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Introduction: Health Facility Regulation

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INTRODUCTION

The delivery of health care began in the churches of the Medieval era and has grown to such porportions that today it can truly be described as an industry. Regulation of this industry, however, is still in its infancy. Until the early Sixties, the health care industry remained relatively free of government efforts to regulate the quality, cost or allocation of health care services. With the increased government funding of health care through such programs as Medicare and Medicaid, however, came the concomitant attempts to control the recipients of this largesse. Moreover, the runaway inflation of the Seventies has led to growing public concern about health costs, which has generally been translated into demands for even more government control. Because health facilities, primarily hospitals and nursing homes, have been the greatest contributors to rising health costs, regulatory strategies have understandably focused on these behemoths of the health care industry. Unfortunately, state regulation through, for example, the "certificate of need" program and federal regulation through, for example, the reimbursement policies and participation requirements of Medicare and Medicaid have so far had little demonstrable effect on either the costs of health care facilities or the quality of care that they provide.

The purpose of this symposium is both to examine the causes for the failure of efforts to regulate health facilities and to suggest some improvements in these regulatory efforts. The articles range from a theoretical discussion of the constitutional underpinnings of governmental regulation of health facilities to a practical guide on making "certificate of need" work. In most cases, the authors have drawn on their personal experiences with various state regulatory and financing agencies in analyzing the problems that they address. Because these experiences are used only as examples, however, the articles are relevant to all efforts to regulate health facilities. Furthermore, the common thread of federal legislation, which affects every level of regulation in this area, strengthens this broad applicability.

Perhaps the most important conclusion to be drawn from this symposium is that the answers to the present crisis in health facility regulation usually lie not in more regulation, but rather in more effective regulation. It is to be hoped that, through a greater understanding of the mechanisms of health facility regulation, agency staffs, the bar that practices before them, and the public that they serve will make more

effective use of existing regulatory programs in an effort to reduce the costs of health care facilities, improve the quality of care provided by those facilities and allocate wisely the resources available to them.

Finally, the *Review* would like to express its gratitude to Professor Kenneth R. Wing, who proposed this symposium and was instrumental in bringing it to fruition. In addition to co-authoring two of the articles that appear herein, Professor Wing has contributed his skills as a coordinator, an editor, and even a footnote checker, and the *Review* certainly appreciates his efforts.*

* The *Review* would also like to thank Leslie Brown and Kimberly Taylor Powell, both rising second year law students at The University of North Carolina and Professor Wing's research assistants, for their excellent assistance in checking footnotes for this symposium.