

## Cost of Hospital Regulations

by **Kalese Hammonds**  
 Health Care Policy Analyst &  
**Thomas Conner**  
 Research Assistant

### RECOMMENDATIONS

- Eliminate state imposed hospital regulations that drive up the cost of health care and serve as barriers to entering the market.
- Resist attempts to create additional regulations that would further inflate the cost of hospital services.

It is widely accepted that government regulation increases prices, restricts consumer choice, and has created inefficiencies throughout our economy. The consequences of regulatory policies are perhaps most costly in the health care industry where the health and wellbeing of citizens are at stake.

Basic hospital standards come from the Center for Medicare and Medicaid Services' (CMS) Conditions of Participation. One of the conditions requires each hospital to have a physician on call at all times,<sup>1</sup> and requires a registered nurse on duty at all times.<sup>2</sup> Hospitals must comply with these requirements in order to receive reimbursements for services rendered to Medicare patients. While adhering to these regulations is not required for operation, nearly all hospitals comply with the CMS requirements because without Medicare payments for care provided to Medicare patients, operating hospitals would be financially unviable.

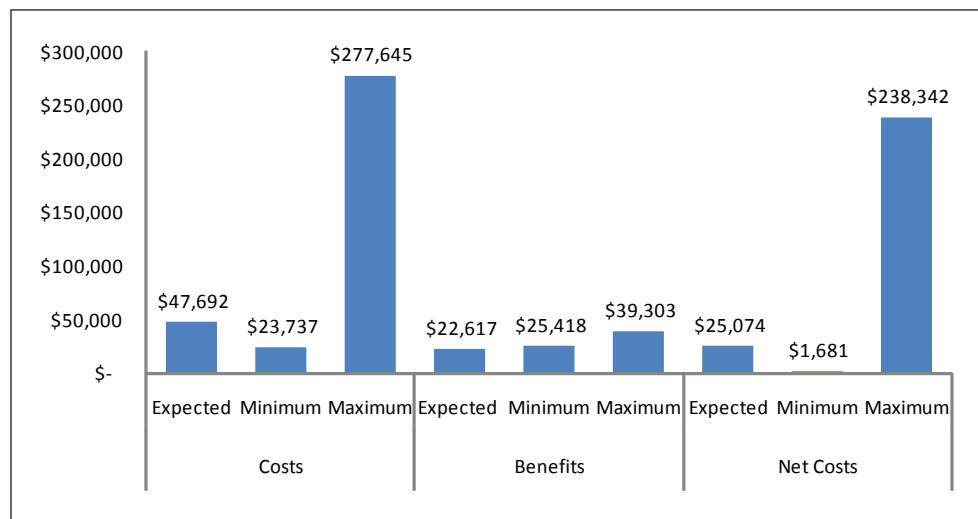
In addition to the standards set by CMS, Texas requires all hospitals to contain an emergency suite<sup>3</sup> and requires general hospitals in counties with more than 100,000 people to have a physician—qualified to provide emergency medical care—on duty in the emergency treatment area at all times.<sup>4</sup> These additional requirements increase operating costs for hospitals, which are ultimately passed on to consumers.

### THE COST

A report by the Cato Institute estimated that complying with Medicare Certificate of Participation requirements and state accreditation and licensure requirements cost \$8.64 billion a year and accounted for 18.1 percent of the \$47.692 billion that health facility regulations cost in 2002.<sup>5</sup>

Hospital administrators estimate that complying with emergency department staffing requirements cost their hospital between

### Health Facility Regulations



Source: Christopher J. Conover, *Health Care Regulation: A \$169 Billion Hidden Tax*, The Cato Institute, October 2004.

\$500,000 and \$600,000 a year, not including the cost of supplying the emergency department or the cost of providing additional space for the emergency suite.<sup>6</sup> When coupled with the low patient volume seen in smaller, less frequented emergency departments, these costs create exorbitant per patient costs that are passed on to all of the hospital's patients. One emergency department saw only nine patients in all of 2006, but complying with the around-the-clock staffing requirement for that emergency facility still cost approximately \$600,000 translating into an operating cost of \$66,667 per patient.

Additional requirements forbid physicians who staff emergency suites from assisting in any other area of the hospital or performing other duties while assigned to the emergency center. One hospital administrator explained that, their emergency room doctor, who costs the hospital upwards of \$500,000 a year, "sits in a room and watches TV and sleeps all day" while other physicians in the hospital juggle multiple responsibilities and fill a variety of roles.

## REGULATORY UNCERTAINTY

The Texas Department of State Health Services provides hospitals the opportunity to apply for a waiver seeking exemption from the requirement to have an emergency suite or a physician on duty at all times. However, it is unclear what explicit criteria the hospital must meet to be exempt, when the waiver application should be submitted, or even how long the exemption will last. Since the new rules were passed in June of 2007, 17 hospitals have applied for a waiver that would exempt them from the emergency services requirements. Seven of these hospitals have been granted reprieve from the rules, but hospitals who were denied their

request and those that are still awaiting approval of their request have little understanding of what ensures approval.

## RECOMMENDATIONS

As Texans continue to grapple with rising health care costs and the potential of a provider shortage, policymakers should work to eliminate unnecessary requirements so that health care facilities can operate as efficiently as possible while maintaining their focus on meeting patients' needs.

In Louisiana, where having an emergency department is optional,<sup>7</sup> the market is able to respond to health care needs by allowing more hospitals to enter into the market and compete for clients. As a result, Louisiana's number of hospitals per capita is more than double that of Texas; creating more competitive opportunities for hospitals, increasing opportunities for higher quality health care, diversifying pricing, and providing a wider range of options for health care consumers.

Although the requirements imposed by CMS do not require an emergency suite or around the clock physician staffing, they provide adequate protection for patients by requiring that hospitals be prepared to provide initial treatment to patients before transferring them to another facility. The federal CMS standards insure patient safety without relying on regulations that increase hospital operating costs and limit entry into the marketplace.

Eliminating the Texas regulations is not a panacea for the rising cost of health care, but it does present an opportunity to alleviate some of the unnecessary costs that contribute to the inflated prices Texas consumers pay. ★

## ENDNOTES

<sup>1</sup> Code of Federal Regulations, Title 42, Section 482.12(c).

<sup>2</sup> Code of Federal Regulations, Title 42, Section 482.23(b).

<sup>3</sup> Texas Administrative Code Rule §133.41(e).

<sup>4</sup> Texas Administrative Code Rule §133.41(e)(2).

<sup>5</sup> Christopher J. Conover, *Health Care Regulation: A \$169 Billion Hidden Tax*, Cato Institute, October 2004.

<sup>6</sup> Phone interviews with hospital administrators.

<sup>7</sup> Louisiana Administrative Code Rule §9301.

