

# Reigniting the Debate About Restrictions on Physician-Owned Hospitals

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Earlier this year, Congressman Sam Johnson (R-TX) and Senator James Lankford (R-OK) introduced the Patient Access to Higher Quality Health Care Act of 2017 (H.R. 1156 / S.B. 1133), a proposed law to repeal certain sections of the Affordable Care Act (“ACA”) that have effectively restricted the expansion and construction of physician-owned hospitals (“POHs”). Specifically, the ACA currently prohibits physicians’ referrals of Medicare or Medicaid patients to any hospital in which they have an ownership share if the hospital was formed after December 31, 2010 (prohibiting POHs from utilizing the “whole hospital” or “rural provider” exceptions to the physician self-referral law). The ACA also prohibits POHs from increasing their aggregate percentage of physician-ownership after March 23, 2010. With certain exceptions, a POH may not increase its aggregate number of operating rooms, procedure rooms, or beds above the number for which it was licensed as of March 23, 2010 (or the later effective date of the hospital’s Medicare provider agreement).<sup>1</sup>

The bills reawakened a debate about the pros and cons of POHs. Critics - mainly the non-profit community and for-profit hospitals - remain concerned that POHs “cherry pick” healthier patients undergoing procedures with higher reimbursement rates. Non-POHs are then left to scavenge on low-reimbursement or non-paying patients, which threatens their existence in an increasingly competitive healthcare environment. Critics also accuse POHs of providing no benefit in terms of cost savings or patient outcomes.

On the other hand, advocates of POHs maintain that increased physician participation in hospital governance and decision-making can streamline operational costs and processes. This allows POHs to manage resources more efficiently and provide high-quality care in a more cost-effective way than non-POHs. Advocates maintain that hospital opposition to POHs is merely a matter of economic protectionism and POHs do not actually present any danger to patient care or healthcare costs. In fact, repealing the ban on new POHs has been part of several Republican efforts for healthcare reform and was included in Speaker of the House Paul Ryan’s “Better Way” white paper.<sup>2</sup>

Studies have found the quality of care provided at POHs to be equal to, or in some cases better than, care at non-POHs across a range of metrics, including process measures, mortality rates, and readmission rates.<sup>3</sup> In FY 2017 of the CMS Hospital Value-Based Purchasing Program, which rewards hospitals for delivering high quality of care, adhering to clinical best practices, and improving the patient experience, seven of the top 10 and 40 of the top 100 hospitals were physician-owned.<sup>4</sup> And for the fifth year in a row, a POH was ranked first in the nation. Studies even found higher patient satisfaction at POHs.<sup>5</sup> All this despite POHs comprising only five percent of all hospitals in the nation.

Studies also showed that costs and Medicare payments at POHs were similar to, or lower than, those at non-POHs.<sup>6</sup> An analysis of CMS payment data by Avalon Health Economics

demonstrated that POHs saved Medicare \$3.2 billion over 10 years.<sup>7</sup> In 2014 alone, POHs resulted in more than \$258 million in Medicare savings.

The Federation of American Hospitals and the American Hospital Association have come out in strong opposition to the proposed bills, presenting commissioned studies that confirmed their concerns regarding POHs. Similarly, the Chamber of Commerce has opposed any efforts to unwind the ACA's protections against self-referral to POHs.

While both Patient Access to Higher Quality Health Care Act bills remain in committee as of August 2017, their introduction has raised broad questions: Do the ACA restrictions on POHs reduce patients' access to high-quality healthcare? Should POHs that meet certain quality or cost saving thresholds be exempted from the ACA's restrictions? Would competition stimulated by POHs be good for the American healthcare industry? And will politicians and lawmakers consider the recent data regarding POHs when determining the appropriate role of POHs in our delivery system moving forward?

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<sup>1</sup> Elizabeth Plummer & William Wempe, *The Affordable Care Act's Effects on the Formation, Expansion, and Operation of Physician-Owned Hospitals*, 35 HEALTH AFF. 1452 (2016).

<sup>2</sup> See Paul Ryan, [A Better Way: Our Vision for a Confident America](#) 32–33 (June 22, 2016) (“Lifting the ban on physician-owned hospitals will make markets more competitive by driving down prices and increasing quality.”).

<sup>3</sup> See, e.g., Daniel M. Blumenthal et al., *Access, quality, and costs of care at physician owned hospitals in the United States: observational study*, 351 BMJ 1, 5 (2015).

<sup>4</sup> R. Blake Curd, [Physician-owned hospitals: Competition that drives quality](#), THE HILL (Feb. 16, 2017).

<sup>5</sup> Daniel K. Lundgren et al., *Are the Affordable Care Act Restrictions Warranted? A Contemporary Statewide Analysis of Physician-Owned Hospitals*, 31 J. ARTHROPLASTY 1857, 1859 (2016); see also Adriana G. Ramirez et al., *Physician-owned Surgical Hospitals Outperform Other Hospitals in the Medicare Value-based Purchasing Program*, 223 J. AM. COLL. SURG. 559, 563 (2016) (physician-owned surgical hospitals “demonstrate better patient satisfaction related to specialized training of providers and staff, similar or better patient outcomes, and lower costs hypothesized to occur as a result of aligning manager and leadership salaries with growth and profit of the organization.”).

<sup>6</sup> Blumenthal, *supra* note 3; see also Press Release, Physician Hospitals of America, 55 [National and State Organizations Voice Support for Higher Quality Healthcare](#) (May 17, 2017).

<sup>7</sup> John T. Gill, [Physician-Owned Hospitals Should Be Included In ACA Repeal Bill](#), D HEALTHCARE (Feb. 10, 2017).