



Health Care Law Update

November 2022

Supreme Court Denies Review of Kentucky Certificate of Need Law

The U.S. Supreme Court this month declined to hear a case challenging a Kentucky law that requires new home health businesses to obtain a certificate of need issued by the Commonwealth of Kentucky before they may operate.

Dipendra Tiwari and Kishor Sapkota, two Nepali-speaking immigrants, formed Grace Home Care to provide home health services to other Nepali-speaking refugees and immigrants in Louisville, Kentucky. They believed that they could deliver better care for Nepali individuals by pairing them with health care workers who spoke their language and understood their culture. However, they were blocked from operating their home health business when Kentucky denied their certificate of need application on the basis that there was not a great enough need for a new home health business in the geographic area.

The expressed purpose of Kentucky's [certificate of need law](#) is to prevent the proliferation of health care facilities, health services, and major medical equipment that increase the cost of quality health care in Kentucky. While certificate of need laws are criticized for protecting the business of established providers and creating significant barriers to new providers entering the market, they are intended to ensure that there is a need for new providers and that existing providers can leverage the scale of the patient population to provide better quality services, invest in technology, and hire sufficient staff to meet the language and cultural needs of their patients. In this case, Kentucky determined that Grace Home Care's geographic area did not need more home health agencies, even though there was a large population of Nepali immigrants who

undoubtedly would have felt more comfortable utilizing a Nepali home health agency.

Following the denial of its certificate of need application, the owners of Grace Home Care filed a lawsuit in federal district court arguing that they were deprived of their Fourteenth Amendment right to earn a living and asserted that the law only serves to protect incumbent home health care companies from competition.

After the district court denied their claim, they appealed to the Sixth Circuit Court of Appeals. While the appeals court sympathized with the petitioners, the Chief Judge explained that economic regulations, even those affecting an individual's liberty to work in a given area, violate due process only when they impose burdens without any rational basis for doing so. He concluded that Kentucky's certificate of need law passes this rational basis standard, perhaps at a low grade, because it was rational for the state legislature to believe that the law would increase cost efficiency, improve quality of care, and improve the existing health care infrastructure. Part of his basis for this conclusion was that certificate of need laws in general have been recognized as a valid means of furthering a legitimate state interest, and that 16 states currently apply their certificate of need laws to the home health care industry. He surmised, though, that if the court were the Kentucky legislators, it would be inclined to think that certificate of need laws should be the exception, not the rule, and that such laws perhaps have outlived their own need.

FOR MORE INFORMATION

For more information, please contact:

Cori R. Haper

937.443.6856

Cori.Haper@ThompsonHine.com

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