually along with the assets from an existing provider, a CON can add a half a million dollars or more to the development or acquisition cost. If an application for a CON is pursued, it can easily add hundreds of thousands of dollars in legal fees, appeals, consulting costs, and market studies. As we know, these are controlled on a state level and have stringent rules that are specific to its process and regulations. The inconsistency of rules from state to state is another nightmare for national providers.

Even the U.S. Justice Department's Anti-trust Division and the Federal Trade Commission issued a joint statement in 2008 opposing CON:

"The Agencies believe that CON laws impose substantial costs on consumers and health care markets and that their costs as well as their purported benefits ought to be considered with care..." As the Agencies have said, "[O]n balance, CON programs are not successful in containing health care costs, and . . . they pose serious anticompetitive risks that usually outweigh their purported economic benefits. CON laws tend to create barriers to entry for health care providers who may otherwise contribute to competition and provide consumers with important choices in the market, but they do not, on balance, tend to suppress health care spending. Moreover, CON laws may be especially subject to abuse by incumbent providers, who can seek to exploit a state's CON process to forestall the entry of competitors in their markets."

This is a classic case of the "haves" and the "have-nots." Those that have a substantial market position would typically want to keep the protective and anti-competitive aspects of CON. Those who don't and seek to provide services that are controlled by these laws believe patients are better served by new services that could be delivered with lower costs and more competition.

Why not eliminate this antiquated and costly process? It could be done with the stroke of a pen and yet it has withstood many challenges over the last 40-plus years. There are a lot of folks with vested interests in seeing these state laws continued: state government and agencies that derive considerable income (and power) from fees imposed on the process, politicians with constituents who would like to see this practice continued or even strengthened, providers who want protection (and higher prices) from competition, and attorneys who make a healthy living from the political and legal process that this system provides.

It's time to evaluate all sources of healthcare costs and eliminate those that no longer serve the patients or the purpose for which they were intended. Just my $1.02 (cost + inflation).

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