

House Medicare Bill Slams Physician-Owned Hospitals; Restricts Growth, Investment

Lawmakers and industry stakeholders are assailing an unexpected provision of the House-passed Children's Health Improvement and Medicare Protection (CHAMP) Act that limits the growth of physician-owned hospitals and restricts the amount of investment by physician groups or individual physicians. Proponents of the bill say it protects the Medicare trust fund by easing the growth of specialty hospitals that they believe drive up the cost of Medicare through overutilization. Opponents say the severe restrictions could lead to the demise of the industry.

"This will kill them," one longtime Washington lobbyist said.

The Congressional Budget Office (CBO) estimates the bill would save Medicare \$700 million over five years and nearly \$3 billion over 10 years.

The legislation also pits two powerful lobbies against each other. The American Medical Association (AMA) expressed concerns over the law, while the American Hospital Association (AHA) has vowed to support the provision through the conference process.

"[The bill] ensures that physicians cannot refer patients to hospitals in which they have an ownership interest, so it eliminates the conflict of interest inherent in self-referral, and prevents cherry-picking and the financial incentives for physicians that can lead to increased utilization," an AHA spokesperson said, adding the provision also promotes "fair competition."

A physician-owner of a Midwestern hospital that would be affected by the bill disagrees with that assessment. He believes the longtime vilification of the physician-owned hospital industry is driven by larger hospitals' desire to snuff out competition. And, he said, he can hardly blame them. He said if he were McDonald's and a Wendy's moved in next door and he could find a way to ban them through legislation -- he would.

But he scoffed at the assertion that physician-owned hospitals cherry pick patients or drive utilization. His hospital treats Medicaid, Medicare and insured and uninsured patients alike, he said, adding they turn no one away. Further, he said the idea that any physician would be morally vapid enough to suggest a patient have unnecessary surgery for his or her own financial gain is demeaning to all physicians.

An AMA official said the organization supports physician-owned hospitals as one way to provide patients with high quality care, and is concerned about restrictions on them in the legislation. "All physicians caring for Medicare patients face a steep 10 percent cut next year, which will surely harm seniors' access to health care," AMA Board Chairman Edward Langston said in an e-mail. "We will continue to work with members of Congress on the physician provisions of the legislation during the conference process, including working to keep the doors open at physician-owned hospitals."

But AHA plans to do the same. "[AHA] will work to ensure the issue of physician-owned limited-service hospitals continues to be addressed as the bill moves its way through conference," the representative said.

It is currently unclear when the bill will go to conference and, when it does, how this controversial provision will fare. An aide to Senate Finance Committee Chair Max Baucus (D-MT) was unable to comment on the lawmaker's position by press time. The Senate-passed SCHIP reauthorization bill is narrowly focused on SCHIP and does not include Medicare reforms that Baucus hopes to move separately.

A staffer for ranking committee member Charles Grassley (R-IA) said the subject is definitely on his radar. Recently, the Finance Committee launched a probe into a Texas physician-owned specialty hospital after a patient died following elective surgery. Medicare subsequently pulled the hospital's provider number and the facility decided to shut down (see *Inside CMS*, March 22).

"Sen. Grassley has longstanding concerns about specialty hospitals and related to physicians' roles in particular," the aide said. "He has been an advocate for legislation that would address his concerns and has been weighing his legislative options on specialty hospitals apart from the SCHIP debate. Sen. Grassley is looking at the language in the House SCHIP bill. It may be similar to what he's been contemplating, but he won't make any determinations on support until he has a better idea of what the final SCHIP conference committee product contains."

According to Section 651 of the House-passed CHAMP Act, only hospitals that held a Medicare provider agreement as of July 24, 2007 -- and do not add beds or operating rooms after the bill's enactment -- can remain exempt from the current Medicare policy that prohibits physicians from referring patients to facilities with which they hold financial interest.

Essentially, there can be no new construction and facilities may not grow, the Washington lobbyist said. This is financially disastrous not only to hospitals which may have, say, 15 beds open with the idea of doubling capacity in later years, but also to developers who have "put \$20 million in concrete" into a project and yet don't have a provider number. The proposal does nothing to protect ongoing projects, the lobbyist points out.

To address any conflicts of interest, hospitals would be required under the CHAMP Act to submit reports identifying all physician investment and procedures for disclosing ownership to patients. The source with a group that represents physician-owned hospitals said members have no issues with the disclosure laws.

The bill also limits the portion of a facility that physicians -or family members may own -- to 40 percent and caps individual investments at 2 percent. Physician-owned hospitals may not provide loans or other favorable financial incentives to invested physicians. It further codifies recent CMS regulations that demand all hospitals have the capacity to offer initial emergency care and procedures to transfer patients if the situation is beyond the scope of their capabilities.

Hospitals will have 18-months to comply with the new bill, if enacted. But, stakeholders say the grandfather clause only drags out the inevitable. "It leaves us withering on the vine," the source representing physician-owned hospitals said.

According to a one-pager that outlines the potential financial impacts of the rule -- generated by the above source's group -- the law would "obviate" the economic owner interests of the physicians legally held property. Legally, it could result in an unconstitutional taking of property -- a violation of the 5th Amendment -- "because physicians are being forced to sell at bargain 'fire sale' prices due to government intervention in private markets."

The one-pager also notes that the demise of such hospitals could negatively affect communities which see jobs and revenues from the hospitals, which -- unlike their non-profit counterparts -- do pay taxes.

According to many, while physician-owners have long known they're not popular on Capital Hill, section 651 came as a shock.

"We did not see this coming at all," David Weber, CEO of the Wenatchee Valley Medical Center (WVMC) in North Central Washington state, told *Inside CMS*.

WVMC -- which treats 41 percent Medicare and 11 percent Medicaid patients -- would be forced to re-arrange its financial structure under the bill. The facility, started by three physicians in 1940, is currently 100 percent owned by a group of 150 physicians. Although it complies with the provision that limits a physician's holdings to 2 percent of the total investment, it would still violate the section restricting aggregate physician ownership to 40 percent. Therefore, in this case, if each physician owned an equal amount -- or approximately 0.67 of 1 percent - every investor would be forced to divest 0.4 of 1 percent of their ownership to reach compliance under the bill.

But, Weber asked, who would want to purchase a business that is federally restricted from growing?

During an Aug. 1 House Rules Committee hearing on the CHAMP Act, GOP Rep. Doc Hastings (WA), who represents the Wenatchee region, and Rep. Pete Sessions (R-TX) vilified the provision for its potential to put critical health care facilities out of business. Hastings specifically asked if the WVMC would be affected by the law.

Democratic Reps. Frank Pallone (NJ) and Jim McDermott (WA) fumbled with several conflicting replies, first claiming the facility would not be touched by the provision, then switching course to say that it may very well be affected. At one point, McDermott said the closure of such facilities is exactly the point of the legislation because many don't have emergency rooms. In addition, the AHA is opposed to them, McDermott added.

Pallone was more tempered, explaining that the intention of the provision is to ensure "that down the road, there aren't any abuses" relating to physician self-referrals at the expense of Medicare.

Hastings sponsored an amendment that would have eliminated the 40-percent stipulation, and Sessions sponsored another to strike the entire provision. Both were shot down 8-4 along strict party lines. Asked later Wednesday if the issue has been resolved, Hastings said, "Absolutely not ... I don't know how they'd resolve this. Would you sell off part of the business? I don't know."

During the Ways & Means markup, Rep. Sam Johnson (R-TX) offered an amendment to strike the language that “restricts both existing and non-existing physician-owned hospitals from expanding or being built.” The amendment would have also stricken any language that “would provide significant regulatory burden on specialty hospitals.”

The amendment was rejected, but Ways & Means Chair Charlie Rangel (D-NY) and health subcommittee Chair Pete Stark (D-CA) told Johnson they would be willing to work on a compromise.

Hastings later bristled, voicing outrage over the provision during the CHAMP Act debate on the House floor. “The [WVMC] is 100 percent owned by 150 doctors -- and I simply fail to see why this should be made illegal in the United States of America,” Hastings said.

Moreover, he said, Reps. Pallone and McDermott had admitted to him that they'd received calls from other concerned hospitals. “Mr. Speaker, something is terribly wrong in the House of Representatives if hospitals across this country are calling committees in a panic to find out if health care legislation is going to force them to close down.”

Stakeholders said they have a little bit of time to rally the troops and lobby Congress to repeal or amend the provision as final action is not expected for at least a month. Conference won't be completed until September, then the legislation will head for a president's desk, where it faces a promised veto.-- *Amy Lotven*

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