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It's Time to Reform State Hospital Regulations

By Michael Thompson

2/4/2016 – Virginia lives under an out-of-date Certificate of Public Need (COPN) law that was originally enacted at the urging of the federal government in an effort to contain health care costs. According to the Mercatus Center at George Mason University the law has not succeeded in cost containment. This federal requirement was repealed in 1987, and since then 14 states, large and small, have taken these laws off their books. Virginia could do so this year under legislation pending the General Assembly.

Not only do we here in Virginia still live under our COPN law, but of the remaining 36 states with similar laws, ours covers one of the highest numbers of specific areas where state approval is needed, some 18 while Arizona has only 2 or 3 falling under its Certificate of Need statute.

Those opposed to removing the COPN regulatory statute, say that hospitals are in financial trouble and need this law in order to survive. It is said that the poor will be put into jeopardy and that charity care provided today by our hospitals will disappear.

Yet, in the 14 states where there are no such laws, the rural hospitals are operating today, charity care is provided, patients are being taken care of and the hospital industry has not gone bankrupt. As a Richmond Times-Dispatch editorial explained last fall, “*The COPN system is an outdated response to a bygone problem that had been created by old federal reimbursement formulas. But big hospital chains have found (COPN laws) very handy when they want to stifle competition from upstarts who might provide better services at lower prices.*”

To underscore that point, the Thomas Jefferson Institute released two studies late last year showing the profit/loss and net worth figures for all the hospitals in our state. Overall, the hospitals are doing quite well as their own financial numbers show. Indeed, over the past three years the number of hospitals operating in the red have decreased and there is no reason to believe this won't continue to be the case. So our COPN laws are not needed to protect the hospitals' bottom line.

Last fall the Federal Trade Commission and the US Justice Department said that these Certificate of Need laws are anti-competitive, outdated and are not in the country's or the health care industry's best interest.

There are numerous instances where hospitals that have been denied equipment and expanded capacity and where procedures are more expensive than in non-COPN states. But let's take a look at a state just north of us that might have a meaningful experience to consider.

Pennsylvania ended its Certificate of Need laws 20 years ago. But a concerned legislator last year decided that it should be restored. The Hospital Association of Pennsylvania opposed that measure to reinstate COPN as did the Pennsylvania doctors' association. They had lived under a Certificate of Need law once, saw the benefits of its removal and did not want such a regulatory system re-imposed.

So while the Virginia Hospital Association claims hospitals and patients will be significantly harmed without COPN laws, the Hospital Association of Pennsylvania explains that these laws should not exist because there is no evidence that they contain costs and the result is a costly and cumbersome process.

The Hospital Association of Pennsylvania concluded its testimony last year in opposition to the reinstatement of its COPN law by saying, "...hospitals believe that fair competition is essential in health care delivery, just as it is in health care coverage. Competition that enables choice by consumers in accessing health care fosters innovation and improvement in health care and is essential in advancing medical practice and technology."

Reforming Virginia's COPN laws should increase access to care, do a better job of controlling health care costs, and encourage more innovative health care solutions. Removal of these laws has worked in 14 other states, and many states that still have such laws, the areas they regulate are much fewer than the 18 areas in Virginia. Ridding Virginia of this COPN law would likely result in a healthy pro-business free-enterprise health care system as in many other states. As fourteen states have shown: doing away with this restrictive law does not deny the poor access to health care, hospitals continue to operate and charity care continues.

It's time for Virginia to dramatically reform our COPN law. Total removal of this law would be ideal and the results in other states can guide us on how to do that. If, however, the General Assembly decides to dramatically reduce the areas where this law applies, it can see where states like Arizona are providing quality health care with only 2 or 3 regulated areas, not 18 as we have today in Virginia.

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