



**American Hospital
Association**

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January 4, 2005

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Dear Mr. Hackbarth:

On behalf of the American Hospital Association, I wanted to follow up on the last MedPAC meeting to underscore the importance of several proposed recommendations. The decisions you make in January will be critical to the future shape of America's health care system.

A full market basket update for hospital inpatient and outpatient services. MedPAC data showed a continued four-year decline in hospitals' overall Medicare margins to a *negative* 1.9 percent in 2003. Staff projects that margins will remain negative through 2005. Congress has already approved a full inpatient market basket update for 2006 for hospitals reporting certain quality data. We strongly urge the commission to keep this full update recommendation for 2006.

Eliminate the "whole hospital" exception under the Stark self-referral law.

MedPAC staff has presented a compelling picture of the problems that physician-ownership and self-referral can create for our health care system. As a matter of policy, Congress, through the Stark laws, prohibited physician self-referral in many settings. An exception was made for physicians with an ownership interest in a "whole hospital" based on the reasoning that a single physician's ownership interest in and referral to a whole hospital was diffused across multiple departments so as to limit any self-inurement that may result. And Congress expressly prohibited physician self-referral to departments or subdivisions within the whole hospital. At the time these laws were passed, however, policy makers did not foresee that specific departments or specialties within a hospital (e.g., cardiac care, orthopedics, surgery) would become stand alone hospitals.

Unfortunately, some have tried to recast this issue. To be clear, this is not about competition, specialization or choice. This is not about whether limited-service hospitals should exist. Some of these organizations may indeed play an important role in our health care delivery system. The issue at hand is the potential for conflict of interest when physicians own and self-refer to these hospitals. Limited-service hospitals could



Glenn M. Hackbarth, J.D.

January 4, 2005

Page 2

continue to develop – even be managed and governed by physicians – but without ownership and self-referral as part of the business model. We strongly urge the commission to keep this important recommendation to eliminate the whole hospital exception in the Stark law.

Add to the recommendation an extension of the current moratorium on physician self-referrals to certain limited-service hospitals under Medicare and Medicaid until the whole hospital exception can be eliminated. The current moratorium on physician self-referrals to certain limited service hospitals will expire in June 2005. Because of the legislative calendar, Congress may not be able to act to eliminate the whole hospital exception before June. If Commissioners believe that physician ownership and self-referral raise conflict of interest concerns, it would be important to signal to policy makers the need to extend the moratorium in order to prevent this from happening until such time as Congress can act on closing the whole hospital exception.

Thank you for your time and attention to these important issues. If you have any questions, please call me at (202) 626-2266, email me at ccoyle@aha.org, or contact Ashley Thompson at athompson@aha.org.

Sincerely,

Carmela Coyle
Senior Vice President, Policy