

Ambulatory Surgery Centers

Certificate of Need & Physician Self Referrals

Introduction

There is legislation being considered by the Pennsylvania General Assembly to reinstate the state's **Certificate of Need laws and prohibit Physician Self Referrals; HB 247 and HB 1405**. Ambulatory surgery centers (ASC) specialize in providing limited surgical procedures, pain management and diagnostic services in an outpatient setting. Often physicians prefer to operate on their patients in an outpatient facility because they improve efficiencies, which minimize patient waiting times. ASCs offer superior outcomes due to staff specialization. ASCs deliver lower infection rates and offer true cost savings to patients and employers.

A **Certificate of Need (CON)** is a permit most health care-related businesses must receive from the state of Pennsylvania prior to offering new services to patients, renovations to existing facilities or even buying new equipment.

A **Physician Self-Referral** occurs each time a physician asks a patient to return for an appointment, refers a patient to another colleague within the physician's own medical group or refers a patient for a service (e.g., laboratory test, imaging study or surgical procedure) in a facility with which the physician has a financial relationship.

A prohibition of Physician Self Referrals and a reimplementations of CON regulations will stifle competition and innovation, drive up health care costs and limit choices available to patients by making it more difficult for doctors to provide appropriate health care for their patients. Pennsylvania allowed the CON laws to expire in 1996. We think for good reason.

Talking points HB 247 & HB 1405

Certificate of Need (CON)

CON programs do not contain costs and often lead to increased prices

CON programs are outdated and actually drive up prices by fostering anticompetitive barriers, particularly in respect to reimbursement structuring, thus increasing costs for patients and third-party payors.

CON programs can have a negative impact on patients, restrict customer choice, impede innovation in health care delivery and jeopardize patient welfare

- The Federal Trade Commission has criticized CON laws for negatively impacting the quality of care because they delay the entry of entities that could provide higher quality services than existing facilities.¹
- The Federal Trade Commission has stated CON regulations “foster lower quality and reduced innovation in health care markets”.²
- One study examining the causal relationship between CON regulations and the quality of care rendered determined that states with rigorous CON regulations had mortality rates 6% higher than states without rigorous CON regulations among Medicare patients.³

CON is administratively cumbersome. PA Dept. of Health, CON Review Board, Pennsylvania Health Care cost Containment Council, State Health Facility Hearing Board, and Local Review Committee would each play a role in the Certificate of Need process as outlined by HB 247.

¹ Federal Trade Commission & Department of Justice. *Improving Health Care: A Dose of Competition*. July 2004, Ch.8 at 4.

² Federal Trade Commission, Bureau of Economics. *Staff Comments to Georgia State Senator Culver Kidd*. March 7, 1988.

³ Custer, William S. *Certificate of Need Regulation and the Health Care Delivery System*. Center for Risk Management and Insurance Research. Georgia State University, 1997, at 13.

Self-Referrals

Physician-owned and other ASCs can save the government money

- By federal law, Medicare reimbursement for ASCs is substantially less than the same services performed on an inpatient basis.
- ASCs were paid 63% of what hospital received in 2008 for the same service.
- ASCs have less overhead than hospitals which is often reflected in the cost to patients/third-party payors

Self-Referrals (Continued)

Physician-owned and other ASCs are highly regulated.

- Pennsylvania requires all ASCs to be licensed by the Department of Health.
- All ASCs serving Medicare beneficiaries must be certified by the Medicare program and comply with standards developed by the federal government.
- The federal government also limits the scope of surgical procedures reimbursed by Medicare.
- In addition the state and federal inspections many ASCs choose to go through voluntary accreditations:
 1. JCAHO – Joint Commission on Accreditation of Healthcare Organizations
 2. AAAHC – the American Association for Ambulatory Health Care
 3. AAAASF – the American Association for the Accreditation of Ambulatory Surgery Facilities
 4. AOA – the American Osteopathic Association

A prohibition of Physician Self Referrals will reduce access to care, quality of care, efficiency and patient convenience.

- Self-referrals are convenient for patients and may lead to better coordinated, more efficient, higher-quality care.
- Physician-owned and other ASCs can increase consumer satisfaction.
- Prohibition of Self-Referrals could negatively impact patient-safety issues and lengthen waiting time for services.

Prohibition of Self-Referrals will hamper efforts to recruit and retain physicians in Pennsylvania

Prohibition will eliminate the ability for hospitals to joint venture with any entity where health care services would rely of physician referrals