POLITICO

June 29, 2017

Physician-owned hospitals stake their industry on repeal efforts – *by Renuka Rayasam*

A window of opportunity for physician-owned hospitals to help eliminate a rule that prevents them from accepting Medicare payments has opened up with Republican efforts to roll back significant parts of the Affordable Care Act.

“Section 6001 was put in ACA to shut us down at patients’ expense,” said John Richardson, executive director of the Physician Hospitals of America, a trade group that represents the industry.

“What we’re working on is trying to get on a legislative vehicle that will get to the president’s desk. We’re talking to senators about all of the data we have — we are part of the solution.”

Facing a powerful hospital lobby that believes these facilities drive up costs, and uncertainty about the Senate’s ability to pass an Obamacare repeal bill that includes language lifting the block on Medicare payments, the fight ahead for physician-owned hospitals promises to be a tough one.

If successful, the industry would resume expansion with a flurry of new construction that’s been halted in the last seven years since the ACA became law — much of which would likely occur in the Lone Star state. Of the roughly 250 hospitals in the country owned by doctors, 40 percent are based in Texas, which has some of the most permissive hospital construction laws in the country.

But without being able to accept Medicare, new physician-owned hospitals would all but cease to exist. The dozen or so facilities in Texas that sprung up since 2011 all went bankrupt or were sold to a larger hospital group, according to a 2016 Health Affairs article.

“When the moratorium came down, many physician-owned hospitals were kept from being able to expand and were frozen in their tracks,” said Carlos Cardenas, president of the Texas Medical Association and board chairman at the Doctors Hospital at Renaissance, which is on the Texas-Mexico border and one of the largest physician-owned hospitals in the country.

“Lifting the moratorium will add kindling and we will see a resurgence,” he said.

The industry, however, faces opposition from the hospital industry and public health advocates who argue that the facilities — many of which focus on single specialties, such as orthopedics or cardiology — siphon high-profit patients from community hospitals. They’re also accused of routinely conducting profitable procedures, even when less costly primary or preventative care is clinically appropriate.

“These hospitals often only take well-insured people and leave the uninsured and the poorly insured to the general community hospitals,” said Jan Emerson-Shea, spokeswoman for the California Hospital

Association, which represents more than 400 hospitals in the state. (CHA does not include physician-owned facilities in its membership.)

Emerson-Shea said that cherry-picking patients hurts community hospitals, which unlike like specialty hospitals, are required to treat everyone, regardless of their ability to pay.

“It’s those well-insured patients who help offset the losses [that] general, acute-care hospitals incur in treating everyone,” she said.

But Richardson of Physicians Hospitals of America says physician-owned hospitals play an important role in giving patients more choice in where they receive care, and that the care is of high quality.

“Patients experience higher satisfaction rates at hospitals with physician ownership. All the government data confirms it,” he said.

Since 1989, worried that doctors would place profit over patient care, Congress has increasingly limited Medicare payments to facilities in which referring physicians have a financial stake. However, a loophole in the law that kept payments flowing to physician-owned hospitals continued to fuel the industry in the 1990s.

About a decade ago, Congress temporarily halted Medicare payments to certain physician-owned hospitals, and the Affordable Care Act permanently froze funding to facilities formed or expanded after 2010.

Now the physician-owned hospital industry lobby is hoping that Republicans’ efforts to overhaul the health care law will buoy their yearslong pitch to completely lift the moratorium.

In addition to the introduction of separate House and Senate bills — both of which allow new and expanded facilities to accept Medicare patients — the group is lobbying to have the measure included in the Senate’s Better Care Reconciliation Act. But strict Senate rules on what can be included in a bill that needs to pass with a simple majority means making the change will be a tough sell.

Regardless of the outcome, physician-owned hospital groups promise to be persistent in their efforts, given that the fate of their industry is on the line.

State legislatures can do little without congressional action, but the administration has some wiggle room to approve new facilities. Over the past few years, CMS has granted exemptions for five hospitals in Indiana and Texas, including Texas-based Renaissance, because they are in rural areas or serve a large share of low-income patients.

Being able to accept Medicare is critical to these high-cost hospitals.

When the moratorium came down, “there a was major chilling effect” on the industry, said William Wempe, a professor at Texas Christian University’s business school. “The legislation absolutely had its intended effect.”

Wempe co-authored the article published last year in Health Affairs that looked at the impact the ACA had on Texas' physician-owned hospitals. He found that growth in the state accelerated in anticipation of the law, but came to a standstill once it was implemented.

Forest Park Medical Centers is one of about a dozen newer physician-owned hospitals in Texas that tried to make a go of it without being able to accept Medicaid, Medicare or Obamacare plans. It went bankrupt last year. By the end of 2016, 21 of the company's employees were indicted on fraud charges for accepting bribes and kickbacks in exchange for patient referrals.

It's the kind of scenario that Obamacare architects worried would become more common, and that the law was trying to prevent. But one of the medical center's investors argued in an op-ed that it was Obamacare's regulations, rather than criminal behavior, that was to blame for the facility's failure.

By contrast, physician-owned hospitals that formed before 2010 — and were therefore, allowed to collect Medicare payments — were able to stay afloat.

Irvine, Calif.-based Hoag Orthopedic Institute has succeeded by forging a hybrid model. Jointly owned by physicians and the nonprofit Hoag Memorial Hospital, the specialty facility treats patients covered by Medicare and Medicaid, and provides charity care.

"Our hospital was different from the start," said Dr. James Caillouette, an orthopedic surgeon and one of the hospital's founders. "The idea was we would adopt the values of the community hospital, we would care for the community, but at the same time be a physician-led enterprise."

In just six years, Hoag Orthopedic has become the largest joint-replacement center in California, along the way, earning five-star CMS ratings. Caillouette said he would like to see new legislation that doesn't just open the floodgates, but provides incentives for innovative physician-owned hospital models that work with local hospitals.

"I would argue that rather than passing legislation that essentially sets up the same war that occurred previously, there is probably a better opportunity for both community hospitals and physicians to come together."

Victoria Colliver contributed to this report.