



# Committee On Finance

Max Baucus, Ranking Member

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**Statement of U.S. Senator Max Baucus  
Hearing on Physician-Owned Specialty Hospitals: In the Interest of Patients, or a Conflict  
of Interest?**

“Thank you, Mr. Chairman, for holding this hearing. And thanks to our witnesses for being here to testify on this critical issue. It’s hard to believe that the Medicare Modernization Act – the MMA -- was signed into law 15 months ago today. It’s also hard to believe that the specialty hospital issue was one of the most difficult to resolve of that 400-page bill. But it was. And as we’ll see today, the controversy continues.

Some view specialty hospitals as innovative, focused factories for high-quality, specialized care. Advocates say specialty hospitals add competition to the health care marketplace. Others say specialty hospitals flourish because they exploit a Medicare loophole allowing physician-owners to select patients who are less sick and, therefore, more profitable.

For my part, I don’t want to stand in the way of innovation or competition. For example, I’m glad that Congress brought innovation to Medicare in the form of outpatient drug benefits. That was long overdue.

And hospitals and physicians should work together in innovative ways to improve efficiency in health care. The U.S. spends twice as much per-capita on health care as the majority of advanced Western countries. And yet our health outcomes are worse than theirs. We should get a better bang for our buck.

That’s why I want to encourage quality and accountability in health care. I am pushing to advance incentives for quality improvement in Medicare, so patients -- and taxpayers -- get the most for their money. As for competition, I’m all for it – as long as it’s carried out on a level playing field.

But when it comes to physician ownership of specialty hospitals, I’m not sure the playing field is level. That’s because physicians alone choose where patients go on the playing field – either to community hospitals or specialty hospitals. Some liken physician-owners of specialty hospitals to coaches who choose the starting lineup for both teams -- in this case, the specialty hospital team and the community hospital team.

And for the third time, a federal agency tells us that the healthiest team, i.e., the most profitable patients, ends up at physician-owned specialty hospitals. In 1989, the HHS Inspector General reported that patients of referring physicians who owned or invested in independent clinical labs received 45% more lab services than Medicare patients in general. Forty-five percent.

In response to this study and others like it, Congress sought to remove incentives to self-refer, through the Stark law. This legislation sought to restrict physician self-referral, first in the area of clinical labs, and subsequently in 10 other areas, including physical therapy and certain imaging procedures. But the Stark law did not address the issue we're here to discuss today: physician self-referral to specialty hospitals. In part, that's because there weren't many specialty hospitals at the time.

But as the non-partisan GAO has pointed out, the number of specialty hospitals tripled between 1990 and March 2003. The Stark law does prohibit physicians with ownership interest in only a hospital department from referring patients to that department. For example, doctors can't invest in just the orthopedics wing of a hospital and then refer patients to that wing. But – notwithstanding the MMA moratorium -- the law currently allows physicians to self-refer to specialty hospitals in which they have a financial interest.

This is the case even though specialty hospitals are typically smaller in size and scope than community hospitals. The average surgical specialty hospital has 14 beds. In many ways, these specialty hospitals resemble hospital departments more than they do community hospitals. This loophole may well need closing. And I am interested to hear testimony on this issue today.

Today we'll hear about a report from the Medicare Payment Advisory Commission – MedPAC – which has heard public testimony over the last 15 months, surveyed 48 specialty hospitals and visited several communities in which specialty hospitals exist. We'll also hear what I understand are preliminary findings from the Department of Health and Human Services. HHS surveyed 11 specialty hospitals.

Starting with MedPAC, their report recommends a number of steps to improve the accuracy of the Medicare inpatient payment system. These recommendations should mitigate all hospitals' incentives to choose healthy patients over sick ones. MedPAC also recommends several steps to better align physician-hospital incentives. On this point, many specialty hospital advocates argue that the growth of these facilities results from physician dissatisfaction with hospital management practices. MedPAC's recommendations for "gains haring" stand to alleviate some of that concern, by giving physicians more control over their workplace.

Finally, and importantly, MedPAC recommends extending the MMA-mandated moratorium on new specialty hospital construction. As I understand it, MedPAC made this recommendation in part to examine further the issue of physician self-referral, and whether it's appropriate to allow such referrals in the specialty hospital setting.

As for the HHS report, we received word only recently that the Agency would be ready to testify today, albeit with preliminary findings. I understand further that many of those findings are not statistically significant. This suggests caution in using the HHS findings as a basis for policy changes.

After MedPAC and HHS, we'll hear from witnesses who have experienced the impact of specialty hospitals first-hand, both pro and con. These witnesses have strongly-held views on this important issue, informed by experience. I am interested to hear their perspectives, and I thank them for taking time from busy schedules to be with us today.

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