



Ban Physician Self-referral to New Limited-service Hospitals

Issue

A loophole in the federal law allows physicians to own limited-service hospitals, such as cardiac, orthopedic and surgical facilities, where they then refer their carefully selected patients for highly reimbursed procedures – a practice known as self-referral. This practice raises serious concerns about conflict of interest, fair competition, and whether the best interests of patients and communities are being served.

Why Physician Conflict of Interest is a Serious Problem. When physicians own, even in part, the facilities to which they refer patients, their decisions are subject to competing interests. Physicians who own limited-service hospitals and refer patients to those facilities raises the following concerns:

Patient selection. Physician-owners have at least three ways in which they can financially reward themselves by selectively referring or "cherry picking" patients. First, they can simply avoid treating uninsured, Medicaid and other patients for whom reimbursement is low. Second, they can selectively refer patients to different facilities, sending well-insured patients to the facilities they own and poorly insured or uninsured patients elsewhere, often to the local full service community hospital. And third, they can selectively refer healthier, lower-cost, lower-risk patients to facilities they own, leaving more severely ill patients to be treated by local full-service community hospitals.

Service selection. Physician-owned limited-service hospitals, by definition, limit the care they provide to a select group of services. As research from the Medicare Payment Advisory Commission (MedPAC) has shown, physician-owners target only profitable diagnoses and procedures — cardiac care, orthopedic surgery and other surgical procedures. There are no limited-service burn hospitals, limited-service neonatal care hospitals, or limited-service pneumonia hospitals.

Quality oversight concerns. Physician-ownership and self-referral also can lead to serious conflict of interest in the area of quality oversight. Oversight for the quality of care in America is performed through a "peer review" process – groups of physicians who review, evaluate and oversee the quality of the care provided by their physician colleagues and specialists. Quality oversight is fraught with conflict of interest when the physician doing the review is an owner/partner with the physician being reviewed. The

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arrangement raises concerns about whether quality could be compromised because of financial interests.

The Facts. In October 2003, the Government Accountability Office found that, when compared to full-service hospitals, physician-owned limited-service hospitals:

- treated patients that tended to be less sick;
- treated smaller percentages of Medicaid patients;
- are much less likely to have emergency departments;
- have higher margins; and
- had physician-ownership that averaged slightly more than 50 percent.

In March 2005, MedPAC issued its report to Congress on the topic, which found that when compared to full-service hospitals, physician-owned limited-service hospitals:

- tend to treat lower shares of Medicaid patients;
- concentrate on certain diagnoses – high-paying diagnosis-related groups (DRGs);
- treat relatively low-severity patients within those DRGs; and
- do not have lower Medicare costs per case.

Current Status. Because of concerns with this practice, the Medicare Modernization Act of 2003 (MMA) imposed a temporary moratorium on physician self-referrals under Medicare to new limited-service hospitals. While the moratorium expired June 8, 2005, CMS put in place a "defacto" moratorium — barring new limited-service facilities from coming into the Medicare program for up to six months (until December 2005) to allow CMS to carefully review its policies related to these entities.

Tell Congress to close the loophole in federal law by permanently banning physician self-referral to new limited-service hospitals. By doing so, Congress can help to prevent conflict of interest between physicians and patients, preserve care for everyone's health care needs, and promote fair competition in today's market place. The American Hospital Association supports S. 1002, introduced by Sens. Charles Grassley (R-IA) and Max Baucus (D-MT), which would permanently close the self-referral loophole. Urge your senator to co-sponsor this important legislation.