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GRASSLEY/BAUCUS BILL S.1002 "THE HOSPITAL FAIR COMPETITION ACT 2005"

By: Carl C. Hanemann and Conrad Meyer

On May 11, 2005, Senators Chuck Grassley and Max Baucus introduced legislation to address concerns about the rapid growth of specialty hospitals and physicians' self interest in such facilities. The Medicare Modernization Act of 2003 had imposed an 18-month moratorium, expiring on June 8, 2005, prohibiting physician referrals to specialty hospitals in which the physician has an ownership or investment interest. The Grassley/Baucus Bill, known as the "Hospital Fair Compensation Act of 2005," attempts to (1) reign in the growth of physician-owned specialty hospitals by permanently extending the current moratorium and (2) adjust the inpatient prospective payment system in a way that is designed to reduce what the bill's drafters believe is the incentive of physicians to refer patients with relatively less severe conditions to specialty hospitals in which they have an ownership interest.

If enacted, the Grassley/Baucus Bill would, among other things:

- Continue the moratorium on new specialty hospitals currently set to expire on June 8, 2005.
- Restrict "grandfathered" specialty hospitals, approved prior to November 18, 2003, from growth in the number of investors, ownership interests, scope of services and number of beds.
- Recalibrate the Diagnostic Related Groups weights based on costs not hospital charges.
- Recalculate the DRG weights based on costs at least once every five years, not annually.
- Recalculate DRG weights based on hospital specific values rather than national average of charges.
- Recalculate DRG weights to account for differences in the frequency of outliers.
- Re-evaluate DRGs to insure that they appropriately reflect each patient's differing severity of illness.

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- Prohibit specialty hospitals from having any ownership or investment interest by physicians who refer Medicare or Medicaid patients to the facility.
- Create criteria by which hospitals and physicians can align incentives and benefit from hospital costs containment measures, referred to as “gainsharing,” as long as financial incentives affecting physician referrals are minimized and such incentives do not compromise quality of care.

Adoption of the Grassley/Baucus Bill, as written, is anything but certain, as the Republican Policy Committee of the U.S. Senate has issued a report concluding that an extension of the moratorium on new specialty hospitals is unwarranted. If enacted, however, the bill would become effective June 8, 2005. The full text of the bill can be found at [The Hospital Fair Compensation Act of 2005](#).

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Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact: the Health Care practice chairs:

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