



Charles N. Kahn III
President and CEO

October 17, 2023

Dear Representative:

On behalf of the Federation of American Hospitals (FAH), we appreciate the House Energy and Commerce Subcommittee on Health's focus on strengthening patient access to care in Medicare in the forthcoming subcommittee hearing titled "What's the Prognosis? Examining Medicare Proposals to Improve Patient Access to Care & Minimize Red Tape for Doctors" in which the subcommittee will consider various bills. However, we want to alert you to our concerns with H.R. ____, *To amend title XVII of the Social Security Act to revise certain physician self-referral exemptions relating to physician-owned hospitals*. We strongly oppose any legislation that would lift existing bans on Physician-Owned Hospitals (POHs). POHs fail to meet the needs of patients and undermine rural health access.

The FAH is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC, and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

In 2010, Congress acted to protect the Medicare and Medicaid programs and taxpayers that fund them by imposing a prospective ban on self-referral to new POHs. The FAH strongly believes that the foundation for current POH law must not be weakened. The law helps ensure that full-service community hospitals, especially those in rural communities, can continue to meet their mission to provide quality care to patients. Recently released data from the health care consulting firm Dobson | DaVanzo shows that POHs, when compared to other hospitals, treat less medically complex and more financially lucrative patients, provide fewer emergency services, and enjoy patient care margins 15 times those of community hospitals.¹

While POHs create unfair competition across all communities in which they operate, opening the door to POHs in rural communities specifically would undermine the delicate health care infrastructure, patient mix, and patient volume that rural hospitals rely on to keep their doors open. By cherry picking healthier patients and providing a limited selection of higher-paying specialty services, POHs put the most vulnerable patients at risk by undermining the financial

¹ Dobson | DaVanzo Study. (2023). https://www.fah.org/wp-content/uploads/2023/03/2023-Fact-Sheet_20230323_wAppendixandCharts_POH-vs.-NonPOH-Only.pdf

viability of full-service, community hospitals in rural areas. Should POHs displace community hospitals in rural communities, residents may lose access to services like obstetrics and 24/7 emergency care that are typically only available in acute care hospitals. Thus, maintaining current law is key to ensuring that hospitals can continue to provide quality care to all patients in their communities. This revised bill purports to be a solution to access to care in rural communities; however, it would only put existing rural hospitals in further financial jeopardy.

There is a substantial history of Congressional policy development and underlying research on the impact of self-referral to POHs. The empirical record is clear that the conflicts of interest inherent in these hospital ownership arrangements promote unfair competition and result in cherry-picking of the healthiest and wealthiest patients, excessive utilization of care, and patient safety concerns. The standing policy includes more than a decade of work by Congress, involving numerous hearings, as well as analyses by the Department of Health and Human Services (HHS) Office of Inspector General (OIG), Government Accountability Office (GAO), and Medicare Payment Advisory Commission (MedPAC). Weakening or unwinding the current ban opens the door to expanding the very behaviors that Congress has successfully deterred for more than a decade.

As the Committee considers legislation to fine-tune Medicare payment to best serve seniors and strengthen the program, we urge you to consider the negative consequences of any legislation that lifts or creates exemptions on the existing POH bans.

We look forward to working with you and your colleagues in Congress to protect patients' access to affordable health care services. If you have any questions or would like to discuss these comments further, please do not hesitate to contact me or a member of my staff at (202) 624-1534.

Sincerely,

