

## **Kentucky Should Award CONs so All Hospital Systems in The State Benefit, Not Just One**

The certificate of need (CON) is a category of state laws and regulations which grants providers permission to build certain healthcare facilities, acquire major medical equipment and to provide certain healthcare services. These laws vary widely between states both in their scope of services and facilities covered, and in the requirements to meet “need”.

The purpose of these laws was to save healthcare costs by elimination of duplication of expensive medical services. Most states enacted these laws after passage of the 1974 Federal Health Planning Resource Development Act which tied Medicaid and Medicare funding to State oversight of the purchasing of major medical equipment and the construction of major medical facilities. By the mid 1980's, almost all States had some form of CON laws. In 1987, the Federal government repealed the Health Planning Resource Act, in part because it was ineffective in controlling costs and Medicare switched to a DRG form of reimbursement for acute care hospitals. In 2010, the National Conference for State Legislatures list 27 states as requiring CONs for Acute Care Hospitals

The effectiveness of the CON has been researched extensively and few if any of the myriad of studies have concluded that it saves healthcare costs. In Sept of 2008, the Federal Trade Commission and Department of Justice issued a joint statement that, “ CON Laws Undercut Consumer Choice, Stifle Innovation and Weaken Markets’ Ability to Contain Health. Care Costs”.

In Kentucky, the CON is controlled by the Executive Branch. It's regulations for hospitals set the bar too high for construction of new facilities and in some cases has inhibited growth and the provision of healthcare to Kentuckians. Jessamine County is a current example of this situation, one of the fastest growing counties in Kentucky which currently has three large urgent treatment centers in various stages of development. These centers are each aligned with large healthcare systems and together cost much more than the acute care facility the county needs.

CONs are a commodity, they are designed to prevent duplication of services and in the process set up a situation which many have described as a State-Sanctioned Monopoly. Once granted, often to for-profit corporations, they can be sold, benefiting the owner.

The question must be asked: If we do not have the political will to do away with the CON, why is the State giving away this certificate? The Federal government does not do this with the airways, nor is the State proposing to give away gambling licenses. Why then give away the CON? This is a State resource.

A proposal which needs careful consideration, especially in our severe budgetary shortfall, is to place CONs for the construction of new major healthcare facilities up for closed-bid on a national level. Monies raised can be matched with Federal Medicaid funds, this year a 3.3 to one match, and the dollars placed back into the healthcare system to fund indigent care at all

healthcare facilities in the State.

Thus, if a CON for an Acute Care Hospital in Jessamine County brought in \$20,000,000 this amount would be increased to \$86,000,000 with the Federal match. The monies could then be divided proportionately to all Acute Care Facilities in the State. This way all will benefit from the granting of a CON, not just the hospital chain to whom it was granted. And this benefit would be magnified by 3.3 times the amount collected. If an out-of-state provider was awarded the CON, then all of the money would be brought into the State.

Medicaid is fast becoming a major safety net for a large portion of our State's population but unfortunately it is in grave danger of funding shortfalls. Innovative solutions are needed and the State should not be giving away valuable resources.