



Charles N. Kahn III
President and CEO

May 24, 2024

The Honorable Tina Smith
720 Hart Senate Office Building
United States Senate
Washington D.C., 20510

The Honorable Jerry Moran
521 Dirksen Senate Office Building
United States Senate
Washington D.C., 20510

Dear Senators Smith and Moran,

The Federation of American Hospitals (FAH) writes to express our concerns with S.4322, *The Rural Emergency Hospital Designation Improvement Act*. While we strongly support efforts to preserve and increase access to health care in rural communities, we are concerned that, as drafted, S.4322 opens up rural communities and their full-service community hospitals, and potentially urban communities as well, to the well-documented conflict of interest concerns with physician ownership that led Congress to ban new physician-owned hospitals (POH). As such, **we urge you to significantly amend S.4322, *The Rural Emergency Hospital Designation Improvement Act*.**

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.

We thank Senators Smith and Moran for their efforts to increase access to care in rural areas. Although the FAH supports the sentiment and motivation behind the existing REH program – a narrow designation intended to preserve access to health care in rural communities by helping struggling rural facilities on the brink of closure keep their doors open for emergency care and outpatient services by enabling hospitals that closed or are unable to continue full operations after December 27, 2020 to reopen as REHs – we believe this bill (and similar legislation recently considered in the House by the Ways and Means Committee) threatens to undermine our shared goal of ensuring all residents of rural communities have access to full-service inpatient and outpatient care that they need and deserve.

While physician ownership is permitted for currently eligible REHs (*e.g.*, those rural hospitals with no more than 50 beds that participated in Medicare as of Dec. 27, 2020 that convert and

meet all REH requirements) under the rural provider exception, S.4322 would significantly expand REH eligibility without prohibiting physician ownership of those newly eligible hospitals. Expansion would include hospitals that met the eligibility criteria at any point between January 1, 2015 and December 27, 2020. For example, a hospital that was under 50 beds in 2015 but expanded to well over 50 beds by December 27, 2020 could convert to an REH under this bill. In addition, the bill contains a provision under which the Secretary of HHS could waive eligibility requirements for “facilities that operate similarly to a” REH “in order for such facilities to be eligible for conversion to” an REH. This waiver provision is silent on the size, rural status, or closure requirement. Moreover, the bill would broadly expand the scope of services new and existing REHs provide beyond emergency and outpatient services to include inpatient hospital services for rehabilitation, psychiatric, and obstetric care. In sum, S.4322 would effectively undermine the Congressional ban on new POHs and expose additional rural communities to the public health harms they pose.

These concerns, voiced by the Centers for Medicare and Medicaid Services (CMS), Congressional Budget Office (CBO), Government Accountability Office (GAO), Office of the Inspector General (OIG) and MedPAC, include, among others:

- Failure to meet patient needs by cherry-picking patients.
- Avoiding Medicaid and uninsured patients, while at the same time treating fewer medically complex patients compared to non-physician owned facilities.
- Increasing costs for patients and taxpayers through excess utilization.

The rural provider exception currently available to REHs even falls short of the broader conflict of interest, patient safety, and transparency protections that apply today to physician-owned hospitals under the whole hospital exception.

We urge you to work with stakeholders to address these concerns and amend S. 4322 so that it supports rather than threatens the availability and viability of comprehensive, general acute care hospital services, particularly in rural communities.

If you have any questions or would like to discuss our concerns with the legislation further, please do not hesitate to contact me or a member of my staff at (202) 624-1534.

Sincerely,

