PERSPECTIVE

Promoting Health Care Transparency and Competition

Kentucky's 'Certificate of Monopoly'

Number 2006-4

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Summary
(Total Word Count 877)

The new CON criteria assure that the for-profit hospital monopolies will continue and some counties that desperately need at least one hospital will go without one.

In Kentucky, a certificate of need (CON) is required to build a new hospital. Hospital care in Kentucky is expensive, and Kentucky is a poor state. According to the Institute of Health and Social Policy, Kentucky has the 17th highest charge-to-cost ratio in the United States for fiscal year 2003-2004.

To help control health care costs, Certificate of Need laws were enacted in the 1970s. At their peak, all states except Louisiana had CON laws. The premise behind the CON law is that health care economics are not affected by competition and costs can be lowered by controlling hospital growth and duplication of services. However, the CON laws are old and were enacted before for-profit hospitals were commonplace. Several for-profit hospital chains have in their SEC 10K reports business plan the targeting of rural counties to obtain a favorable market with less competition. This attests that the premise of health care economics not being affected by competition is no longer valid.

As a result of changing economics, several states have repealed their CON laws. In 2002, the number of states with CON laws had dropped to 36, along with the District of Columbia. Gov. Ernie Fletcher set out to revise the Kentucky CON law to allow costs and quality to be a factor in granting a CON (see *C-J* editorial on Jan. 3). However, the adopted plan deviated significantly from the plan that was proposed. The adopted Kentucky Health Care Plan has been described as opening the CON process, but the devil is in the details. It would have been simpler, more honest and saved the taxpayers money to simply state in the plan, "In Kentucky, no additional new hospitals can be built."

The new criteria assure that the for-profit hospital monopolies will continue and some counties that desperately need at least one hospital will go without one. These criteria make little economic sense, and it can be argued that they are even dangerous. For example, if a patient has a heart attack, a stroke, or is involved in major trauma, he or she needs to have medical attention within an hour of symptom onset or the chances for recovery are reduced.

If you live in Jessamine County, your county hospital has not been approved. I wish you luck as you fight the traffic on Highway 27 to seek care in Lexington. If you live in a county where an existing hospital has final revocation of its state license, a CON still cannot be granted. How can this be good for our state?

Criteria for granting a CON have been added which appear to allow the building of a new hospital in Kentucky, but all criteria have been tightened, tightened to the point that one wonders who in the Department of Health and Family Services actually wrote them. Specific changes in the Kentucky Health care Plan are as follows:

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1) All criteria for building an additional hospital have been changed from applying to the nearest hospital to applying to all hospitals in the county and in the surrounding counties.

2) The criterion for granting a CON if a hospital has "a documented history of uncorrected quality control problems which threaten the life, health and safety of the hospital's patients" has been eliminated.

3)There are criteria for granting a CON if there is final revocation of Medicare and Medicaid provider agreements, state license or accreditation by the Joint Commission. These are not only very rare events but also must happen to every hospital in the county and surrounding counties before a CON can be granted, a virtual impossibility.

It is ironic that the unions are under pressure to compete for workers but some large for-profit hospital corporations are being given state-protected monopolies.

3) The revenue criterion seems reasonable; exceeding 150 percent of the average state revenue, but it also includes Medicare and Medicaid income and must also be met by all hospitals in the county and surrounding counties. Since Medicare and Medicaid payments are similar to all hospitals, they have the effect of averaging revenues. Thus, if 75 percent of a hospital's patients have Medicaid and Medicare, the remaining 25 percent of the patients would have to generate revenues exceeding 300 percent of the average state revenues before this criterion is met.

4) The criterion for a new hospital based upon occupancy has also been tightened. An 80 percent occupancy threshold has been set. This is very high when one considers outpatient beds and the low occupancy rates during the weekends. In addition, this criterion must be met by all hospitals in the county and surrounding counties.

5) Criteria for the expansion of existing hospitals have been loosened, allowing for new beds to be granted at a lower occupancy rate than for an additional hospital. In addition, the criteria only apply to the hospital requesting expansion and not to other hospitals in the county or surrounding county. Thus, existing hospitals can keep building, making sure no one else enters the market.

In his right-to-work initiative, Gov. Fletcher has stated that trade unions need competition and individual employees should have a choice regarding union membership. It is not the purpose of this commentary to debate the merits of "right-to-work," but it is ironic that the unions are under pressure to compete for workers but some large for-profit hospital corporations are being given state-protected monopolies, creating an almost exclusive lock on their employees, who have little choice in employers.

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This Op-Ed is an edited version of an article previously published in the Courier Journal on June 22, 2006.

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