

Improving Health Care: A Dose of Competition¹

AHPA Response

Arguments Against FTC Assertions and Assumptions

Improving Health Care, more than 300 pages in length, is critical of many aspects of existing health care system. Although it offers only a handful of recommendations, the report is replete with problematic assertions and assumptions, many of which are doctrinaire and unsupported by demonstrated fact or cogent analysis. The common theme is opposition to planning, regulation, and government intervention in the health care system. Arguments against these doctrinaire, and often unsupported, assertions and assumptions include:

- *The health care market is inherently imperfect (not perfectible)*
The FTC recognizes that the usual benefits of competition are not achievable in the health care system under current conditions. The report acknowledges a number of glaring market imperfections that need to be cured if market forces and competition are to have their presumed beneficial effects. The problems cited include the mediating influence of service selection and purchasing intermediaries such as insurance, Medicare, physicians and other health care professionals, the lack of price and quality information, legislatively imposed service mandates, cross-subsidization within the system, and service to all in urgent and emergent circumstances regardless of ability to pay.

The report argues that these imperfections should be cured as quickly as possible. Whatever the merit of this view and argument, cures are not likely soon. Even if acted upon aggressively, the changes required would take years to accomplish in most cases. Community-based planning and CON regulation are linked to, and help compensate for, a number of these acknowledged imperfections. It is important to maintain and strengthen planning and targeted CON regulation until the related market imperfections are corrected.

A stable and more equitable health care system cannot be based on the pursuit of ideological purity and unrestrained market forces.

- *Health care is not or at least should not, be treated as a commodity*
Although the FTC does not state directly that health care should be treated as an economic commodity, its arguments and assumptions make practical sense only if that were the case. Even in theory, much less in practice, market forces can have the system-shaping effects the FTC calls for, and argues will result from unfettered competition, only if health care is treated as any other economic good. The report laments that many, if not most, people see health care as “a special good” that is not, and should not be, subject to unfettered market forces. The positive aspects of planning, CON regulation, facility licensure, and a number of other mediating social constraints are in place, in part, because market forces do not, and probably cannot, be used to discipline this market without unacceptable collateral damage and cost.
- *The studies critical of CON cited by the FTC are not reliable*
The argument that planning and CON regulation result in higher costs and prices, inferior quality, reduced access, less innovation, and lower operating efficiency, though asserted repeatedly, is not supported by demonstrated fact. This refrain is based largely on an unwavering adherence to orthodox economic doctrine.

Most of the sources cited that purportedly show negative economic and quality effects of CON regulation are FTC staff reports, and FTC staff statements, which, in turn, are usually based on these studies. Thus, many of the citations are self-referential. The base studies themselves are highly problematic.

¹ *Improving Health Care: A Dose of Competition*. A Report by the Federal Trade Commission and the Department of Justice, July 2004. The full report is available at www.ftc.gov/condo on page 8 specifically Chapter 8 (pp. 1-6) and the Executive Summary (p.22).

Improving Health Care (against)
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The data used, the timeframes covered, and analytical processes relied upon are problematic. The conclusions drawn are debatable. Based on multi-variate regression analysis and statistical correlation, none demonstrates cause and effect and, beyond theoretical conjecture, none explains the method or mechanism by which the changes observed were achieved.

Analyses that try to examine the economic and quality effects of CON regulation yield mixed findings, not the uniformly negative results asserted in the FTC report. Contrary to the impression conveyed in the FTC report, there are no reliable studies showing the effects of CON regulation on access to care, system efficiency, innovation, or other specific system characteristics. Assertions to the contrary are based largely doctrinal assumptions.

- *Empirical evidence and experience are ignored or treated dismissively*

The recently reported experience of U.S. automakers showing lower costs in States with CON programs and published analyses showing significantly lower mortality rates among open-heart surgery patients in States with CON programs are dismissed. This information, when acknowledged, usually cited in the testimony of a commentator or hearing panel member, is often dismissed by pairing it with opposing anecdotal testimony of CON critics.

- *Health care should not be treated as a privilege*
The FTC prides itself on working in the interest of the consumer, the average citizen. It argues that a “consumer driven” health care system is desirable and possible if market forces are permitted free reign. The paean to consumer control, though superficially attractive, borders on the disingenuous when examined in the light of economic and health system realities. The report prescribes theoretical cures to real problems. The discussion is at the macroeconomic level. The assumption appears to be that if you address, at least theoretically, overarching system questions and imperfections, maximum

benefit will flow (trickle down) to the individual.

Unfortunately, the individual is treated as a theoretical economic entity or construct. Market realities are such that under FTC prescriptions access to quality health care would become a privilege, not a right or reasonable social expectation, dependent upon the economic standing, the knowledge base, and the social status of the individual. The report appears to anticipate and endorse this outcome. It speaks approvingly of consumers needing incentives to “balance costs and benefits and search for lower cost health care with the level of quality that they prefer.”² Presumably, the poor might “prefer” a “level of quality” consonant with what they could afford. As with any other commodity, an unfettered health care system will offer many different quality levels or categories, in both clinical and economic terms.

² *Improving Health Care: A Dose of Competition, Executive Summary*, p. 5. 🍎

