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Reform Health “Need” Regulations

By Michael W. Thompson

12/19/2014 -- In recent years the federal government has continued to impose burdensome new regulations on the states, especially in the area of health care. Strict new rules handed down as a result of Obamacare are forcing insurance companies to cancel coverage for roughly 250,000 Virginians this year, and costs are continuing to increase for everyone. Virginia should take action to expand access to health care while lowering the cost to consumers.

In the upcoming legislative session, the Virginia General Assembly has the opportunity to move away from an outdated government controlled health care structure that increases costs and delays patient care, to a more free market-based solution that will improve access to care across the Commonwealth.

While President Obama and some others believe we need more government intervention in the health care industry, the most efficient way to improve Virginia’s health system is to start by reducing antiquated government control of investments in health care facilities. Virginia’s Certificate of Public Need (COPN) law is a relic of the 1970’s federal government health care mandates which have since been repealed. This law, still in effect here in Virginia, stands in the way of competition, innovation and access to care for those living in the Commonwealth.

Virginia established the COPN program four decades ago (as required by the federal government), and it has remained in its current form for the last twenty years. The law gives state regulators the authority to block a private health facility from making investments or expanding access to care. Health facilities that want to provide additional services to patients in need must pay a large application fee as large as \$20,000 and go through a lengthy subjective review process of up to 9 months so that a bureaucrat can first determine if there is a “public need” as if the investor has not already made that determination. In doing so, the state even invites objections from a health facility’s competitors to determine whether or not they should be allowed to invest in better services.

While some believe more government control will protect the public from misguided spending, the COPN program has not kept up with the realities of the health care marketplace and patient needs. It has resulted in delays and more expensive projects, and those costs are passed on to consumers. Even the Federal Trade Commission and Department of Justice have said these outdated laws contribute to rising prices, because they inhibit competition.

According to The Kaiser Family Foundation, Virginia ranks in the bottom third of all states for the ability to treat overnight hospital patients. That is because while there is a need for increased access to care, bureaucratic red tape and Virginia’s COPN law prevents health care providers from adequately meeting those needs.

These obstructions have been documented and quantified. For instance, a recent study concluded that more than 300,000 Virginians have suffered from a serious mental illness in the past year, yet any hospital wishing to expand treatment for the mentally ill must spend several months and tens of thousands of dollars to justify their investment to state regulators because of the COPN law. How many patients could have been seen and treated in the absence of these bureaucratic delays?

Even routine investments for hospitals must be approved by regulators; including adding beds for overnight care, expanding operating rooms, or even building a cafeteria or parking deck.

If COPN requirements were loosened, medical facilities would be able to meet the demand for patient services without spending unnecessary capital on lobbying and red tape. The COPN laws have protected health care facilities from competition for decades and costs have only increased as a result.

Free markets and competition have driven innovation and lowered costs for consumers in Virginia and across the nation, and we should embrace these principles in health care as well by considering the elimination of outdated and “unhealthy” Certificate of Public Need requirements.

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Michael Thompson is currently the Chairman and President of the Thomas Jefferson Institute for Public Policy, a non-partisan Virginia focused foundation dealing with the issues of improving education, government reform, economic development and environmental stewardship. This foundation is the state's premier independent public policy foundation and has gained broad based respect from political and business leaders throughout Virginia.