# Calling the Hospital Lobby's Bluff on Protectionism

*Directly subsidize safety-net hospitals, and end protectionism for the rest.*

**Reinier Schuur**

The American healthcare market heavily favors incumbent hospitals. Federal and state regulations protect existing hospitals from competition and give them a competitive advantage over independent medical practices and physician-owned hospitals (POHs).

Such regulations include, but are by no means limited to:

- **Section 6001 of the Affordable Care Act (ACA):** Prohibits POHs from receiving Medicare and Medicaid dollars, largely freezing the creation of new POHs and the expansion of existing ones.
- **The 340B Drug Program:** Requires drug companies to sell certain expensive drugs to hospitals at steep discounts, with the expectation that hospitals pass the savings on to patients. (In practice, hospitals routinely charge insurers the full price of these drugs, and keep the profits for themselves, rather than passing the savings on to patients.)
- **Facility Fees:** Medicare reimburses hospitals an extra ‘facility fee' on top of the services that they provide. Independent providers do not get this facility fee unless a hospital buys them, incentivizing hospitals to acquire private practices.
- **Certificate of Need (CON) Laws:** Require healthcare facilities to get state permission to build or expand—frequently giving direct competitors veto power over market entry.

How do hospital lobbying groups justify this de facto protectionist policy? By arguing that without these policies, incumbent hospitals would struggle to offer critical services (such as emergency departments) and to care for vulnerable uninsured or underinsured populations.

Some hospitals do genuinely struggle to keep critical services open to vulnerable populations. This is evidenced by closures of critical service lines and entire facilities across rural and low-income counties. No bluffing there. But do such struggles therefore justify skewing the entire healthcare market to protect and advantage massive hospital conglomerates? No, they do not.

## The Case Against Hospital Protectionism

Let's first acknowledge the kernel of truth underlying the hospital lobby's arguments. Most hospitals do face a competitive disadvantage because federal law (EMTALA) requires them to take in all patients regardless of ability to pay, and because government health insurance (Medicaid, Medicare) often reimburses at or below the actual cost of care. Since these hospitals cannot pass that shortfall back to government payers, they shift the financial burden of undercompensated care onto profitable patients with commercial insurance policies by overcharging them—a financial balancing act known as cross-subsidization.

Hospital lobbyists are right to point out that federal law and community care mandates put all-access hospitals at a competitive disadvantage against those competitors who are much freer to choose their own patients. It is therefore understandable that all-access hospitals are especially protective of the commercially insured patients that help keep their doors open.

Critics of the hospital lobbyists, however, argue that this dependence on cross-subsidization and the financial strain imposed by undercompensated care are overblown and used as a pretext to block competition. But this misses the deeper point. Even if we concede the hospital lobby's dependence on cross-subsidization, sweeping protectionism is not the answer.

For one, protectionism fails to prevent struggling rural and community hospitals from closing. Between 2010 and 2026, over 140 rural hospitals shut their doors, and more than 40% of rural facilities nationwide continue to operate at a net loss despite decades of protectionist policies. The only real 'success' of protectionism has been in protecting large health systems from competition at the expense of independent physicians. Indeed, since 2024, hospitals and corporate entities have owned nearly 60% of all medical practices, and over 80% of physicians were employed by them, up from 14% and 26% respectively since 2012. Consolidated healthcare markets are also much more expensive for patients. Highly concentrated hospital systems are about 12% more expensive than those operating in competitive markets.

So protectionism not only fails to protect access to critical medical services for vulnerable populations but, by protecting incumbent hospitals from competition, it artificially creates *more* vulnerable patients by making healthcare more expensive for everyone. Protectionism protects no one other than the incumbent hospitals from open competition.

## Opening up Hospital Competition, Responsibly

Would some hospitals, and the vulnerable patients that they serve, struggle or even close without extra funding? Yes. Does this justify protecting all hospitals from competition? No.

Hospitals that claim that repealing sweeping hospital protectionism will threaten patient access to critical care should be able to apply for, and receive, a direct subsidy at the local or state level. In exchange, however, such hospitals (or health systems) should be barred, or heavily restricted, from buying up independent medical practices and vertically integrating their services.

Hospitals that refuse this subsidy should be free to engage in such business practices, *but without protections*. They will have to compete for patients on an open market. If they fail, there should be no bailouts.

Hospitals can't have it both ways. Hospitals can't, on the one hand, claim to be struggling charities in need of protection and then use those same protections to stamp out competition and consolidate local or regional healthcare markets, especially if they also remove service lines and reduce patient options. Protections should take the form of direct subsidies to maintain access to critical care for vulnerable patients. Protections should not be so sweeping as to protect all hospitals from competition as such.

To be clear, this solution would be something to work towards over time, not something that could happen overnight. But it is clear that we need some alternative policy goal to aim for when it comes to the outsized role of incumbent hospitals in the healthcare market.

Moreover, as an advocate for free markets in healthcare, I do not suggest giving hospitals a direct subsidy lightly. But we already indirectly subsidize hospitals to provide critical medical services to vulnerable populations, namely by letting hospitals overcharge taxpayer-subsidized employer-based health insurance plans to cover unprofitable services and patients. Hospitals then use the inherent financial instability of this cross-subsidization to justify sweeping protectionism that holds the whole healthcare market hostage.

Better to directly subsidize struggling hospitals, end sweeping protectionism for the rest, and free up healthcare markets so providers and businesses can compete on a level playing field.

**About the Author**

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