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Poor way to decide who gets hospitals

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By Kevin T. Kavanagh

With three titans vying for a slice of the Jessamine County health care pie, Kentucky's Draconian certificate of need regulations once again are catapulted to the forefront of public policy.

It has been a long story, starting in 2006 when the state granted two certificates of need for urgent treatment centers, which combined were projected to cost more than a proposed hospital.

Jessamine is one of Kentucky's fastest growing counties and needs a hospital, not only to continue and accelerate its growth, but also for the health and safety of its citizens. The county does not need a stabilization and transfer facility. In the U.S., the standard is to transport the patient to the closest treating facility as quickly as possible.

Now there are three planned outpatient centers in Jessamine County in various stages of development. Each is run by or has contacts with one of the three health care titans in Lexington: St. Joseph Health System, Baptist Healthcare System and UK Healthcare. Two are now applying for inpatient beds.

A couple of simple observations: The certificate of need (CON) has done little in Kentucky to control health care spending on large construction projects. It does, however, stifle competition and in rural counties grants monopolies without a Public Service Commission to control costs.

Here is a real conundrum for Gov. Steve Beshear. Jessamine County needs a CON for an acute-care hospital, but how do you decide which of the three titans will get it? Well, I can think of four alternatives.

First, the state can do nothing and just apply the current CON law which requires that all facilities in all adjacent counties meet a nearly unobtainable definition of need before a CON can be granted to the one facility making the application. Sounds ridiculous? Yes, but it's a Fletcher regulation.

This alternative has a real problem by inhibiting competition. At Health Watch USA's 2009 conference in Lexington, Joseph Miller, an attorney in the Justice Department's Anti-Trust Division, said this alternative may run afoul of federal anti-trust laws. (See www.healthwatchusa.org/conference2009.)

Second, as was done with Bullitt County, the regulations can be revised to allow the granting of beds in Jessamine County. But how does one decide which of the three titans gets the beds? Granting beds for one would be expected to at least leave a sour taste in the mouths of the others.

Third, do away with the CON and let them go at it. A lot of construction and jobs will be created.

The CON does not work. It is a headache to administer and in some states has been a breeding ground for corruption.

Finally, do something that has not been done before. Change the regulations to allow granting of a CON and place it up for bid. CONs are monopolies, similar to airways, and once granted can and have been sold. If the process was advertised nationally, an outside entity might even place the highest bid which would bring money into the state.

The funds raised could then be increased over three times by matching them with federal Medicaid funds. This money could then be used to fund heath care at all the hospitals in Kentucky. In this way, not just one institution benefits by the granting of a CON but all benefit, and this benefit is magnified by a factor of 3.3.

There is no doubt Medicaid needs the money.

Another option: Kentucky Medicaid should follow Medicare's lead and stop paying for "Never Events" or avoidable medical errors. In a letter sent by the Centers for Medicaid and Medicare Services in July 2008, all states were encouraged not to pick up payment for charges related to Never Events.

Currently, this provision is in both the Senate and House health care reform bills but may not take effect until July 1, 2011. This regulation could save state dollars while using free market principles to promote health care quality, along with decreasing patient mortality and morbidity.

Although these suggestions may be hard pills for some to swallow, these two policies could help to stabilize Kentucky's Medicaid budget.

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