WHAT YOU NEED TO KNOW ABOUT FORMING A SUPER-GROUP

The increased emphasis on cost, quality and compliance in the delivery of healthcare has simultaneously promised to save our healthcare system, while adding immense complexity to the private practice of medicine. The advent of MACRA and all of the intricate payment methodologies proposed by CMS will inevitably trickle down to commercial payers, providing opportunities for well-prepared physicians, but leaving most small, unsophisticated medical practices ill-equipped to survive in the new data-driven environment. As hospitals have scrambled to form captive practices, co-management relationships, ACOs and CINs in an almost scattershot attempt to garner market share, small medical practices will likely be faced with take-it-or-leave-it payer contracts that virtually guarantee a smaller piece of the overall reimbursement pie. These market forces have caused physicians to increasingly see the need to become part of larger networks of physicians which are able to engage as a group in alternative payment arrangement with CMS, commercial insurers, self-insured employer plans and hospital organizations. These networks must be sufficiently integrated to avoid federal and state antitrust violations, and be able to monitor and enforce compliance among its physician participants in order to enter into meaningful fee arrangements with payers. The gold standard for integration is a clinically and economically integrated group practice operating under a single Taxpayer Identification Number (T.I.N.). Commonly referred to as “Super-Groups,”
these practices have proliferated over the past several years because, if formed properly, they provide many advantages over traditional practice structures in the face of the paradigm shift that is occurring in the delivery of healthcare.

**Structure**

Super-Groups are commonly formed as limited liability companies (LLC) owned exclusively by qualified physicians licensed in the state where the Super-Group is located, with each physician owning one membership unit of the LLC. In general, all of the partners/owners of the practices joining the Super-Group will become members, and all associate physicians will become associate physicians (non-members) of the practice, and be required to enter into associate employment agreements directly with the practice.

Although a Super-Group is a single group practice operating under one T.I.N, one of the frequently used methods to organize the Super-Group involves using separate “Care Centers,” each of which constitutes a separate “satellite” office location or group operated by those physician members of the Super-Group who are affiliated with that particular Care Center. Each formerly independent medical practice will cease to practice medicine as a separate company, and the physicians will comprise their own separate and distinct Care Center of the Super-Group. In general, a Care Center’s professional collections will be distributed to the Care Center, after subtracting its direct expenses (e.g., rent, payroll, insurance), and the Care Center’s allocable share of common overhead. This Care Center model allows the former groups to retain a great deal of autonomy while still enjoying the benefits of the Super-Group.

**Benefits of Super-Groups**

The basic theory behind the formation of a Super-Group is that physicians will generally be in
a better position to face the ever-changing and complex healthcare environment if they are part of a larger group of like-minded practitioners. Super-Groups hold a number of advantages over smaller practices, and the following list provide some examples of the advantages of Super-Groups.

- Super-Groups are in a better position to implement alternative fee structures such as bundled payments, episodes of care and shared savings because of their size, access to more sophisticated information technology and level of clinical integration.
- As a Super-Group, physician members may be in a better position to implement quality and efficiency initiatives that will enable it to negotiate with third-party payers than would a much smaller practice. For instance, Super-Groups have the opportunity to accumulate substantial data that may be used to implement quality and cost-saving measures that, because of the increased number of physicians in the practice, can result in substantial absolute dollar savings that can be used as a tool in pro-competitive negotiations with insurance carriers. Such programs are already in place through larger payers and ACO projects.
- A Super-Group may be able to invest in ancillary services (e.g., lab services) and treatment modalities without violating the federal prohibition against self-referrals (Stark).
- A Super-Group may have increased leverage to negotiate lower medical malpractice premiums and other costs typically incurred by medical practices. This “group buying power” may also enable the Super-Group to negotiate more favorable deals for products and services such as bank financing, EMR and Practice Management software and medical supplies and equipment.
- Time consuming practice management functions, such as billing, accounts payable, credentialing, negotiating with vendors, pension administration and human resources administration, will be performed by a management company, allowing the Care Centers to focus on patient care and practice building;
- The Care Centers will have the ability to share coding and billing practices in order to optimize collections.
- Depending upon the geographic scope of the practice, the formation of a Super-Group may provide the practice with the ability to negotiate more effectively with local hospitals.

Formation

Forming a Super-Group usually involves three phases of steps. The steps do not necessarily have to be followed in the exact order listed below, but these are generally the steps which a group must follow to properly and fully form the group. When practices are ready to form a super-group, the practices should engage the services of an attorney who is familiar with the Super-Group formation and who understands the various legal restrictions and requirements which must be met. He or she will be able to help you walk through these steps listed below.
Phase One

- Initial meetings to discuss short-term, medium-term and long-term goals and compile list of potential members;
- Draft a letter of intent and confidentiality agreement by and among prospective members; and
- Form Limited Liability Company, obtain federal tax identification number and state employer identification number.

Phase Two

- Form an Implementation Committee;
- Establish a meeting schedule for the Implementation Committee and other members;
- Implement a due diligence process through the collection and analysis of critical financial and legal information from prospective owners;
- Prepare an Operating Agreement and other organizational documents, which detail, among other issues, management structure, compensation formulas, committee structures, officer responsibilities, etc.; and
- Evaluate legal issues including Federal Stark, Anti-Kickback, antitrust issues and state law issues.

Phase Three

- Work with the attorney to draft “care center” agreements;
- Establish board of directors based upon mechanism described in Operating Agreement;
- Select officers and form committees (e.g., credentialing, Benefits, Information Technology);
- Create policies and procedures to ensure legal compliance (e.g., billing compliance, HIPAA compliance);
- Review and negotiate vendor contracts (e.g., practice management systems, EHR contracts);
- Review and negotiate banking agreements (e.g., line of credit, term loan); and
- Legal review of managed care contracts.

While it may seem like a big change from a small practice, becoming a member of a Super-Group can bring many advantages to a practice and its physicians. It can provide a great deal of leverage in contracting and allow the physician members to participate in a number of endeavors they would not have otherwise been able to do. Super-Groups can be an excellent way to stay competitive within the ever-changing landscape of healthcare.

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