



The Patient's Health is Always Job One

The Kentucky Hospital Association is taking a leading role in tackling complex and thorny issues dealing with the delivery of quality health care and providing for the security of health care providers. Kentucky's hospitals call on Kentucky policymakers to partner with us for the good health of our people.

There is no free market in health care and Kentucky's hospitals encourage policymakers to remember that hospitals occupy an unusual position as both a business and a public service to their communities. Unlike any other health care provider, the hospital is open to serve patients twenty-four hours per day, 365 days a year, regardless of the patient's ability to pay.

Hospital financing is multifaceted and not subject to quick fixes and one-size-fits-all solutions. Public policy theory, no matter how brilliantly conceived, is no substitute for the facts on the ground, which dictate the manner in which hospitals actually must operate. The hospital funding system has developed over time in response to numerous federal interventions and, while it is far from ideal, it is the reality in which hospitals must function to serve our patients.

Kentucky's hospitals urge policymakers to support the Certificate of Need program and other programs that allow hospitals to provide services to their patients despite a plethora of federal laws and regulations that burden the delivery of care.

▶ RETAIN CERTIFICATE OF NEED

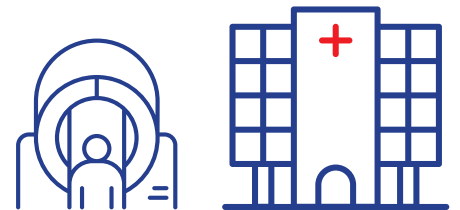
The Certificate of Need program (CON) serves a valuable function allowing hospitals to safely invest in expensive plant and equipment needed to treat patients. The CON program also helps to preserve the quality of care for our patients by keeping standards high.

While opinions vary about specific aspects of the CON program and the program may require updating from time to time, the CON program plays a critical role in supporting a level playing field among providers and is particularly important to those serving vulnerable communities.

Kentucky outperforms non-CON states by a number of measures. Our hospitals' prices and costs are among the lowest in the nation and they compare favorably to neighboring states.

According to various studies Kentucky ranks better than non-CON states in providing access to care and total per capita health care costs are less than the national average and superior to nearby non-CON states like Ohio, Indiana, and Pennsylvania.

The health care regime in the United States is a government driven system largely operating outside of free market principles. **Hospitals do not have pricing power because payment rates are set by federal authorities who run the Centers for Medicare and Medicaid Services (CMS).**



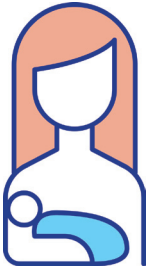
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Further, federal law in the form of The Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals, unlike any other business, or health care provider, to treat any patient coming into the emergency room of the hospital regardless of their insurance or ability to pay. This is an unfunded mandate faced by no other business.

The CON program is an acknowledgement that a non-free market requires other government intervention in the operations of health care services.

KHA supports retaining CON for new beds, ambulatory surgical centers, birthing centers, expensive technology, or where sufficient volumes are needed to insure good outcomes.

▶ FREE-STANDING BIRTHING CENTERS



Significant issues of patient health and safety surround the establishment and operation of a free-standing birthing center and our doctors have recommended that these facilities be moved to the State Health Plan where they will be subject to formal review under the Certificate of Need Program.

Because birthing centers are not currently a part of the state health plan, they are considered under the non-substantive review process to receive a certificate of need. Under this process, there is a presumption of need in favor of the CON applicant.

Any legislation seeking to advance the building of free-standing birthing centers should, at a minimum, require the facility to be under the direction of an obstetrician, require that both the facility and each clinical provider be fully insured for medical malpractice, and require the facility to have an active written transfer agreements with the local ambulance service, and the local hospital.

Hospitals are not opposed to patients having options but our first concern is always with the patient's health and safety. **Removing free-standing birthing centers from CON would be a misguided step in a state with some of the highest infant and maternal mortality rates in the country.**

Kentucky's hospitals call on the legislature to maintain the integrity of the CON program for free-standing birthing centers. The hospital obstetrics community finds the non-substantive review standard is too low a bar, it is critical for the health, safety, and lives of patients that any free-standing birthing center meet minimum safety, medical oversight, and insurance requirements.

▶ WORKFORCE SAFETY CHALLENGES

In the 2023 Regular Session, **the Kentucky General Assembly adopted SB 80**, which declares it a felony to assault a health care provider in the Emergency Department of a hospital. While this was a great step in the right direction, health care providers deserve to be protected throughout the entire facility, not just the ED.



Assaults on health care workers have become all too common in all parts of the hospital.

Nurses, therapists, and doctors report not just abusive language but physical violence from patients and family members in all areas of the hospital. A civilized society cannot tolerate these kinds of attacks, which run the gamut from spitting and hitting to threatening with weapons. The high stress job of saving lives and restoring health should not be further complicated by violence or threats of violence to those seeking to care for patients.

According to the Bureau of Labor Statistics, nationally, the rate of injuries from violent attacks against medical professionals **grew by 63% from 2011 to 2018**, while hospital safety directors say that aggression against staff has escalated since COVID-19 intensified in 2020. **In the second quarter of 2022, more than two nursing personnel were assaulted every hour, equating to 57 assaults per day, 1,739 assaults per month and 5,217 assaults per quarter.** With the increase in violence against hospital workers and healthcare worker burnout, it is clear that we need to protect health care workers and make their safety a priority.

Kentucky's health care workers deserve protection of the law and the ability to carry out their service to patients without the risk of physical violence or abusive behavior.

KHA asks the Kentucky General Assembly to pass and the Governor to sign into law legislation designed to provide greater security and protection for our hospital workers throughout the facility.

▶ WHITE BAGGING PHARMACEUTICALS



White bagging is a process in which a prescription is filled by a third-party specialty pharmacy and then administered by the provider rather than making use of the provider's pharmacy. **Typically the specialty pharmacy is owned by the insurer covering the patient.**

This seemingly minor change of using a third-party pharmacy rather than the provider's pharmacy can increase patient copays and plan sponsor bills, interrupt scheduling and treatment, affect the provider's bottom line, disrupt pharmacy receiving and storage systems, and introduce safety concerns. **It means the insurer is paying its own PBM and pocketing significant profits which are largely non-transparent.**

Safety concerns arise from this practice because it becomes unclear who is accountable for verifying the authenticity and integrity of the drug before administration. **It also raises the question of who is responsible when a delay in therapy, due to a lack of coordination between patient, prescriber, and pharmacy, leads to adverse outcomes for patients.**

The medications involved are almost exclusively drugs provided in a hospital setting such as infusion of chemotherapy. **White bagging results in fractionated care, especially for patients who rely on safety net organizations to assist them in paying for these high-dollar therapies.**

White bagging poses a threat to patient health and safety. Kentucky's hospitals support legislation prohibiting insurers from mandating white bagging and related mandates for hospitals with their own specialty pharmacies.

▶ PROTECTING 340B AT THE STATE LEVEL

Big Pharma is attacking the 340b program and attempting to limit covered entities to no more than one contract pharmacy. **Big Pharma hopes to reduce its costs by limiting patients access to 340b discounted medications**

Other states are looking at legislation to protect 340b covered entities to ensure that patients are not limited to a single contract pharmacy.

KHA supports efforts to advance legislation to ensure covered entities may use more than one contract pharmacy and patients will have access to medications at a pharmacy close to home.

▶ PROTECTING PATIENTS WITH SEPSIS

Sepsis endangers the lives of patients and without proper treatment patients can face organ failure, life-long injury, or death. Managed Care Organizations are refusing to cover treatment for Sepsis-2. By the time the condition progresses to Sepsis-3 organ failure is already imminent. Hospitals must treat patients for Sepsis before it reaches the level of organ failure and insurers must cover the treatment. **The policy of refusing to cover Sepsis-2 treatment is short-sighted and may cause permanent injury to the patient and ultimately increase the cost of care.**

Treatment of Sepsis-2 is one of the measures examined by CMS for the annual renewal of the Hospital Rate Improvement Program. **It would be a mistake for the Cabinet for Health and Family Services to adopt the position of the MCOs and risk the lives of patients and interfere with one of the measures used by the federal government to determine the efficacy of the HRIP program.**

The Kentucky Hospital Association calls on the Cabinet for Health and Family Services to reject this policy by the MCOs refusing to cover the cost of care for Sepsis-2. If the Cabinet will not take the proper steps to protect the lives and health of patients, the hospitals must seek legislation, as have other states, to curb the excesses of the MCOs.

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▶ LIABILITY REFORM

KHA and Kentucky hospitals continue to support liability reform. The reforms in SB 5 from the 2021 session of the General Assembly in response to COVID-19 were an important step in the right direction and demonstrated that lawyers were not put out of business nor jury trials denied to anyone because of commonsense limitations on litigation. Sadly, these protections lapsed with the end of the state's declaration of the public health emergency. **The lack of such protection will force already financially stressed hospitals into an even more difficult position at a time in which they are facing billions of dollars in losses.**

The lack of tort reform creates additional costs for the business community, including hospitals, in terms of meritless lawsuits, inflated damages, and leads to defensive medicine.

Costs for liability insurance are lower in neighboring states which have adopted liability reforms and that puts Kentucky at a disadvantage in recruiting and retaining physicians.

Because repeated attempts have been made to change the tort laws only to see the new laws struck down as unconstitutional, Kentucky's hospitals call on the General Assembly to pass a constitutional amendment addressing the Jural Rights Doctrine

LIABILITY REFORM - CONTINUED

which has been an impediment to updating Kentucky's legal system to keep it in line with those of our sister states.

Upon adoption of such a constitutional amendment, Kentucky should reform the laws so that **paid charges are used to calculate any damages rather than billed charges for medical services.**

The General Assembly should also reform the tort laws regarding the calculation of attorneys' fees. With 28 states placing a cap on attorneys' fees and another 12 using a sliding-scale fee schedule, **Kentucky is in a small minority of states that do not set reasonable limits on fees.**

These commonsense reforms remove a number of incentives for inflated claims and excessive jury awards and insure a greater portion of the award goes to the client without depriving the attorney of a just fee.

KHA supports a constitutional amendment to modify and update the Jural Rights Doctrine, legislation to modernize medical liability and tort laws to protect businesses and health care providers from meritless suits, eliminate false incentives that inflate claims and jury awards, and insure that a larger portion of any jury award actually goes to the plaintiff.

▶ ALL PAYER CLAIMS DATABASE (APCD)

Kentucky's hospitals are opposed to efforts to establish an All-Payer Claims Database (APCD) in Kentucky. This is an expansion of government that intrudes into the private health information of patients and involves duplicative bureaucracy because de-identified all payor claims data is already collected by the state and available for use.

APCDs are being pushed by groups that claim they want to use the data to better understand the health problems facing the state. **The real agenda is to have government regulation of health care private sector commercial prices.** Several states are leading in this effort by setting up "cost commissions" to regulate and cap commercial prices that health care providers can be reimbursed. **Kentucky hospitals already have some of the lowest commercial prices in the country, ranking 12th lowest nationally by the RAND corporation's most recent report.** Rate regulation of hospital prices is not needed **and would only put hospitals in greater financial jeopardy when a 2023 KaufmanHall report found 38% are already at risk of closure.**

This kind of new bureaucracy is unnecessary because, by statute, Kentucky already has all-payer claims data spanning over 20 years, collected by the Cabinet for Health and Family Services, from hospitals and ambulatory facilities. It is readily available to researchers and Kentucky's hospitals use the data every day to assess the needs of their communities and plan services to address those needs. In addition, the existing Medicaid claims data, and the more than 75 reports filed annually with the state by the Medicaid MCOs are available to provide a better understand health challenges of the Medicaid population.

Polling indicates that across the board all voters strongly oppose having their medical information sent to the government and accessed by people other than their personal physician in addition to their valid privacy and security concerns.

Finally, an APCD is not required for transparency and would be an inaccurate source of information, given the data would not be audited for errors in payment which frequently occur, and hospitals are already federally required to make their prices transparent.

KHA asks the legislature to oppose the creation of this misguided program to expand government and place patient health information at risk of exposure.

Voters strongly oppose having their medical information sent to the government and accessed by people other than their personal physician in addition to their valid privacy and security concerns.

For more information about KHA's Legislative Priorities, contact:

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