Understanding The Process of Merging Your Medical Practice with A Large Mega Group or Hospital

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 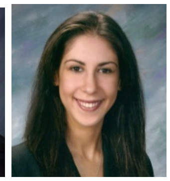

Overview:

As the costs of running a medical practice increase and the reimbursement rates from third party payors decrease, many physicians are being drawn to offers from large medical groups and hospitals to take over their practices. Although many physicians are attracted by these offers to increase their take home pay, as well as not have to deal with the day to day administrative duties of running a medical practice, physicians must weight the benefits and costs associated with entering into these relationships. Although these offers may seem very desirable, a more in depth analysis may result in a physician's realization that this arrangement is not a good fit and is not as glamorous as initially presented. Furthermore, since many medical practices are comprised of more than one physician, it is important to recognize that such offers may not be ideal for all of the members of the group. As such, each member of the group needs to do his/her own analysis in order to ensure that such an arrangement is appropriate for his/her needs.

Autonomy:

When a physician group is taken over by a large practice or hospital, the physician group will no longer have control regarding the operation of the practice. For many physicians this is a positive thing, as many physicians purposely chose to pursue a medical career as opposed to a business career, and would rather devote their energy solely to patient care. However, for many physicians as they have spent years building and developing their practices and would like to remain in control.

Compensation:

As noted above, when evaluating whether to go forward with an offer from a large medical practice or hospital, it is imperative to evaluate the offer from a business perspective. When a large medical practice or hospital approaches a physician group, they will in almost all instances entice the physicians in the group with an increased salary based upon the fact that the large medical practice or hospital has more leverage and is in a better bargaining position to obtain higher reimbursement rates from third party payors. Although higher reimbursement rates may be promised, the physicians should review and confirm the large medical practice or hospital's fee schedule for the top ten CPT codes billed in their practices.

Additionally, many large medical practices and hospitals will offer reimbursement to the physician based upon a percentage of fees collected by the large medical practice or hospital for services personally rendered by the physician minus expenses. Physicians need to recognize that prior to joining a large medical practice or hospital, 100% of the fees collected for services rendered belonged to the physicians. Furthermore, in many instances physicians will also be expected to pay an "administrative fee" to the large medical practice or hospital, which may be as high as a few thousand dollars a month.

It is also important to note that in many instances the percentage paid to the physician does not include ancillary services, as well as diagnostic health services (DHS) as defined by the Stark Law, including for instance diagnostic tests and lab work. Therefore, if a physician's practice is heavily based on diagnostic testing, then the expected compensation may be significantly lower than the perceived compensation.

Benefits/Buy-out:

Physicians must also weigh and compare the benefits being offered. The general benefits offered (ie healthcare) may or may not be better. In addition, the buy-out in the event of termination (including for retirement, death, disability, voluntary or involuntary withdrawal) are often diminimous. Physicians must recognize that if their group is structured where the physicians are paid in the event of withdrawal, they would no longer be eligible for their buy-outs pursuant to their operating/shareholders'/partnership agreement.

Office Lease/Equipment:

The physician group will likely be required to assign its office lease and equipment leases. Although this may not initially seem like an issue, a problem arises in the event that the relationship does not work out since the agreements would have to be reassigned back to the physician group, which would require the consent of the equipment company and landlord. Since the large medical practice or hospital will have deeper pockets, the equipment company and landlord may not be so inclined to reassign the lease. As such, in order to protect the physician group, it is our recommendation that the office lease and equipment leases be licensed to the large medical practice or hospital. The leases would remain in the name of the physician group, and the large medical practice or hospital would pay the physician group a set fee for the use of such space and equipment based upon a fair market value analysis. In the event the relationship is terminated, the physician group would maintain control of the space and the equipment.

Malpractice Insurance:

This is especially important in the event a physician has a "claims made" policy, which only offers protection to a physician while the policy is in effect. If a "claims made" policy is discontinued, the physician would have to obtain "tail" coverage, which is very expensive. Although the large medical practice or hospital will likely be responsible for maintaining malpractice insurance for the physician, there is a chance that a new policy will be purchased for the physician as opposed to coverage being continued. As such, physicians need to be mindful as to who will be responsible for paying for such tail coverage if such situation arises.

Restrictive Covenant:

When a physician joins a large medical practice or hospital he/she will likely be subject to a restrictive covenant which will restrict the physician from essentially competing with the large medical practice or hospital within a specified time and location following termination. Physicians need to be aware of how their practice would be restricted should they terminate their relationship with the large medical practice or hospital, especially if the physicians were not previously subject to a restrictive covenant as per their operating documents. Physicians also need to be careful in the event a large medical practice or hospital purchases their practice. Specifically, physicians need to be mindful of the Anti-kickback statute as it relates to the structure of the deal, since some transactions have been deemed to be in violation of the Anti-kickback statute based upon payments made in connection with a restrictive covenant.

Conclusion:

Being presented with an offer to transfer a medical practice to a large mega group or hospital can be very exciting, however, there are many issues that need to evaluated both from a business and legal standpoint. To that end, it is in the best interest of the physician to retain a team of professionals specializing in health care – attorneys and accountants– to ensure that the offer is appropriate and in the best interest of the physician. Although an offer may be appropriate for some physicians, it may not be as desirable for others.

About the Authors:

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