



## Senate Bill Would Lift Stark Ban on Physician-Owned Hospital Expansion

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A recent Senate bill would lift the ban on expansion of physician-owned hospitals imposed by the Patient Protection and Affordable Care Act (PPACA). Senator James Lankford (R-OK) introduced this bill on May 16, 2017.<sup>1</sup> The bill, titled the “Patient Access to Higher Quality Health Care Act of 2017,” targets two exceptions to the prohibition of certain hospital referrals by physicians otherwise imposed under the Physician Self-Referral Law (“Stark”).<sup>2</sup> According to Senator Lankford, “[t]he Patient Access to Higher Quality Health Care Act of 2017 will increase competition, which will lower health care costs and expand quality of care by empowering smaller physician-owned hospitals to innovate and tailor their services to the communities they serve.”<sup>3</sup>

Section 6001 of the PPACA, which passed in 2010, amended section 1877 of the Social Security Act to impose additional requirements for physician-owned hospitals to qualify for either the “whole hospital” or “rural provider” exceptions under Stark law.<sup>4</sup> Among these is a prohibition on facility expansion. As revised, these exceptions now provide that physician-owned hospitals may not—

increase the number of operating rooms, procedure rooms, and beds beyond that for which the hospital is licensed on March 23, 2010 (or, in the case of a hospital that did not have a provider agreement in effect as of this date, but does have a provider agreement in effect on December 31, 2010, the effective date of such agreement), unless an exception is granted pursuant to paragraph (c) of this section [pertaining to so-called “applicable hospitals” or high Medicaid facilities].<sup>5</sup>

The bill introduced by Senator Lankford would repeal PPACA Section 6001 and thus would remove this restriction. This, in turn, would allow physician-owned hospitals to expand without finding themselves, or their physician owners, in violation of Stark law as a result, provided they continued to meet all remaining requirements of one of these exceptions. According to Senator Lankford, this repeal would allow broader participation by physician-owned hospitals and have the effect of increasing “hospital competition, innovation, and access to care.”<sup>6</sup>

This bill was referred to the Senate Finance Committee on May 16, 2017. Its House equivalent, H.B. 1156, was referred to the House Subcommittee on Health, where there has been no action since March 2, 2017. If these bills move forward, a rigorous debate among various advocacy groups within the healthcare industry can be anticipated. Already, the Physician Hospitals of America and American Medical Association have come out in support of the bill, while the American Hospital Association and the Federation of American Hospitals have registered their vehement opposition. The ultimate fate of this bill will be of importance to both physician-owned and non-physician-owned hospitals.

<sup>1</sup> For the text of the Senate bill, see <https://www.congress.gov/bill/115th-congress/senate-bill/1133/text?r=10>. A House bill (H.R. 1156) was introduced by Representative Sam Johnson (R-TX) on February 16, 2017.

<sup>2</sup> [https://www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/physician\\_owned\\_hospitals.html](https://www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/physician_owned_hospitals.html).

<sup>3</sup> <https://www.lankford.senate.gov/news/press-releases/senator-lankford-introduces-bill-to-allow-physician-owned-hospitals-to-have-a-level-playing-field>.

<sup>4</sup> 42 C.F.R. § 411.356.

<sup>5</sup> 42 C.F.R. § 411.362(b)(2).

<sup>6</sup> <https://www.lankford.senate.gov/news/press-releases/senator-lankford-introduces-bill-to-allow-physician-owned-hospitals-to-have-a-level-playing-field>.

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