

COMPANION LEGISLATION REPEALING MORATORIUM ON PHYSICIAN-OWNED HOSPITALS INTRODUCED IN SENATE

On May 17, Sen. James Lankford (R-OK) introduced companion legislation (S. 1133) to the House bill that would repeal the Affordable Care Act's ("ACA") moratorium on physician-owned hospitals. Named the Patient Access to Higher Quality Health Care Act of 2017, the bill is the Senate's version of legislation (H.R. 1156) previously introduced in the House by Rep. Sam Johnson (R-TX). Sen. Lankford's bill was referred to the Senate Finance Committee.

The House-approved American Health Care Act, which would repeal and replace many of the provisions of the ACA, did not address the ACA's moratorium on physician-owned hospitals. Nevertheless, lifting the moratorium is consistent with Republican efforts for health care reform and was included in Speaker of the House Paul Ryan's "Better Way" white paper.

The ACA's prohibition on physician-owned hospitals prohibits the formation of new physician-owned hospitals. It also prohibits each existing physician-owned hospital from expanding the aggregate number of operating rooms, procedure rooms and/or licensed beds beyond such hospital's licensed number as of March 23, 2010.

HISTORY OF THE PHYSICIAN-OWNED HOSPITAL PROHIBITION

The prohibition on physician-owned hospitals has recently received increased attention. For example, in April 2017, the Centers for Medicare & Medicaid Services ("CMS") issued a proposed rule addressing potential changes to the rules governing physician-owned hospitals. In the proposed rule, CMS sought comments from providers and industry stakeholders regarding the current restrictions on physician-owned hospitals and how those restrictions affect the delivery of health care. Over the past several years, physician-owned hospitals have achieved high scores in Value-Based Purchasing Programs, CMS Star Ratings and various studies regarding access to care in physician-owned hospitals, which may be contributing to a climate that is willing to consider lifting the prohibition.

While the likelihood of the removal of the physician-owned hospital prohibition remains uncertain, the following providers may want to evaluate options in order to be prepared in the event the prohibition is lifted: large physician groups interested in forming new physician-owned hospitals; existing physician-owned hospitals interested in increasing the number of licensed beds, operating rooms and/or procedure rooms; physician hospital owners looking to increase their ownership percentage in an existing hospital; and hospitals who desire to partner with physicians to form new physician-owned hospitals.

If you have questions or would like assistance developing a strategy to address a repeal of the moratorium on physician-owned hospitals, please contact:

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