



# *New Developments In KY Healthcare*

On Sept 16, 2006 the Kentucky Medical Association passed without incident or debate a provision to repeal Kentucky's Certificate of Need Law.

Kentucky is one of 34 States which require a Certificate of Need (CON) before a new healthcare facility is allowed to open. The CON was first started in the mid-1970s in response to a Federal Government mandate to control hospital costs. At that time, Medicare and Medicaid was a fixed amount above a facility's cost, a cost plus system of payment, and wanted to control costs by preventing duplication of services. The CON was enacted by states not because they all independently came to the conclusion that the CON made good economic sense, they enacted it because of Federal pressure and incentives. At its peak, all states except Louisiana required a CON.

Over a decade after the Federal Government entered and restricted the free market system in healthcare, it finally recognized that the CON was not holding down costs but instead was creating a whole new set of problems all of its own. In response, the federal government switched to a DRG or fixed cost per diagnosis system of payment. It abandoned its mandates on states having a CON and stopped incentive payments to states which enacted the law. Although, the Federal Government easily reversed its approach to healthcare, states were left with the CON laws firmly embedded into their healthcare economy. Currently, fifteen states have demonstrated the fortitude to unravel and back out and appeal their certificate of need laws, citing the need to increase healthcare competition. Other states are looking at abolishing the CON.

On September 16, 2006, Kentucky took a large first step in this process, the Kentucky Medical Association officially adopted the position to abolish Kentucky's CON. They cited the following reasons:

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#1. That the CON law in Kentucky is old and outdated. The Certificate of Need Law (CON) was enacted in the late 1960's in Kentucky, at the time when healthcare was ruled by non-profit organizations and physicians usually had a single doctor practice and had little interest in the business of medicine.

#2. That free market principles hold down healthcare costs. More and more evidence is mounting that CON laws assure monopolies and do not hold down healthcare costs. Competition is the basis which has built this nation. No matter how big corporations become, economy of size does not take place when a monopoly exists. Without market pressures, prices increase and quality may even decrease.

For-profit corporations are becoming more and more commonplace in the healthcare market. In states with CONs, they are granted virtual monopolies with no oversight on prices charged to the patient. In fact, data on the insurance contract price for various procedures are often hidden, giving the patient little options for comparison shopping. According to SEC filings, many of the for-profit corporations seek out or "target" rural markets because of "their favorable demographic and economic trends and competitive conditions".

#3. That the CON hinders competition. By requiring only a certain number of facilities to be built in the state and protecting their market share the state has helped assure that facilities will be full no matter what the cost. There is no oversight of facility charges by governmental committees such as exists within the utilities commission. In rural areas, the monopoly is complete and little competition exists. The facilities affected include hospitals, imaging centers, surgery centers, nursing homes, home health programs, hospice program, transplant programs, cardiac programs, ambulance services, private duty nursing services, drug treatment programs, adult day care programs and major medical equipment purchases. There is now mounting evidence that CON laws drive up healthcare costs by fostering barriers for the entry of competitors into the healthcare system.

Kentucky's CON law regarding acute care hospitals virtually assures no additional facilities will be built in the State of Kentucky. It is so restrictive that one wonders whether its primary purpose is to guard the healthcare of citizens or whether it is mainly used to protect influential political

