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Physician-Owned Hospitals Change Strategy Against Proposed Ban, Explain Delicate Negotiations in Washington

Written by Leigh Page | [December 18, 2009](#)



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As the Senate debates on a proposed ban on physician-owned hospitals comes down to the wire, the Physician Hospitals of America has switched to a more focused campaign that seeks to push back the ban to 2014 and soften restrictions on growth of existing facilities.

The Democrats' health reform legislation, which carries the ban, might still be voted on before Christmas, so members should not let up on the day-to-day campaign to sway their senators and representatives, PHA representatives said in a conference call with members Thursday.

In the conference call, PHA lobbyists reviewed some hopeful signs on Capitol Hill and sketched out what still needs to happen for PHA's proposed changes to be implemented by Congress.

They say they have been in close contact with Senate Majority Leader Harry Reid and his staff and find the Nevada Democrat to be sympathetic to the new proposal. The goal is for Sen. Reid to insert the changes into the "manager's amendment," containing all the changes that Senate leadership wants to make in the huge bill.

But the lobbyists emphasized that before that happens, they still need more Democratic senators to come forward and publicly support the PHA proposals.

To bolster arguments that physician-owned hospitals are beneficial for Americans, the association released new findings showing that there would be no Medicare savings if Congress moved against physician-owned hospitals.

"We are in many ways a victim of the old canards by those who would like to close down physician hospitals," said Molly Sandvig, PHA's executive director.

Another study found that the Senate and House bills' very complicated formulas for restricting future growth would not

allow any physician-owned hospital to add beds, expand ORs or take any significant steps to expand the facility.

PHA's change in strategy. Lobbyists explained that PHA's original campaign to remove the ban was quite complicated and just wasn't gaining any "traction" on Capitol Hill. The association convened 1½ weeks ago an emergency session of its executive committee, which endorsed a proposal to switch to the more focused strategy, and that new policy was then endorsed by the full board of directors.

The new proposal asks the Senate to roll back implementation of the ban from Feb. 1, 2009, to Jan. 1, 2014 as well as to soften the complete ban on allowing exiting facilities to grow.

The 2014 date was chosen because many other provisions in the bill take effect in that general time range and because it gives the 125 physician-owned hospitals still in planning stages a chance to open.

Senators' receptiveness. The lobbyists said many senators seem receptive to arguments that the current deadline is too immediate. "Historically, when Congress makes changes of great significance, they have provided for a reasonable transition from point A to point B," one of the lobbyists said.

But they said some senators are still concerned that changing the date would unleash "a rush to build" and some senators are angry that so many hospitals have gone ahead and started plans for new hospitals, even as the ban became a serious possibility.

PHA officials respond that rolling back the deadline wouldn't cause a building spree because bankers would be very reluctant to lend money to a brand new project that has a deadline only a few years away. They added that the proposed deadline might be whittled back in political horsetrading. As to allegations that physicians have been brazenly beginning plans for new hospitals, the PHA says that even a few months ago the ban was still not a certainty and, at any rate, many of the pending projects have been in planning stages for many years.

Senate support for the proposals. At least three senators would support the new language, but lobbyists would like 10-12 senators to come out in favor. They say it wouldn't take a large number to convince Sen. Reid to add the proposals to his manager's amendment. They noted that Sen. Reid has a physician-owned hospital in his state and he is "sympathetic."

Late last week, they said, Sen. Reid said there had been "senior-level discussions" on changing the physician-ownership provision. The majority leader has already started working on his manager's amendment, the lobbyists added.

They emphasized that the ban is considered a very small part of a huge piece of legislation and no senator sees the issue as a strong enough a reason to vote against the whole bill.

Although many Republican senators support physician-owned hospitals, the lobbyists said the opposition party has no influence because it is almost entirely opposed to the legislation, only one or two exceptions like Sen. Olympia Snowe (R-Maine). Even strong support of the cause by Sen. Ben Nelson (D-Neb.) is diminished because he is on the fence about supporting the whole bill due to its language on abortion.

Chances of Senate passage. The Senate reform bill has yet to get the 60 votes needed for passage due to lack of support from Sen. Nelson, Sen. Joe Lieberman (I-Conn.) on the right and Sen. Russ Feingold (D-Wis.) and Sen. Bernard Sanders (I-Vt.) on the left (due to removal of the public option), PHA lobbyists said.

If the Senate leadership decides it could not get the 60 votes needed, it might opt for a simple majority of 51 votes, but such a strategy would require entirely rewriting the bill into a less ambitious piece of legislation, the lobbyists said. And

proposals for the ban would not go away. The ban has been attached to other bills in the past and would no doubt be attached to other bills in the future.

If the bill passes the Senate. If the bill passes in the Senate, it would then go to a conference committee made up of representatives from both houses of Congress, and they would have to merge the Senate provisions with somewhat different provisions in the House bill that was passed last month. For this reason, it is still important for members to contact their representatives as well as their senators, the lobbyists said.

The House's version of the ban, even more restrictive than the Senate's, sets the ban retroactively back to Jan. 1, 2009, but no one believes that version would prevail.

PHA lobbyists said some powerful House leaders are sympathetic with the industry. Charlie Rangle (D-N.Y.), chairman of the House Ways & Means Committee, doesn't like the retroactive date and is willing to improve the House bill, they said. But the ultimate decision on the ban would rest with Speaker Nancy Pelosi (D-San Francisco). Rep. Rangle's office has said that Rep. Pelosi decided not to bring the PHA's issue to the House floor when the entire bill was being debated and said she intended to take this issue up in the conference.


What happens if ban stands. If the ban on physician-owned hospitals cannot be altered, plans for new projects could still go forward but physicians would have to bow out of the whole ownership structure, PHA officials said. The PHA would continue to fight to lift the ban and allow existing hospitals to add beds and ORs. Needless to say, the PHA wants to have this fight now and is asking members to do everything they can to reach out in Washington through the holiday season.

The campaign continues. "We may have very little time left to affect the outcome of the physician hospital piece in the pending healthcare reform legislation," Ms. Sandvig writes. Five individual hospitals recently placed two ads on the issue in the Wall Street Journal. And the PHA has commissioned studies by an independent economist that explore some of the misperceptions about physician-owned hospitals.

One study concluded that procedures performed at physician hospitals cost Medicare an average of 4-6 percent less than the same procedure performed at a hospital not owned by physicians.

Another study concluded that under the bills' current restrictions on growth, no physician-owned hospital could qualify to apply for grow and only 2 percent of other hospitals would meet the growth requirements.

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