Navigating Hospital–Physician Alignment Issues

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INTRODUCTION AND OVERVIEW

- Why are Hospitals and Physicians Aligning?
- Working with Physicians
- Alignment Models
- Common Issues for (almost) All Models
- Model-Specific Alignment Issues
- Conclusions
- Questions
WHY ARE HOSPITALS AND PHYSICIANS ALIGNING?

Physicians:

- Declining Reimbursement
- Increased operating costs
- Increased compliance burdens
- Increased complexity in a market shifting to value-based payment
- Loss of market share/inability to compete
Hospitals:

- Expand primary care base
- Acquire “marquee” docs
- Fill geographic or specialist needs
- Managed care experience
- Ability to assume and manage risk-based compensation
- Physician leadership
- Market Power
What are Hospitals Looking for in an Alignment Partner?

- Meet strategic needs
- Compatible clinical, corporate and compliance cultures
- Lack of regulatory hurdles or compliance problems
- Organized financial information
- Retention of key physicians and staff
- Strong physician leadership and management
WHAT ARE HOSPITALS AND PHYSICIANS ALIGNING?

- What are Hospitals Looking for in an Alignment Partner?
  - Favorable payer rates or ability to increase rates
  - No significant debt or other liabilities
  - Successful EHR adoption
  - Managed care and care coordination experience
  - Physicians united in desire to align
  - Access to desired inpatient cases and ancillaries
WORKING WITH PHYSICIANS

- MDs are suspicious
- Expectations are lower
- Clearly articulate and agree upon goals
- Identify and work through small number of physician leaders
- Maintain transparency
- Identify financial, operational and compliance issues ASAP
- Try to avoid a long, drawn out process
- Prepare for generational divide
- Independent advisors for physicians
ALIGNMENT MODELS

- Not an Exhaustive List
- Care Coordination Models (see charts)
  - Gain Sharing
  - Service Line Co-Management
  - Bundled Payments
  - ACOS
  - Managed Care Organizations
IPA + Hospital + MSO, w/o Restri. Knox–Keene

Health Plans (HMOs)
Delegate Only Professional Services

IPA
Delegated for professional services and some outpatient.

Shared risk and incentive arrangements with HMOs and Hospitals
- UM review etc. for shared risk services;
- Shared risk and incentive administration: by HMO, hospital or MSO
- Reporting and auditing and adjustment processes

HMO pays for hospital and other institutional care

MSO
Admin support IPA professionals re Capitation and claims admin.; credentialing; provider contracting, health plan contracts; quality management (QM); utilization management (UM); health plan, RBO and management reports; PCP and other network physician reports, incentive pool development and administration; marketing and business development.
Medicare Advantage Plan

Delegate Only Professional Services

Professional Services Delegation

IPAs
Delegated for professional services and some outpatient.

MSO Agreement to administer Professional Services

MSO
Admin support for; physician, outpatient diagnostic and therapy, etc.

MSO
Admin support for; Hospital SNF and other, facilities, home health, DME, etc. . .

Hospital(s)
Limited delegation for inpatient facility services

MSO Agreement to administer Institutional services and risk pool
Medicare Advantage Plan
Delegates All Professional and Institutional Services except CMS contract, benefit design, enrollment, marketing, part D drugs, out of area, transplants, quality oversight

Limited Knox–Keene Plan
Delegated All Professional and Institutional Services.

Hospitals
Delegation: TBD

IPAs
Delegated all Professional Services

MSO
Agreement to administer Professional Services

MSO Agreement to administer Institutional Services

MSO
Admin support for physician, diagnostic out patient, therapy, some ancillary, etc., RBO reporting, etc.
**Medicare ACO:**

**Risk Share Flow of Funds, Years 3, 4, Etc. (IPA and PHO)**

- **CMS**
  - Monthly: 50% cap 
  - Year End: Surplus down, Deficit up

- **ACO**
  - Service Contracts
  - Shareholder Agreements

- **Ancillary**

- **ACO IPA**
  - Service Contracts
  - Shareholder Agreements

- **Hospitals**

- **PHO**
  - Shareholder / Operating Agreement
  - Deficit up, Surplus down

- **Physicians**

**Monthly:** cap to IPA, cap or FFS to Hospital, FFS to Ancillary, less withhold (reserve)

**Year End:** selected providers share in surplus by P4P, in deficit by withhold; surplus (net reserves, expense and P4P) and deficit pass on to PHO, e.g., draw on LOC; PHO owners share per SH/Oper. Agmt.
ALIGNMENT MODELS

- Practice Acquisition Models (see charts)
  - Foundations
  - Hospital-based outpatient clinics
  - 1206(g) clinics
  - “Friendly PCs”

- Others
  - Surgery Centers
  - Radiology Networks
Medical Group (individual MDs) → PSA → Foundation (501(c)(3)) → Payers

Employment Agreements
HOSPITAL-BASED OUTPATIENT CLINIC

Medical Group (individual MDs) - Hospital Outpatient Clinic

Facilities, non-MD Staff, etc. - MDs

Professional Fee - Facility Fee

Payers
“FRIENDLY PC”

- Hospital
- MSA + AOA
- PC
- Friendly MD
- Employment Agreements
- MDs
- Payers

Employment Agreements
COMMON ISSUES FOR (ALMOST) ALL ALIGNMENT MODELS

- Stark
- PORA
- Anti-kickback statutes (federal and state)
- Antitrust
- Licensing
- Exempt organization
- Control
MODEL–SPECIFIC ALIGNMENT ISSUES

Care Coordination Models

- Gain Sharing
- Service Line Co–Management
- Bundled Payments
  - Episode payment models
  - Cardiac rehabilitation
  - Comprehensive Care for Joint Replacement
  - Commercial arrangements
Care Coordination Models

- ACOs
  - Medicare ACOs
  - Shared Savings demonstration models, first generation, second generation, etc.
  - Shared Risk
  - Capitated
  - Private Initiative ACOs
MODEL–SPECIFIC ALIGNMENT ISSUES

- Care Coordination Models
  - PPOs
    - Contract with third party payors on a non-capitated or FFS basis, generally, for all services provided by network providers
    - Antitrust issues to extent bargain for competitors’ non-integrated practices
  - Case rate contracts
    - Typically for a particular procedure or type of procedure
    - Inclusive of all hospital and physician care, often with specific limits, e.g., bed days, or carveouts (e.g., unrelated procedures due to complications outside team’s experience)
    - On case-by-case basis, by a letter of agreement, or on an ongoing basis
Care Coordination Models

- PHOs (physician–hospital organizations)
  - Generic term. In California, not so much a distinctive type of contract arrangement
  - Knox–Keene licensure required if takes global risk or risk beyond the licensure of one component
  - In practice, the payor and the provider parties often prefer single contract arrangements

- Coordinated Care Initiatives (CCI)
  - California Medi–Cal Program for Seniors and Persons with Disabilities (SPDs)
  - Otherwise, new buzzword. Describes arrangements along the whole managed care and coordinated care spectrum
MODEL–SPECIFIC ALIGNMENT ISSUES

- Care Coordination Models
  - HMOs
    - Recent applications for Knox–Knee licensure for hospital–owned HMOs
    - Number compared to total number licensed in California
    - Enrollment small but growing
    - Full license (direct CMS, DHCS, employer contract), hospital–sponsored/owned HMOs
      - A few examples
      - Operational challenges not faced by RKKs
MODEL–SPECIFIC ALIGNMENT ISSUES

- Care Coordination Models
  - HMOs
    - Restricted license HMOs (RKKs), hospital owned
    - Many recent applications
    - Take global risk (professional and institutional)
    - Licensing and operational requirements
      - Financial capacity
        - Tangible net equity
        - Lines of credit, loans, guaranties
          - Regulatory
          - Upstream Plan required
        - Enrollment, revenue, expenses and other financial projections and justifications
        - Liability insurance, fidelity bond and stop loss insurance
MODEL–SPECIFIC ALIGNMENT ISSUES

- Care Coordination Models
  - HMOs

- Licensing and operational requirements
  - Provider network
    - Primary care and specialties
    - Hospital and other institutional services

- Administrative capacity
  - Executive, network, claims, utilization management, and other departments
  - UM, QI and other policies and procedures
MODEL—SPECIFIC ALIGNMENT ISSUES

- Care Coordination Models
  - IPAs
    - “Friendly PC” model: hospital designee shareholder, MSO designatee
    - With or without local shareholders
    - All professional services or one or more specialties
  - MSO (for HMO business)
    - “Rent” or “build”
    - Roles
      - IPA administration
      - Risk/incentive pool administration
Practice Acquisition Models

- Foundations
  - H & S Code Section 1206(l)
  - Limited to 501(c)(3) organizations
  - 40 physicians of whom 2/3 are full-time
  - 10 board-certified specialties
  - Independent contractors, not employees
Practice Acquisition Models

- Foundations
  - Foundation hires staff, provides facilities and contracts with payers
  - Medical research and health education
  - Multiple MDs with separate Foundation PSAs vs. one group/one PSA
  - % of gross collections
  - Practice acquisition issues
  - Post-acquisition compensation
Model-Specific Alignment Issues

- Practice Acquisition Models
  - Hospital outpatient clinics
    - H & S Code Section 1206(d)
    - Hospital provides facilities and non-MD personnel
    - MD may sell practice assets to hospital (goodwill?)
    - MD bills for hospital outpatient department visit
    - Professional Services Agreement
    - Site of service differential
Practice Acquisition Models

- 1206(g) clinics
  - Operated or affiliated with institution of learning teaching recognized healing art
  - PSA with clinic
  - MD employment agreements
  - OSHPD 3 requirements
Practice Acquisition Models

◦ “Friendly PC”
  • Hospital–friendly MD (executive?) owns PC
  • Hospital manages PC
  • PC employs physicians
  • Alternative to 1206(l) foundation
  • Corporate practice of medicine
  • Control of friendly physician
Practice Acquisition Models

- Key Practice Acquisition Issues
  - Asset vs. stock sale
  - Purchase price
  - Payment of purchase price
  - Allocation of purchase price
  - Assumption of liabilities
  - Representations and warranties
Practice Acquisition Models

- Key Practice Acquisition Issues
  - Indemnification
  - EHR adoption
  - “Tail” insurance
  - Retention of staff
  - Custody of medical records
  - Restrictive covenants
MODEL–SPECIFIC ALIGNMENT ISSUES

- Key Practice Acquisition Issues
  - Post–Sale Employment Agreements
    - Duties
    - Compensation
    - Benefits
    - Time off
    - Malpractice insurance
    - Term and termination
    - Restrictive covenants
    - Dispute resolution
CONCLUSIONS