

Physician-Owned Hospitals

By Ed Rabinowitz

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Physicians Fight to Maintain Ownership Interest in Hospitals

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Physicians and hospital ownership have gone together hand-in-hand for decades. No one gave the relationship a second thought. That changed with the inclusion of the Stark provision in the Omnibus Budget Reconciliation Act of 1989, which prohibits physician self-referral to a lab or ancillary service provider in which the physician has ownership interest.



However, the Stark Law *doesn't* apply "to the ownership of a hospital by a physician as long as the physician has privileges to perform procedures there, and the investment is in the whole hospital, not a part or department of the hospital," according to Les Johnson, an associate in McGlinchey Stafford's healthcare practice.

Since then, numerous efforts have been made to remove the 'whole-hospital exception' from the Stark law, including four attempts to attach restrictions to proposed legislation since August 2007. None have succeeded, but those efforts have physicians, hospitals, and their lobbyists on their toes because of the far-reaching implications of such restrictions.

"We expect to see [new restrictions] attached to some bill at any time," explains Jane Keller, CEO of Indiana Orthopaedic Hospital (IOH), a 100% physician-owned facility that opened in 2005. "It's a never-ending battle right now."

Concern over costs

The concern voiced by Congress over physician-owned hospitals, as well as specialty hospitals such as IOH, is that they drive up healthcare costs by creating incentives for doctors to order more tests and procedures. However, studies—including one released in 2005 by the Medicare Payment Advisory Commission (MedPAC) that examined the pros and cons of physician ownership of specialty hospitals—don't support those assertions. Among other things, the MedPAC report found that physician-owned specialty hospitals didn't have lower costs, but their patients have shorter lengths of stay than in acute care hospitals.

Keller agrees with the study's findings. "We do have a higher nurse-to-patient ratio, which means our labor costs are higher. But we're able to get patients out faster because this is what we do day in and day out. It's a savings to everyone if our patients go home a day earlier and they're prepared to go home."

Molly Sandvig, executive director of Physician Hospitals of America, says the higher-costs issue is merely a smoke screen. "The arguments [by Congress and acute care hospitals] are basically excuses to try to prove the evils of physician ownership," says Sandvig. "The real issue is one of control and competition. The larger picture is the struggle between system hospitals and physicians to control the healthcare commodity, which is the patient, unfortunately."

Benefits for physicians

Donna Klein, managing partner and head of McGlinchey Stafford's healthcare practice, says there are valid reasons that physicians have for owning and operating their own hospitals, one of which is control. When physicians have ownership in a hospital, they have more of a say in the staffing and services provided, as opposed to just being another member of the medical staff. Control, says Klein, leads to improved quality.



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"Physicians contend, and I think there are studies that support the fact, that quality in many cases is better in a specialty or physician-owned hospital," Klein explains. "In fact, control of the various types of hospital-acquired infections is better in surgical hospitals as opposed to a full-service hospital where you have a mix of patients that can increase the risk of infection."

Loss of the ability to maintain ownership in a hospital could also have a negative impact on physician's finances and their medical practice, according to Sandvig. "Some of these [physician-owned or specialty] hospitals were built in areas where it's very hard to recruit physicians. The hospital is used as a recruitment tool for the practice. Doctors who may not have otherwise come to an area do so because of the opportunity to own part of the hospital. It's all tied together."

Protect your interests

Klein does not think physician-owned or specialty hospitals are going away any time soon, at least not if patients have a say in the matter. She explains that what's really important to patients is that they're cared for in a facility where the entire staff has experience in handling a particular procedure over and over again.

Patients *are* making their voices heard, and physicians can do the same as well. "We did a letter-writing campaign with our patients about three weeks ago, and we had more than 140 patients turn in a letter for us to mail to our delegates," says Keller. "That's the best thing [patients and physicians] can do is contact the people who are representing them in Washington and get the word out."

Echoed Sandvig, "That can make all the difference."

Ed Rabinowitz is a veteran healthcare reporter and writer. He welcomes comments at edwardr@ptd.net.

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