

WILL REPEAL AND REPLACE LIFT THE MORATORIUM ON PHYSICIAN-OWNED HOSPITALS?

The Affordable Care Act ("ACA") established certain amendments to the Stark Law, including that new physician-owned hospitals cannot be formed and existing physician-owned hospitals cannot expand the aggregate number of operating rooms, procedure rooms or licensed beds beyond the number for which the hospital was licensed on March 23, 2010. Due to the Trump administration's desire to "repeal and replace" the ACA, it is possible that the moratorium on physician-owned hospitals may be lifted.

While the recently leaked draft repeal and replace bill does not include a repeal of the ban on physician-owned hospitals, that does not mean that a lift on the ban may not be forthcoming in future proposed legislation. Speaker of the House Paul Ryan, in his "Better Way" white paper describing his goals for health care reform, called for lifting the ban on physician-owned hospitals. A provision to lift the ban could be included in a future ACA-related bill that does not move through the initial reconciliation but that would need 60 votes in the Senate instead of 50.

While the future of the moratorium on physician-owned hospitals is unknown, it is important for providers to evaluate potential impacts and strategies if the ban on physician-owned hospitals is lifted.

PREPARING FOR A MARKET SHIFT

The likelihood of a lift on the physician-owned hospitals ban remains uncertain; however, providers should evaluate potential options in order to be prepared in the event the ban is lifted. If the ban were to be lifted, the hospital market is likely to see changes such as:

- Large physician groups forming new physician-owned hospitals that compete with existing hospitals;
- Existing physician-owned hospitals increasing the number of licensed beds, building new operating rooms and offering additional procedure rooms;
- Physician-owners exercising options to dilute ownership percentages of non-physician owners of existing facilities; and
- Hospitals partnering with physicians to form new physician-owned hospitals.

Non-physician-owned hospital providers may want to begin working to identify physician groups in the community that may jump on an opportunity to form a physician-owned hospital. In the course of this work, non-physician-owned hospitals should consider strategies for alignment with such physician groups, evaluate alternative opportunities that may shift the focus from a desire to form a new competing facility and/or consider whether a joint ventured hospital partially owned by physicians would benefit the community and the non-physician-owned hospital. Further, non-physician-owned providers may want to consider the impact in the event a competitive physician-owned facility were able to increase the number of beds, operating rooms and/or procedure rooms.

Physician-owned hospitals and physician groups may want to begin to evaluate any desires to expand or enter into the market. It is important to note that the timeline for the creation of a new hospital typically exceeds the process required to expand an existing hospital or to add new investors to an existing hospital. Physicians interested in owning a new hospital may want to consider real estate options, financing options and potential partners.

If you have questions about this topic or would like assistance in developing a strategy to handle the potential repeal of the ban on physician-owned hospitals, please contact:

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