SAFETY IN NUMBERS

Most Independent Physicians Can't Afford to Go it Alone Anymore

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Almost every aspect of healthcare in the United States is in a state of transition. While popular media tends to zero in on a few hot topics, such as the Affordable Care Act (ACA) and the rising cost of coverage for consumers, the conversation often leaves out one critical contingency of the healthcare delivery system – providers. Healthcare systems are consolidating, non-traditional parties are making inroads into the space, and models of patient care and reimbursement are moving away from the traditional fee-for-service model toward value-based care.

How can an independent physician possibly compete with hospitals and other super-sized provider entities when now, more than ever, innovation, scale, and data/metrics are critical to providing effective patient care? Enter the independent physician super-group, a business model that lies somewhere between complete independence and employment; namely, the consolidation of multiple solo practitioners or small practice groups into a larger but still physician-owned medical group.

BUSINESS COMPETITION AND THE INDEPENDENT PHYSICIAN

Many physicians will tell you that they were called to the practice of medicine through an underlying desire to help people. While the stated goal is admirable, and the value of physicians' contributions to their community really goes without saying, the reality is that the practice of medicine is a business. All professionals, including physicians, have to make a decision between employment and business ownership. The benefits of business ownership may make owning one's own practice more attractive; there is, theoretically, more autonomy in decision making, increased flexibility in work hours and greater control over economics. Some physicians, however, prefer to focus on patient care instead of running

a business and seek more certainty around their compensation, choosing, as a result, to be an employed physician.

The Centers for Medicare & Medicaid Services (CMS) began to emphasize value-based healthcare approximately 10 years ago. The idea was to reward healthcare providers with incentive payments for the quality of care they give to their patients, as opposed to the fee-for-service model, which compensates physicians based on the frequency and type of their patient visits. In the years that followed, there were further developments in value-based care, including increased incentives for the use of electronic health records (EHR) and the ACA's emphasis on quality care through incentive-based rewards to healthcare providers. Private insurance carriers also followed suit, creating provider contracts and models of reimbursement that emphasized quality over quantity of care.

In order for providers to demonstrate quality patient care, they must be able to provide the payers with evidence of outcomes. Capturing and manipulating data into usable forms, and having sufficient sample sizes to produce meaningful and statistically significant results, each becomes critical as a result. How can a solo practitioner or small independent medical practice possibly compete for reimbursements with hospitals and larger healthcare conglomerates, which have significantly more resources, if the solo practitioner is also responsible for clinical patient care during office hours and administering an office?

And it's not just hospitals and other consolidated healthcare providers who are creating this competitive pressure. In recent years, organizations not traditionally associated with healthcare have disrupted the market. For example, in January 2018, Amazon, Berkshire Hathaway, and J.P. Morgan announced that they wanted to do something about the problem of rising healthcare costs for their 1.2 million combined employees, as well as the perceived lack of care improvement. This trio created Haven. While details remain somewhat vague, many in healthcare are expecting Haven to build a risk-based, clinically integrated network of providers and perhaps also to contract directly with hospitals as a payer.

THE "ALMOST INDEPENDENT" MODEL

Physicians often cling to independence well beyond the point that it makes financial sense to do so, fearful of becoming a cog in a hospital's wheel of employees. The physician-owned super-group is the sometimes-overlooked opportunity that may combine the best of both worlds.

"Now, even the most ardent supporters of complete independence need to reconsider their stance," says Dr. Simon Prince, founder and CEO of PRINE Health Medical Group, PLLC, a newly formed New York medical group focusing on primary care and chronic kidney disease.

The impetus for the creation of PRINE was this desire to remain independent but also competitive in the market.

"I have explained to my fellow docs, just like the movie, 'Almost Famous' – we may need to aspire to be 'Almost Independent,'" he says. "Now, it is about consolidating in a more physician-friendly, kinder, gentler manner. It is about achieving enough scale to have a voice, enough infrastructure to support operations, and just enough independence to keep on going."

CHALLENGES AND OPPORTUNITIES

A larger medical practice, comprised of physician owners, permits those physicians to come together to achieve more efficiency, better quality of care, greater payer reimbursements, and better work-life balance. These physicians can use each other as a clinical resource, covering each other's patients both in the office and while on-call in hospitals. A larger number of aligned providers affords significantly more leverage when negotiating reimbursement rates with payers and vendors. The increased revenue brought into the practice through a combination of greater patient volume and better reimbursement rates then allows the practice to invest in better technology, such as a more sophisticated EHR system which can more easily synthesize patient data to demonstrate quality to CMS and private payers. In addition, the practice can support additional personnel who can focus on things like clinical care coordination, billing and collections, and compliance/risk management.

The benefits of joining a consolidated but autonomous medical practice does, however, come with certain costs, and doing so requires some risk tolerance. Combining separate legal entities in any industry requires the engagement of professional advisors, such as attorneys and accountants, to work through issues such as employment/payroll; employee health and welfare and retirement benefits; tax and accounting matters; and indemnification among the parties for potential historical liabilities. This can be an even more complex undertaking in the medical industry. In addition to the areas mentioned above, the movement to a new legal entity requires the practice to: enter into new payer contracts; re-credential its providers with payers and potentially healthcare facilities; integrate existing patient medical records into a unified EHR; and adopt uniform quality, compliance and clinical standards, protocols, and procedures.

And perhaps the most obvious question on the mind of a physician who is considering joining forces with some of his or her potential competitors is, what happens if it doesn't work out? The unwinding of a medical practice requires working through many of the same issues described above, but in reverse order. But on this side of the process, there are patient relationships and continuity-of-care issues to consider. There also could be potentially significant costs incurred to put things back the way they were, or just walk away to become employed by a larger provider. Additionally, restrictive covenants, which serve to protect the members of the group from unfair competition when a member departs the practice, may come into play so it may be impractical to resume one's practice in its prior form after leaving the new group.

Physicians and their advisors must go into the process of consolidating into a newly formed super-group with their eyes wide open. The physicians need to be mindful of each other's perspectives, experiences, and concerns, and all parties must be patient, as the process will take months from start to finish, and perhaps even a year or longer. The governing documents (e.g., shareholders agreement, limited liability company agreement) should be carefully thought through and discussed among the parties, and must be detailed in addressing common issues that arise among business owners, including the dissolution of the business. Both strong leadership and the development of trust among the group of new physician partners are critical to the success of the venture. The physicians must be able to view the formation process, and make the necessary decisions along the way, simultaneously through their own lens as an individual and through the lens of the entity as a whole.

While it may be easier or more comfortable to maintain the status quo, it is becoming increasingly clear that failing to address the realities of a more competitive provider environment may actually result in costlier outcomes for providers.

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