

Improving Health Care: A Dose of Competition¹

AHPA Response

Arguments in Favor of Planning and CON Regulation

Though a small part of *Improving Health Care*, the FTC attack on CON regulation is full force and unrelenting. It has been underway for two decades and can be expected to continue unabated. There are a number of logical and practical arguments in favor of planning and CON regulation that are largely ignored in the report. These arguments include:

- *CON is a useful market balancing tool*
In a necessarily imperfect, and an increasingly inequitable health care system, community-based planning and CON regulation are flexible tools that, when used intelligently, help protect the critical health care infrastructure that is required to meet both expected and unanticipated public need. Market forces are invaluable in balancing the cost, supply, access, and quality of most goods and services. Market fluctuations and vagaries are acceptable for most commodities, but are problematic for essential social goods and services, especially health care. Planning acknowledges that health care is not, and should not be treated as, an ordinary economic commodity.
- *Under current and expected health system market conditions, community-based planning and CON regulation are useful in promoting competition.*
CON regulation, and related planning, can be and has been used to provide consumers and other purchasers with price and quality information, and stimulate direct competition and market entry where indicated. This is now done when and where market forces are shown to apply or be effective.
- *Recent empirical evidence shows substantial economic and service quality benefit from CON regulation and related planning.*
Empirical studies by all three major U.S. automakers show substantially lower health care costs in states with CON programs.² Similarly, the most recent and largest study of CON regulation on treatment outcomes found that open heart surgery mortality rates are more than 20% lower in states with CON regulation than in states without regional planning and regulation.³
- *CON regulation is one of the few practical planning tools available to policymakers.*
Whatever its limitations, CON regulation, with related community-based planning, is one of the few tools that policymakers, health system

officials, and ordinary citizens have available for use in trying to compensate for known weaknesses and deficiencies in the existing health care system. CON decision-making processes provide a unique forum where all interested parties, and ordinary citizens, can express their views and state their needs. CON review, and related community-based planning, is distinct in that it often is the only light available to illuminate important quality, cost, and access concerns that are important to consumers. The sentinel effect of community-based planning and CON regulation is substantial and should not be ignored or undervalued.

- *CON regulation is the only practical tool available to implement basic planning policies and practices*
The inverse relationship between average annual service volume and treatment outcome is well known. Generally, higher average annual program volume is correlated with lower complication, readmission, and mortality rates. It has been documented repeatedly for many of the services regulated under CON programs. CON regulation is the most reliable and practicable tool for implementing service, institutional and regional planning policies and practices that facilitate and ensure appropriately high program volumes.
- *Improved Geographic Distribution of Services*
Planning and CON regulation are the only means currently available to promote and ensure that there is a reasonable geographic distribution of health care services and facilities, and to ensure a minimal commitment to serving the medically indigent. Planning and CON controls necessarily limit the concentration of services and facilities in affluent areas at the expense of less affluent communities. Both planning and CON regulation can be used, and often are used, proactively to improve both geographic and economic access to care.

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. See specifically Chapter 8 (pp. 1-6) and the Executive Summary (p.22).

² General Motors Corporation. Statement of General Motors Corporation on the Certificate of Need (CON) Program in Michigan, February 12, 2002; Ford Motor Company. Relative Cost Data vs Certificate of Need (CON) for States in Which Ford has a Major Presence, February, 2002; DaimlerChrysler Corporation. Certificate of Need: Endorsement by DaimlerChrysler Corporation, February 2002.

³ Vaughan-Sarrazin, MS, Hannan, EL, Gormley, CJ, Rosenthal, GE. "Mortality in Medicare Beneficiaries Following Coronary Artery Bypass Graft Surgery in States With and Without Certificate of Need Regulation," *JAMA*, Vol. 288 No. 15, October 16, 2002, 1859-1866. 🍏