Modern Healthcare

Ill. decisions on Mercy, Centegra renew questions on certificates of need

By Andrew L. Wang, Crain's Chicago Business | September 13, 2012

An Illinois regulatory board's selection of one hospital plan over another in northwest suburban McHenry County raises questions as to whether the state — rather than the market — should decide the fate of health care projects.

The Illinois Health Facilities and Services Review Board this week rejected for a second time Janesville, Wis.-based Mercy Health System's application to build a $115 million hospital in Crystal Lake. The decision follows the board's earlier approval of Centegra Health System's proposal to construct a $233 million hospital in nearby Huntley.

The decisions, if not overturned by a possible court challenge, leave Crystal Lake-based Centegra the apparent winner in the lengthy and costly regulatory battle.

In its nearly 40-year history, the board has seen more than its share of corruption and political scandal, which prompted the 2010 passage of legislation intended to reform an agency whose key purpose is to regulate construction projects to prevent duplicating health care services.

Reforms aside, critics blast the facilities board as a relic of a bygone health care environment that has outlived its usefulness. The market does a better job of picking winners and losers than a group of nine gubernatorial appointees, critics say. Requiring health care providers to obtain a "certificate of need" before starting construction insulates existing medical providers and tamps down the competition that would put a dent in rising health care costs, they say.

"There are all kinds of benefits of allowing newcomers to enter the market and ignoring the voices of incumbents who will use entry regulations to protect the status quo," said health economist David Dranove, a professor at Northwestern University's Kellogg School of Management.

The board on Tuesday voted 6-3 against Mercy's proposed 70-bed project in Crystal Lake. In July, it voted 6-3 to approve Centegra's plan for a 128-bed hospital in Huntley. The votes came after the board rejected both projects in December. After the July vote, Mercy sued the board, saying the decision violated state law. That case is pending.

The board was established as a 13-member panel in 1974, intended to prevent overinvestment in health care facilities that would drive up costs.

It was embroiled in scandal when federal authorities in 2005 indicted Stuart Levine, a former board member who later pleaded guilty to using his position to squeeze hospitals for favors, kickbacks and contributions for his political friends. The same investigation led to the conviction of former Illinois Gov. Rod Blagojevich.

Since the 2010 overhaul, even critics agree the board is a more professional, and more transparent, organization.

The board has its supporters, including the Naperville-based Illinois Hospital Association, with represents more than 200 hospitals and medical centers in the state.

State Sen. Susan Garrett, D-Lake Forest, who in 2008 led a task force to reform health care planning, calls the panel "one of the most important boards in the state."

By providing oversight on medical projects, the facilities board makes sure that investment doesn't just flow to wealthier areas, where consumers are likelier to have private insurance, and away from poorer urban rural locations, Ms. Garrett said.

The aim of regulating construction projects to keep quality health care affordable is reasonable, says attorney Mark Silberman, a former general counsel to the board.

"It's just getting from the goal to the practical application," said Mr. Silberman, a partner in the Chicago office of Duane Morris LLP.

But others say the premise of the agency is flawed.

"It clearly has worked as an impediment to innovation" by creating barriers to entry, said Mark Rust, a Chicago-based partner and chairman of the health care department at law firm Barnes & Thornburg LLP.

The certificate-of-need process was created in the 1970s, when government and commercial insurance reimbursement rates were calculated with formulas that yielded higher prices for excess capacity. That provided an incentive for hospitals and other providers to overinvest.

"Those formulas disappeared 25 years ago," economist Mr. Dranove said. "It's the industry that is trying to protect itself and perpetuate the same myth that we're in the same world we were in 1975."

There is scant evidence that certificate of need programs reduce health care costs. A 2007 report by consulting firm Lewin Group concluded that it was "unrealistic" to expect that the Illinois regulatory scheme would reduce health care expenditures.

Tags: **Certificate of Need**, **Construction**, **Hospitals**, **Legislation**, **Management**, **Reimbursement**

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