

Repealing "Certificates of Need" would bring more competition into health care

March 24, 2015

The General Assembly is now debating taking some small steps to address the problem of the monopoly that is much of health care in this state. Nowhere is that a greater problem than for the people in Eastern North Carolina and especially in northeastern North Carolina where Vidant has a chokehold on the choices we have for obtaining health care. The bedrock of this monopoly is state control of who can offer health care. As the legislature debates the issue, we would suggest that Jeffrey Singer, writing at the *Cato Institute* offers some ideas that should inform the debate:

As Americans continue to experience the painful consequences of Obamacare, look for mounting political pressure to replace it with reforms that make health care truly more affordable, enhance patient choice, and restore the patient-doctor relationship. But not all the action has to take place in Washington; much needs to happen in the states.

And there is no reason why it can't start now. States can begin by repealing "Certificate of Need" (CON) laws. These are outdated and counterproductive laws which encourage cronyism, increase costs, and detract from the quality of health care.

Certificate-of-need laws require anyone wanting to open or expand a healthcare facility to prove to a regulator that the community "needs" it. Once they prove such a need, the state grants them a certificate which lets them operate. In some states the micromanaging can extend down to the level of expanding offices or adding new equipment. In North Carolina, for example, the state Department of Health and Human Services must approve the addition of basic necessities such as hospital beds. "We don't have to wait for our representatives in Washington to fix our health care mess."

My state of Arizona repealed its CON laws years ago, but these regulations are still present in 35 states and the District of Columbia. Legislators once thought they would tamp down health care costs by preventing unnecessary and duplicative expenditures. But instead, the certificate-granting process effectively grants monopoly privileges to existing hospitals and facilities—increasing costs in the process.

When a new provider petitions for a certificate, established providers are usually invited to testify against their would-be competitors. This means that some health care practices can openly challenge the right to exist of any practice that might hurt their bottom line. Indeed, hospital administrators openly admit that protection against competition thanks to CON laws

has become an integral part of their business model.

Large hospitals and other medical incumbents have another advantage: They can afford the lengthy and expensive process while smaller, newer health care providers cannot. Getting state approval for a certificate of need can take years or even over a decade, including appeals and re-appeals. In a place like Washington state, the application fee alone can cost tens of thousands of dollars. All of this discourages new entrants who lack the legal and financial resources to run the certificate-of-need obstacle course.

Always beware when the fox is pleased with the choice of guard for the henhouse. The American Hospital Association endorsed and lobbied for the widespread adoption of these laws. And yet after these laws were enacted, hospitals still found ways around them. According to one health care journal, "hospitals tend to view CON restrictions favorably when they serve to exclude [competing] facilities from entering a market, but may take steps to circumvent the CON application process where their own expansion is concerned."

The negative effect of Certificate of Need laws on competition and the monopoly-like privileges they bestow have attracted the attention of the Justice Department and the FTC. These agencies strongly condemned certificate-of-need laws as recently as 2008, arguing that they ruin the market process while delivering the opposite of the benefits they were intended to promote...[there's more]

[Click here](#) to go to the original source.

Jeffrey A. Singer is a general surgeon in private practice in metropolitan Phoenix, AZ. He is principal and founder of Valley Surgical Clinics, Ltd., the largest and oldest group private surgical practice in Arizona. He was integrally involved in the creation and passage of the Arizona Health Care Freedom Act, and serves as treasurer of the US Health Freedom Coalition, which promotes state constitutional protections of freedom of choice in health care decisions. He is a regular contributor to Arizona Medicine, the journal of the Arizona Medical Association. He writes and speaks extensively on regional and national public policy, with a specific focus on the areas of health care policy and the harmful effects of drug prohibition. He received his B.A. from Brooklyn College (CUNY) and his M.D. from New York Medical College. He is a Fellow of the American College of Surgeons.