

## ***Final SCHIP Bill Passes Without Physician Ownership Language***

On January 13<sup>th</sup>, 2009, the US House of Representatives passed the Children's Health Insurance Program Reauthorization Act of 2009 (H.R. 2) which would reauthorize the State Children's Health Insurance Program (SCHIP) through September 2013.<sup>1</sup> In addition to this extension and other related program changes, the bill included a provision prospectively banning physician self-referrals to hospitals that they have an ownership interest in. On January 30, 2009, the Senate passed a SCHIP bill (Senate Bill 275), which *did not* include the physician self-referral ban language.<sup>2</sup> The final SCHIP legislation was enacted on February 4, 2009 without the self-referral language included.<sup>3</sup>

The proposed legislation would have altered the "whole hospital" ownership or investment rules by:

- (1) Disallowing any increase in the percentage of physician ownership;
- (2) Prohibiting expansion of physician-owned hospitals except by application subject to strict county population, admission, bed capacity and occupancy parameters; and,
  - a. Limiting expansion to a maximum of 200% of its current capacity
  - b. Limiting the location of any expansion to the hospital's main campus
- (3) Mandating reporting of ownership interests of both referring and treating physicians to patients and the general public.<sup>4</sup>

While existing hospitals would not be forced to "buy-down" physician ownership but would rather be able to remain at the percentage of physician ownership that they had as of date of enactment, the vast majority of

existing hospitals would not be allowed to grow or expand in any way if the self-referral language originally contained in H.R. 2 had passed. Because the *whole hospital* exemption to the Stark law only applies for hospitals in existence as of January 1, 2009, no future growth of physician-owned hospitals would have been allowed under that provision.

Including physician self-referral language in seemingly unrelated legislation has been attempted several times before, most recently in the 2008 Farm Bill, the Supplemental War Spending Bill, and 2007 CHAMP Act. Physician-owned specialty hospitals have long been criticized by the non-profit, general hospital community that physician ownership will lead to cherry-picking of patients and self-referrals<sup>5</sup> and opponents have thus far unsuccessfully attempted to ban their existence. Proponents for physician-owned hospitals state that physician-owned hospitals are regulated by CMS and must meet the same strict regulatory guidelines (e.g., Stark, Anti-Kickback Statute) as non-profit, general hospitals and should not be further prevented from growing or expanding.

<sup>1</sup> HR 2: "Children's Health Insurance Program Reauthorization Act of 2009", House of Representatives, February 13, 2009, Sec. 102

<sup>2</sup> "House Adopts SCHIP Expansion", by Doug Trapp, AMNews, January 26, 2009

<sup>3</sup> "PHA Political Update – Call for Continued Action," By Molly Sandvig, Physician Hospitals of America, January 26, 2009

<sup>4</sup> HR 2: "Children's Health Insurance Program Reauthorization Act of 2009", House of Representatives, February 13, 2009, Sec. 623 p. 258-268

<sup>5</sup> "Letter to Congress, RE: \Moratorium on Self-Referral to Physician-Owned Limited Service Hospitals," American Hospital Association & the Federation of American Hospitals, July 6, 2004.



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