OPPOSE LEGISLATION (H.R. 2513) THAT WOULD ALLOW FOR THE PROLIFERATION OF SELF-REFERRAL TO PHYSICIAN OWNED HOSPITALS

The Federation of American Hospitals (FAH) and our more than 1000 hospitals nationwide **strongly oppose** the *Promoting Access, Competition, and Equity Act of 2015* (H.R. 2513), the “PACE Act of 2015,” and urge the Ways and Means Committee to reject this measure or any legislation to weaken current law.

The purpose of current law is to prevent the harm to community hospitals, patients, taxpayers, and employers arising from the conflict of interest inherent when physicians self-refer to hospitals in which they have an ownership interest.

When the law banning physician self-referral to hospitals was enacted it recognized that more than 200 physician owned hospitals were already in operation and rather than force those hospitals to close or unwind physician ownership, it grandfathered them. However, the law also recognized that these hospitals were operating counter to the spirit of the new law and it prevented their expansion unless they could demonstrate need in the community for greater access to care.

H.R. 2513, however, would have us reverse course. Under the veil of enabling these hospitals simply to expand, the “PACE Act” runs directly counter to the purpose and intent of this well-established law.

**Background**

There is a substantial history of Congressional policy development and underlying research on the impact of self-referral to physician owned hospitals. The empirical record is clear that these conflict-of-interest arrangements of hospital ownership and self-referral by physicians results in *[cherry picking the healthiest and wealthiest patients, excessive utilization of care and patient safety concerns]*. This policy development includes 15 years of work by Congress, involving numerous hearings, as well as analyses by the HHS Office of Inspector General (OIG), Government Accountability Office (GAO) and Medicare Payment Advisory Commission (MedPAC). Together, they have documented the dangers of self-referral and laid the foundation for current law. Further, scoring by the Congressional Budget Office consistently demonstrated that self-referral to physician owned hospitals increases utilization and therefore increases Medicare costs. As a result, both Republican and Democratic Congresses and Administrations, going back to 2003, have taken critical action against self-referral to physician-owned hospitals.
The conflict of interest inherent in self-referral creates an unlevel playing field between full service community hospitals, which accept all Medicare and Medicaid patients and provide significant uncompensated care for the those who cannot pay, and physician-owned hospitals, which are positioned to select their patients based on ability to pay, income, and patient acuity. Since the law was enacted in 2010, there has been a more level playing field, one that promotes fair competition.

It is important to point out that the prospective ban on physician self-referral enacted in 2010 was not a time-limited moratorium. It is a permanent ban that generally prevents expansion of grandfathered physician-owned hospitals unless the hospital can demonstrate need in the community for greater access to care. This carefully crafted exception in the law for certain limited expansion of these grandfathered hospitals is working, with two physician-owned hospitals meeting the requirements and currently on the path to expand.

**Key provisions of H.R. 2513:**

- Permits untold number of new physician-owned hospitals to operate, with only a signed contract for construction, renovation, lease or demolition;
- For several years, permits existing physician-owned hospitals to double regardless of community need or access to care concerns;
- Eliminates local communities’ input in determining whether there is a community need for physician-owned hospitals to expand.

**Analysis**

**H.R. 2513 would apply new, broad standards that disconnect growth from community need, providing a fast track for most current facilities to double their capacity. In addition, it opens the door for the construction of new physician-owned hospitals that could self-refer patients. Together these provisions virtually dismantle current law with broad repercussions for patients, taxpayers, and the sustainability of full service community hospitals that provide services 24/7, including trauma care and other high-cost services that are critical to all communities and patients.**

**Conclusion**

Existing law is effective. It prevents self-serving self-referral which shifts the burden of uncompensated care and weakens full service community hospitals; reduces patient safety concerns; and it prevents the excess growth in health care costs that self-referral has been shown to induce. Further, current law provides a fair and reasonable avenue for those grandfathered physician-owned hospitals to grow. Finally, the law helps ensure that the full-service hospitals every community needs can continue to meet their public safety and public health mission to serve everyone who walks through their doors.

H.R. 2513 is fundamentally inconsistent with the intent of current law, and we urge you to oppose it or any other effort that undermines the important protections against self-referral now in place.