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## Trying to be heard

### Doc-owned hospitals worried about FAH's priorities

By Jessica Zigmond

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For years, physician-owned hospital advocates have said they could make a stronger case for the value of these facilities if they had a larger contingent, and, subsequently, a louder voice on Capitol Hill. On a slightly smaller scale, that theory is proving true within the Federation of American Hospitals, the long-established association of investor-owned or -managed community facilities that has been a fierce opponent of the physician-ownership lobby.

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Just ask David White, an FAH board member who serves as chairman and chief executive officer of Iasis Healthcare, Franklin, Tenn. A member of the FAH since the 1970s, White said he remembers when the association was more effective in representing the views of its entire membership. That's not the case today for FAH member Iasis, whose opposition to the FAH's official position on physician-owned hospitals has led to what White called a "chilled relationship" between the two organizations.

"I think the federation is clearly controlled by one organization, and it's clearly become virtually irrelevant to the other members," White said of the group that was established in 1966. "It only works for the agenda of its largest member. That was never the case previously. We were always able to speak as one voice," he said, adding that for-profit hospital chain HCA is the association's largest member. White worked at then-Columbia/HCA years ago,

well before the idea of physician-owned facilities became a contentious topic. He said he is concerned that the FAH's preoccupation with this issue has superseded other topics that are of equal importance to the federation's other members.

"There is a lot of political capital that has been wasted on this issue where other issues—such as reimbursement—has not been effectively wagered," White said.

But, the FAH said it is committed to a variety of topics. FAH President Chip Kahn declined an interview, but the association sent a written statement that said the "FAH works on a broad array of issues for our members, and they set our agenda. In the case of physician ownership, our members decided overwhelmingly to advocate for eliminating the whole hospital exception."

While the Stark law prohibits physician self-referral, the so-called whole-hospital exception permits physicians to make referrals to hospitals if the physician is authorized to perform services at the hospital, and if the physician's ownership or investment interest is in the entire, or "whole," hospital. That law preceded the growth of specialty hospitals, however, which prompted Rep. Pete Stark (D-Calif.) to say in a 2005 news release that he agrees with those who view physician-owned specialty hospitals as nothing more "than free-standing divisions of a hospital."

The debate continues in Washington, as House leaders recently included provisions to stop the growth of these facilities in the State Children's Health Insurance Program bill they passed, though the Senate version does not have those measures (See story below).

It is likely that "the House will take up the Senate bill—making a conference not necessary—and send it to the president," said Eric Zimmerman, a partner with McDermott Will & Emery, Washington. "With that said, if this provision is not included in what is sent to the president, it will re-emerge again," he added. "Those who object to physician ownership of hospitals have made it clear that this is a priority and one they want to pursue until they achieve their objective."

Meanwhile, the question remains if more members of the federation would like to see their association lobby differently on this issue—and if the FAH is not receptive to their views. Of the members on the federation's board of directors, at least 15 work at hospitals or health systems that have affiliations with physician-owned hospitals, ambulatory surgery centers, or both (See chart). Iasis has 15 hospitals and one behavioral health facility, and seven have arrangements in which physicians have a financial stake in the facility. White acknowledges that the model simply doesn't work in all geographic areas, most obviously in states that already have restrictions on these arrangements. Still, he has said some of his fellow members have been silent on the issue. For this story, board directors of the other companies that have physician-

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ownership models either declined to be interviewed or were unavailable. Some, however, sent statements.

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"Our position on physician self-referral is consistent with that of the Federation of American Hospitals," said the statement from Universal Health Services, King of Prussia, Pa. "Of our 81 full-service acute and behavioral community hospitals, only one has any physician interest—and that is an 11% interest."

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Nashville-based HCA said its one physician-owned hospital—49-bed Texas Orthopedic Hospital—was acquired during the Columbia era and is arranged in a way that would not allow it to unwind the physician-ownership structure. The company's affiliations with ambulatory surgery centers are "clearly allowed under Stark, while physician-owned hospitals operate under a loophole in Stark's whole-hospital exception," a company spokesman said in an e-mail message.

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Randy Fenninger, chief lobbyist for Physician Hospitals of America, acknowledged that some hospital systems have entered into these arrangements reluctantly, while others—such as the Baylor Health Care System in Dallas—have objected to its lobbying group, the American Hospital Association, but to no avail. It's not uncommon, he said, for board members to support policies that contradict policies of the associations that represent them.

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"It's also very clear that to whatever extent there have been board members who have hospitals or hospital systems that joint venture with physicians—those people have either been unable or unwilling to take the fight to the board and change the policy of the association," Fenninger said. "If there were enough of them at the board level, you might have a change in policy."

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