EMPLOYMENT NEVER LOOKED SO GOOD – Forming & Operating Hospital-Sponsored Foundations, Clinics and “Captive” PCs

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Business/Regulatory Starting Point

- What are the “drivers” to do the deal?
- What are each party’s end goals?
- What is the value proposition?
Hospital Perspective

- Market Growth/Penetration
- Cost Containment
- Increased Quality/Efficiency
- Market Stabilization
Physician Perspective

- Income Stability
- Decreased Business Risk
- More/Less Administrative Involvement
- Ability to Expand/Recruit
- Access to Improved Management/Systems
Legal Issues

Antitrust
Tax Exemption
Anti-kickback/Stark
Employee Benefits
Employment & Labor Laws
Reimbursement
Licensure & Accreditation/Records
Medical Staff
Corporate Practice of Medicine
Pre-Negotiation Factors

- Legal restrictions
- Contractual restrictions
- Desire or need for control
- Resources to successfully complete the process
- Number of options for collaboration
- Antitrust constraints
#1 Requirement of a Successful Deal

- Clearly Articulated Business Goals
  - Drives the form of the deal
  - Drives the regulatory underpinnings
Impediments to Success

- No or unclear strategic direction
- No internal consensus among constituents
- No meeting of the minds on deal points
- Lack of clarity on role of management
- Difference in cultures
- Uncertainty
Foundation

Hospital

NFP Foundation

1 or more Medical Groups

Membership Relationship

Professional Services Agreement
Foundation –
Health & Safety Code Section 1206(l)

- Operated by tax-exempt corporation (i.e., I.R.C. Section 501(c)(3))
- Conducts medical research and health education
Foundation – con’t

- Provides health care services to patients through a group of 40 or more physicians and surgeons, who are independent contractors

- Such physicians must represent 10 or more board certified specialties

- At least 2/3 of such physicians practice on a full-time basis at the clinic
Foundation – Hot Spots

- Governance
- PSA/Physician Compensation
- Noncompetition
- Dispute Resolution/Unwind
Hospital-Based Clinic –
Health & Safety Code Section 1206(d)

- Clinic conducted, operated or maintained as an *outpatient department* of a hospital
- Part of hospital license
- Must comply with “provider-based” rules
Hospital-Based Clinic – Hot Spots

- Business/AKS Justification
- Control
- PSA/Physician Compensation
- Noncompetition
“Captive” Professional Corporation

Hospital
or
Hospital-Owned MSA

Management Services Agreement

Medical Group
“Captive” Professional Corporation

- MSO is not a provider of any clinical services
- PC is sole provider
- MSO provides management and billing services to the PC, possibly space, administrative personnel and equipment pursuant to an agreement with a very long tail
“Captive” Professional Corporation—Hot Spots

- Corporate Practice Compliance
- Control
- Management Fee
- Noncompetition
- Dispute Resolution
THANK YOU

QUESTIONS?

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