

PHYSICIAN-OWNED HOSPITAL PERFORMANCE MAY PROVIDE SUPPORT FOR LIFTING EXPANSION MORATORIUM

As lawmakers return for the second session of the 114th Congress, physician-owned hospitals ("POHs") across the country are closely watching the status of the Promoting Access, Competition, and Equity Act of 2015 (H.R. 2513) authored by Rep. Sam Johnson (R-TX). Also referred to as the PACE Act of 2015, H.R. 2513 would change existing law under the Affordable Care Act ("ACA") to allow POHs to expand their facilities under certain conditions. The legislation, which initially garnered support from several national physician organizations, including the American Medical Association, could gain momentum in light of recent governmental and independent reports highlighting POHs' strong performance in achieving quality measures in 2015.

PERFORMANCE OF PHYSICIAN-OWNED HOSPITALS IN 2015

Despite past allegations that POHs cherry-pick the most profitable patients, provide limited or no emergency services and/or increase the utilization of health care services through self-referrals, recent reports released by CMS suggest that POHs are among the top performers in quality and patient satisfaction. These quality achievements may provide H.R. 2513 with new momentum as it tries to make its way through Congress. Quality achievements by POHs in 2015 included:

- *Hospital Value-Based Purchasing Program.* Seven of the top ten hospitals receiving quality bonuses in the new Hospital Value-Based Purchasing Program in 2015 were POHs despite the fact that POHs represent less than five percent of the 5,700 hospitals nationwide. This was the fourth consecutive year that POHs have been the top performers under the Hospital Value-Based Purchasing Program and the third consecutive year that the top performer has been a POH.
- *CMS Star Ratings.* According to the 2015 results of the Hospital Consumer Assessment of Healthcare Providers and Systems Survey ("HCAHPS") conducted by CMS, POHs achieved a higher level of patient satisfaction than their non-POH counterparts. Sixty-seven percent of POHs received a four- or five-star rating, the highest possible rating for the Hospital Compare program. Despite accounting for less than five percent of all hospitals, 84 of the 251 hospitals receiving five-star ratings were POHs.
- *Study by the British Medical Journal.* According to a recent study by the British Medical Journal, titled *Access, Quality, and Costs of Care at Physician Owned Hospitals in the United States: Observational Study* (the "Study"), POHs generally do not treat a higher volume of the most profitable patients than other hospitals, debunking prior reports relied on by many opponents of H.R. 2513. The Study concluded that although POHs may generally treat healthier patients, they do not systematically cherry-pick patients based on a patient's income level or the profitability of their treatment. Additionally, the Study found that POH patients were just as likely to be Medicaid patients and to be from racial minority groups as patients treated at non-physician-owned hospitals. You can learn more about the Study [here](#).

OVERVIEW OF H.R. 2513

Among other rules imposed on POHs, the ACA amended the Stark Law such that POHs are prohibited from expanding the aggregate number of operating rooms, procedure rooms or licensed beds beyond the number for which that particular hospital was licensed as of March 23, 2010. The Secretary of Health and Human Services may grant an exception to this limitation for a POH that qualifies as an applicable hospital or a high Medicaid facility as defined in the regulations. To date, only three hospitals have satisfied the criteria necessary to be granted an expansion exception.

If enacted, H.R. 2513 would suspend these ACA-imposed POH expansion limitations for a period of approximately three years to allow POHs that file expansion requests before September 30, 2019 to increase the number of beds at their facilities. After the three-year period, beginning on October 1, 2019, the ACA expansion moratorium would be re-imposed; however, the expansion exception criteria would be revised to allow POHs with consistently high quality ratings to be granted an exception to expand. According to the language in H.R. 2513, a POH would be deemed as having consistently high quality ratings if the POH achieved a hospital star rating of three stars or greater for 12 consecutive quarters. To ensure consistency, CMS would not be permitted to alter the methodology for computing a hospital's quality rating prior to October 1, 2019.

Additionally, the H.R. 2513 would provide relief for those POHs that were under development as of March 23, 2010 (i.e., those POHs that were under construction but were unable to secure a Medicare Provider Agreement prior to the December 31, 2010 deadline) to allow these facilities to proceed with their previously planned construction. A POH that meets one of the following criteria for new construction would qualify for an expansion exception if the POH:

- Had a binding written agreement for construction, renovation or lease and expended at least \$2.5 million before March 23, 2010; or
- Obtained a state certificate of need (where applicable) on or before March 23, 2010.

If enacted, these new exception criteria would mirror the current exception criteria for the long-term care hospital new building moratoria.

PRACTICAL TAKEAWAYS

While H.R. 2513 faces an uncertain future, leadership changes in the House have found one of the bill's strongest supporters, Rep. Kevin Brady (R-TX), as the new chairman of the House Ways and Means Committee, which has asserted jurisdiction over the measure. The quality performance and patient satisfaction achievements demonstrated by POHs may assist proponents of the PACE Act in persuading members of Congress that physician-owned entities have the ability to produce low cost, high quality results.

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