

PHYSICIAN-OWNED HOSPITALS: ADDITION OF UNLICENSED OBSERVATION BEDS DOES NOT INCREASE THE HOSPITAL'S NUMBER OF LICENSED BEDS

CMS recently issued Advisory Opinion 2013-03 ("Opinion"), clarifying that a physician-owned hospital may add unlicensed observation beds without violating the limitation on expansion.¹

BACKGROUND

Section 6001(a)(3) of the Affordable Care Act ("ACA") amended the whole hospital exception to impose additional restrictions on physician-owned hospitals including the imposition of limitations on the expansion of facility capacity, stating, "The number of operating rooms, procedure rooms and beds for which the hospital is licensed at any time on or after [March 23, 2010] is no greater than the number of operating rooms, procedure rooms and beds for which the hospital is licensed as of such date." **The Opinion clarifies CMS's position that the addition of unlicensed observation beds at a physician-owned hospital will not result in the addition of new "licensed" beds at the physician-owned hospital and, therefore, the number of beds licensed on or after March 23, 2010 will not exceed the number of beds licensed before that date.**

THE OPINION

The requestor of the Opinion, a 61-bed acute care hospital with several physician and non-physician owners ("Requestor"), inquired as to whether the addition of an observation unit with 14 observation beds would increase the hospital's total number of licensed beds beyond the hospital's baseline number of licensed beds as of March 23, 2010.

Because Section 6001(a) of the ACA does not define the term "licensed," CMS looked to the state's bed licensure process for purposes of analysis. **Critical to CMS's opinion was the fact that the Requestor's state does not license observation beds (and therefore Requestor would not be required to pay the state's typical per-bed licensure fee) in rooms that do not meet the state requirements for inpatient suites.** The Requestor also certified that the rooms in which the observation beds would be located would not be used as operating rooms or procedure rooms.

CMS determined that the number of beds licensed on or after March 23, 2010 would not exceed the number of beds licensed before that date because the addition of observation beds would not result in the addition of new "licensed" beds at the hospital. **As a result, CMS concluded that the addition of the observation beds would not violate the prohibition against facility expansion.**

PRACTICAL TAKEAWAYS

The Opinion may pave the way for certain physician-owned hospitals to expand services with the addition of unlicensed observation beds. However, the Opinion could also pose obstacles for physician-owned hospitals that may have previously accounted for observation beds in the calculation of the facility's baseline number of licensed beds.

Physician-owned hospitals with plans to remodel or expand should seek counsel regarding whether such renovations could violate the prohibition on expansion. In light of this guidance from CMS, additional options for growth may be available depending on state licensure laws and a particular physician-owned hospital's facts and circumstances.

If you have any questions or would like additional information on this topic, please contact Andrea Impicciche at 317.977.1578 or aimpicciche@hallrender.com, Alyssa James at 317.429.3640 or ajames@hallrender.com or your regular Hall Render attorney.

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¹ For a copy of the Opinion, click [here](#).