

**TOWN OF
APPLE VALLEY, CALIFORNIA
AGENDA MATTER**

Subject Item:

STATUS REPORT ON PROPOSED ACUTE CARE HOSPITAL

Summary Statement:

At the July 12, 2011 Town Council Meeting, Mayor Pro Tem Stanton requested an update on the status of the proposed acute care hospital on the east side of Apple Valley Road, just north of the Apple Valley Town Center shopping center. In January 2007, the Town Council adopted a General Plan Amendment and Zone Change to allow for the future development of a 100-bed acute care hospital and medical campus and commercial retail fronting Apple Valley Road on an approximately seventy-five (75)-acre site. The project proponents and property owners include two (2) local doctors, Siva Arunasalam and Jay Shankar. The original intent of the project was to build a physician-owned acute care hospital.

Since the Council's original action in 2007, the project proponents have worked to secure private financing and approval by the State of California. These efforts have had mixed results for a variety of reasons, including the economic recession and adoption of the national health care bill.

Staff has been made aware that a provision in the health reform law, enacted in March of 2010, places limits on physician ownership of hospitals. In a June 28, 2010 article on web-based Amednews.com, titled "Physician-owned hospitals: Endangered Species?" it states, "New doctor-owned facilities that are not certified as Medicare participants by December 31, 2010, no longer will be allowed into the program". This new requirement of the Centers for Medicare and Medicaid Service (CMC) limits the expansion or new construction of physician-owned hospitals across the country. The article is attached to this report.

The new regulation puts on hold all plans for physician-owned hospitals until "litigation, legislation or regulation direct otherwise." Staff has confirmed that the project is on hold with Matthew Cutler of Select Healthcare Solutions, who, until the end of calendar year 2010, was working with the doctors to develop the hospital. As of the writing of this report, staff is awaiting a return call from Dr. Arunasalam to provide additional information regarding the project status. Staff is not expecting to receive a different answer than what was provided by Mr. Cutler.

Based upon the foregoing, staff recommends adoption of the form motion.

Recommended Action:

Move to receive and file the report.

Proposed by: Asst. Town Manager of Economic & Community Development Item No. _____

Town Manager Approval: _____ Budget Item Yes No N/A

Council Meeting Date: 8/09/11

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GOVERNMENT



"Health care changes all the time, and for us to stay status quo greatly impairs our ability to take care of our patients," says Michael E. Russell II, MD, an orthopedic spine surgeon at Texas Spine & Joint Hospital, a wholly physician-owned orthopedic care facility in eastern Texas. The newly enacted health system reform legislation squashed the facility's expansion plans -- and with it an expected 540 new jobs for the area. [Photo by Richard Pruitt / www.aharemedia.com]

Physician-owned hospitals: Endangered species?

A health reform provision could be the death knell for many doctor-owned facilities, but some say they are going to fight for survival.

By CHRIS SILVA, *amednews* staff. *Posted June 28, 2010.*

To the physician owners of Texas Spine & Joint Hospital, the health reform debate was a demonstration of how quickly an entire industry's fortunes can change.

Business was so brisk in recent years that executives at the wholly physician-owned orthopedic care facility planned an ambitious expansion project. They drew up plans for three new operating rooms, three new procedure rooms and 20 new beds. The \$37 million project would have added 50,000 square feet and created about 540 new jobs in the eastern Texas community surrounding Tyler, where the hospital is based. But all of that is over. A provision in the health reform law enacted in March placed major limits on physician ownership of hospitals.

New doctor-owned facilities that are not certified as Medicare participants by Dec. 31, 2010, no longer will be allowed into the program. Existing physician-owned facilities face immediate restrictions on expansion. Physician investors say those rules are so strict that virtually none of their hospitals will be able to grow.

"We were basically going to double our capacity at our main facility," said Michael E. Russell II, MD, an orthopedic spine surgeon at Texas Spine & Joint. "And the health care bill halted that progress."

In Loma Linda, Calif., a team of physician investors led by John Piconi, MD, was collaborating with the local university's medical center to develop a new 110-bed tower and medical office building as part of a \$250 million project. He said the project would have addressed underserved areas of care in the community, but because it will not have Medicare certification by the end of the year, it also has been shelved.

"We started this project four years ago when there was no law prohibiting us from doing this. And for us to raise this money and get architectural plans, and then find out we're banned from operating, is disconcerting," said Dr. Piconi, a retired urologist.

Physician Hospitals of America -- an organization based in Sioux Falls, S.D.-- said the reform law will "virtually destroy" more than 60 hospitals that were under development and leaves few prospects for the future of the industry. "Patients across the country should be outraged that, at a time when the government is supposedly attempting to increase access to care, it has chosen to stop the growth of many of the best hospitals in the country," said Molly Sandvig, PHA's executive director.



The Texas Spine & Joint Hospital began as a renovation of an old Montgomery Ward department store in 2002. Plans for expansion included adding three operating rooms, three procedure rooms and 20 patient rooms.

[Image by Texas Spine & Joint Hospital. Blueprints by Downing Ferguson Preepley LLC]

The hospitals already are fighting back. PHA and Texas Spine & Joint announced June 3 that they had filed suit jointly in U.S. Federal Court for the Eastern District of Texas, challenging the constitutionality of the reform law's physician-owned hospital section. The lawsuit includes a motion for a preliminary injunction that would allow the hospital to proceed with its expansion plans.

A deep-seated conflict

For community hospitals, limiting expansion of physician-owned facilities was a vital piece of the health reform package. Other new regulations include capping physician ownership, ending some exceptions to Stark self-referral bans and mandating more disclosure of physician owners' potential conflicts of interest when they send patients to their own facilities.

"This moves us towards that goal of providing a more level playing field," said Michael Strazzella, vice president of federal relations for the Hospital & Healthsystem Assn. of Pennsylvania, which represents nearly 250 community hospitals.

Organizations such as the American Hospital Assn. have argued that physician-owned facilities operate under inherent conflicts of interests, cherry-pick more profitable patients and place strains on community hospitals, forcing reductions in key services. While sympathizing with physician owners who are shelving expansion projects that have been in the works for years, Strazzella said Congress simply was following a pattern of containment that those owners should have recognized.

Key lawmakers have targeted the growth of physician-owned facilities numerous times. Starting in 2003, the growth of the doctor-owned specialty hospital industry effectively was frozen for nearly three years through a combination of legislative and administrative barriers.

But the facilities have their champions. The American Medical Association says physician ownership has created superior care alternatives for patients and excellent employment opportunities for hospital-based physicians.

"Physician-owned hospitals provide high-quality patient care and increase competition and choice in the marketplace -- those should be the hallmarks against which these hospitals are judged," said then-AMA President J. James Rohack, MD. "Restricting physician-owned hospitals is counter to what we are working to achieve: a better health care system for patients and physicians."

Legislative attempts to curb physician ownership often target so-called specialty hospitals -- typically cardiac, orthopedic or surgical facilities that focus on limited services. But the health reform statute stops dead in its tracks any facility that has physician ownership, even if it's less than 1% doctor-owned, according to PHA.

Swept into the mix are acute care facilities, multispecialty hospitals and even struggling community hospitals that have been propped up financially by physicians.

That means the impact of the provisions will be felt at Westfield Hospital in Allentown, Pa., a wholly physician-owned facility. Westfield is an acute care general hospital complete with intensive care beds and an emergency department.

"We are doing things very cost effectively right now, but we are growing and need to add extra capacity," said Yasin Khan, MD, an anesthesiologist and Westfield's CEO.

Dr. Khan said critics' arguments against doctor-owned hospitals during the health reform debate were ill-conceived and outdated. Some of the points raised by the AHA might have applied to specialty hospitals 10 years ago, but not now, he said. "The problem is, they are basically lumping everyone together."

Physician investors saw positive developments when they started directing hospital administration, rather than the other way around.

PHA's Sandvig said physician-run hospitals attract doctors because of the lower degree of bureaucratic jostling. At community hospitals, "there's a real competition between physicians and administration. There's not a lot of love lost."

But the physician ownership model "cuts out the administration as the No. 1 decision-maker," she said. "The reason our physicians open these hospitals is because they want to do something right by their patients. They want to be able to control health care, and they don't feel like they can do that at [community] facilities any more."

Mark Galliard, the administrator of McBride Orthopedic Hospital in Oklahoma City, worked for a community-owned hospital for 10 years and said he's amazed at the difference.

"We are so much more efficient," he said. "We make decisions so much quicker, and I think that's better for the patient."

The model was apparently working for patients. A \$2 million expansion project at McBride aimed at broadening the spectrum of care to meet patient demand was approaching the groundbreaking stage. The reform law forced them to pull the plug.

Galliard disputes the contention that hospitals such as his cherry-pick more profitable patients. McBride, which is owned entirely by physicians, takes care of a patient population that is about 60% Medicare, he said. And like Westfield Hospital, McBride has an emergency department.

Sandvig said opponents of physician ownership are worried that the better way of doing things will push them toward obscurity. "They see a new model that works very well, that's high-quality, low-cost, better efficiency. It's a case of an innovation that they don't want to have to match."

A murky future

Until litigation, legislation or regulation direct otherwise, plans for new or expanded physician-owned hospitals will be in a holding pattern. Facilities also will need to make sure they don't run afoul of the law in their continuing operations.

The reform statute caps physician ownership levels at the point they were on March 23, when the reform bill became law. So if Sierra Surgical Hospital in Carson City, Nev., which is about 30% physician-owned, wants to take on a new physician investor, either another doctor has to sell his or her share, or the total investments of the other doctors must be scaled back.

Sierra CEO Jim Sergeant said the facility wanted to add at least one more operating room and a two-room ambulatory surgical center. But the cap and expansion ban may put the industry into what he described as a death spiral. Investors eventually will start to ignore the facilities, he said.

"I don't know of any other industry that is regulated as heavily as we are," he said. "And then to be prohibited from trying to compete ... it just dumbfounds me that Congress would allow this to occur, especially when they're looking for jobs."

Still, the hardest part of the situation for Sergeant has been hearing that hospitals like his do not add value to their communities. "Anything we do here is to enhance community services."

What's ironic, McBride's Galliard said, is that doctor-owned facilities eventually may be forced to cherry-pick more profitable patients if they can't expand capacity. "I call it a self-fulfilling prophecy. What you're saying we do, you're actually going to force us to do."

The print version of this content appeared in the July 5 issue of *American Medical News*.

ADDITIONAL INFORMATION:

Physician-owned hospitals frozen in time

The health reform law effectively will ban new physician-owned hospitals from starting up and existing ones from expanding. Here's where the 265 facilities stand:

- Employees -- more than 75,000 full- and part-time workers
- Average payroll -- \$13 million
- Average staffed bed size -- 233 (general acute care), 65 (heart), 40 (multispecialty surgical), 34 (rehabilitation), 30 (long-term acute care), 24 (orthopedic)

Source: Physician Hospitals of America

Not all specialty

There are 265 physician-owned hospitals in the U.S., but not all of them are considered specialty hospitals.

Multispecialty	149
General acute care	54
Heart	18
Orthopedic	18
Rehabilitation	12
Long-term acute care	8
Emergency care	3
Heart and general acute	1
Multispecialty children's	1
Multispecialty women's	1
Total	265

Source: Physician Hospitals of America

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