HFMA Lone Star Chapter Dinner Meeting
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Physician Owned Hospitals and Healthcare Reform

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The physician self-referral or Stark law, section 1877 of the Social Security Act (42 USC §1395nn), prohibited a physician from referring a Medicare patient for “designated health services” (most inpatient and outpatient hospital services) to an entity with which the physician (or an immediate family member) had a financial relationship, unless the financial relationship could meet the following exception.

Physician investment in hospitals was protected under an exception commonly referred to as the “Whole Hospital Exception.”

Until the reform legislation, this exception was easy to meet as long as the physician’s ownership was in the entire or “whole” hospital.
Among other things, the Act amended the “Whole Hospital Exception” so that it applies only to those grandfathered hospitals that had obtained a Medicare provider agreement by December 31, 2010.
On March 21, 2010, the House passed HR 3590, “Patient Protection and Affordable Care Act,” which was signed by President Obama on March 23, 2010.

This bill includes Section 6001 titled “Limitation On Medicare Exception To The Prohibition On Certain Physician Referrals For Hospitals.”

This section significantly restricts the Stark “whole hospital exception” that allowed physician-owned hospitals (POH) to accept government-funded patients.
Any new POHs were required to have their Medicare provider agreements executed by December 31, 2010.

POHs under construction were required to meet all of these requirements:

- Be completed before December 31, 2010
- Met Medicare conditions of participation
- Been approved for provider enrollment and received their provider agreements

Existing POHs were grandfathered as of the date of enactment, March 23, 2010.
The Effect of the Act on Physician Owned Hospitals
POHs Generally Cannot Expand

Although existing POHs were grandfathered as of the date of enactment, March 23, 2010, they were generally prohibited from expanding the number of beds, procedure rooms and operating rooms for which they were licensed.

Procedure rooms include rooms in which catheterizations, angiographies, angiograms and endoscopies are performed.

Emergency rooms or departments can be expanded.
POHs generally cannot expand, except for

POHs may apply for an expansion exception every two years subject to satisfying a number of stringent criteria that few hospitals are able to meet.

The exceptions require the POH to either be located in a county with high population growth or be the sole hospital in the county and to meet other requirements, including having a certain percentage of Medicaid patients.

The process also requires that there be an opportunity for community input.
The Act caps the total percentage of the direct or indirect ownership or investment interest in a hospital at the percentage owned in the aggregate by all of the physicians as of March 23, 2010.

A “physician owner or investor” is defined as a physician (or immediate family member of such physician) with a direct or indirect ownership or investment interest in a hospital.
Physicians can transfer equity interests in a physician-owned hospital among themselves and to non-physician joint venture partners without increasing aggregate ownership.

Physician owners may individually increase or decrease their proportion of equity in a hospital, but future physician equity syndications to raise funds for new capital are prohibited.
Of course, for those POHs that were complete and certified after March 23, 2010 and before December 31, 2010, the aggregate physician ownership will capped as of that date.
It is important to note that the interpretation and regulations associated Act are in progress

We have obtained numerous legal opinions and legal interpretations of the Act but regulatory definition is still in its relative infancy
Patient Protection and Affordable Care Act
Misconceptions
The Act does not provide a basis for CMS to deny provider agreements to POHs

A Medicare provider number is issued upon meeting Medicare conditions of participation

In Texas, this means upon accreditation by a Medicare - deemed accreditation agency and the communication of such to CMS
A new POH cannot be grandfathered, and would be unable to meet the Stark Law’s Whole Hospital Exception, so its physician investors would be prohibited from referring their Medicare patients to the POH and the POH is prohibited from billing for such prohibited referrals.

However, physician investors are not prohibited from referring their private pay and privately insured patients to the POH.

The Act has created opportunities for POHs to provide services to insured and cash-paying patients and also to create alignment strategies with its physician-owners to establish integrated care organizations with employers.
As long as the POH does not accept or bill for services rendered to Medicare/Medicaid patients referred by physician investors it may expand.
The Act does not prohibit the hospital from treating Medicare/Medicaid patients or accepting referrals of Medicare/Medicaid patients from non-investor medical staff members.

The hospital’s treatment of these patients would simply not trigger application of the Stark Law, if the referring physician did not otherwise have a compensation interest with the hospital.

Technically, a new POH could accept patients from non-investors, however, out of an abundance of caution, Forest Park has elected to not accept Medicare and Medicaid patients.
Yes. The physician’s ownership in the entity that owns the real estate (building and land) upon which the hospital is located should not implicate the Stark law because the physician’s ownership interest in the real estate entity would not constitute a direct or indirect relationship with the hospital for purposes of the referral prohibition.
What about Medicare/Medicaid Patients who are Treated in the Emergency Department in a POH?

The legislation does not prohibit the hospital from treating Medicare/Medicaid patients in the emergency department, or billing for services provided to such patients, if they are not referred by physician investors.

The hospital’s treatment of these patients would simply not trigger application of the Stark Law.
The Case For and Against POHs
Critics site the possibility for the increased utilization of medical services caused by the conflict of interest on the part of physician owners.

Opponents site POHs for selecting the healthiest and high-reimbursed patients leaving low-reimbursed and unhealthy patients for the community hospital to treat.

The American Hospital Association supported the Act based on the above arguments and sites some infrequent but dramatic patient safety events.
A high number of POHs were awarded the prestigious Press Ganey 2011 Summit

16 of 37 winners of the Inpatient Patient Satisfaction Summit Award are POHs

To earn this award, recipients must be ranked in the 95th percentile or above in the Press Ganey database for excellence in patient satisfaction for three consecutive years

“Almost 45 percent of these awards on patient satisfaction go to physician-owned hospitals even though they make up less than five percent of all hospitals nationwide,” stated John Richardson, executive director of Physician Hospitals of America. “This is a tribute to physician-owners and staff who care deeply about delivering the best possible care to their patients.”

In the clinical care category, which measures quality of care based on CMS data, three of the 11 hospitals honored were POHs (27 percent). POHs won awards in other categories as well
“At a time when cost-controlling and job-producing competition is needed most in healthcare and the overall economy, this provision stands out as special-interest legislation that needs to be reconsidered”

“Lawmakers need to rethink the provision given the growing concern over the viral consolidation in the industry and how that consolidation and loss of competition may ultimately lead to higher prices for healthcare services”

“The hospital lobby's intent appears to have been to reduce competition from doctors by turning them into employees of their service networks rather than facility owners to be feared”

“We report on a near-daily basis of another medical practice being acquired by a hospital or hospital system. And growing more frequent is news of health insurers snapping up doctors and making them employees. If that's fair game in the marketplace, doctors should be allowed to compete on the same level”
“The other irony is the Act’s physician ownership provision choking off a delivery model that's perfectly suited to follow the incentives and carry out the goals of healthcare reform

“Under bundled payment reimbursement schemes, for example, payers want to contract with providers that offer specific types of treatment to patients with specific medical conditions”

“Physician-owned hospitals that offer specialized inpatient care are ideal provider partners in those arrangements”
Forest Park Medical Center at Frisco
Dallas North Tollway and Main Street - Opened June 18, 2012
Forest Park Medical Center
At Southlake
Under Construction at the 114 Freeway at North White Chapel Boulevard
May 2013 Completion