

Physician Employment Contracts

Signer Beware!



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Physician Employment Contracts

Signer Beware!



DREAM JOB

What is Yours?

- Right Location
- Right Practice
- Right Compensation
- Bright Future



A large iceberg floats in a blue ocean under a blue sky. The tip of the iceberg is above the water, while the much larger, jagged base is submerged. The water is a deep blue, and the sky is a lighter blue with some wispy clouds.

DREAM JOB

Are you sure?



Initial Considerations

Written vs. Verbal Agreements

- Reduce potential for mistakes
- Reduce potential for misunderstanding
- Reduce potential for amnesia
- Negotiation
- No harm in trying
- Never overestimate mind-reading abilities



DREAM JOB

Are you sure?



Initial Considerations

Important Contract Terms

- Fringe Benefits
- Compensation
- Physician Duties
- Employer Duties
- Equity Status Opportunities
- Term
- Termination
- Covenants not to compete/confidentiality
- Other Issues





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Are you sure?



Contract Terms

Unique Benefits

- License Fees
- Professional Society and Medical Staff Dues
- Midweek time off (administrative duties, sleep before call)
- CME - time and money
- Professional Liability Insurance
- Payment of Student Loans



Contract Terms

Physician Duties

- Hours (patient visits per day/enrollees assigned)
- Services
- Administrative responsibility
- Billing and compliance
(including participation in managed care contracts)
- Compliance with professional standards, employer rules



Contract Terms

Shareholder or Partner Status

- Is the employee expected to become an owner?
- When? Under what circumstances?
- Review process?
- Buy-in price and terms



Contract Terms

Term

- Unless otherwise specified, employment contracts are usually terminable “at will”
- Law may limit initial term (CA has 7 year maximum)
- Typical: initial term and provision for extension
- Leave time before termination date to renegotiate



Contract Terms

Termination

- Automatic - loss of license, loss of DEA certificate, exclusion from Medicare, etc., death, permanent disability
- For cause - material breach of contract, medical disciplinary cause or reason, fraudulent behavior
- Without cause - for any (lawful) reason or no reason
- Hearing rights?
- Performance evaluations?



Contract Terms

Termination (cont'd)

- Notice to patients - who will provide it and what will it say?
- Access to patient lists and records
 - Patient request, malpractice claim, administrative proceeding
 - Will physician have to pay?
 - How much?



Contract Terms

Covenants not to Compete

- Covenants not to compete during agreement are generally valid (moonlighting, teaching, research)
- Covenants not to compete after termination are disfavored by CEJA and may be unethical if overreaching. They are void in CA, unless coupled with a sale of a bona fide equity interest in the practice.





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Are you sure?



Contract Terms

Confidentiality Clauses

- Confidentiality clauses are generally enforceable.
- Protect ability to advocate for quality
- Protect ability to communicate professional announcement of new position to patients (some practices consider patient list to be a “trade secret”)



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Are you sure?



Contract Terms

Other Issues

- Membership on IPA and payor panels (need for assistance/right to rescission)
- Intellectual property ownership (who gets it)
- Peer review (scope of obligation/ requirement to release from liability)
- Indemnification (avoid it)
- Corporate practice of medicine (refuse it)
- Recruitment contracts (get a lawyer)



Final Thoughts

Merit-based Incentive System (MIPS)

- Your 2017 MIPS performance will follow you...
 - Physician Compare
- Is your employer committed to success?
 - Individual or Group Reporting?
 - Prior PQRS experience
 - EHR/ HIT sophistication
 - QRUR/sQRUR –how does your employer rank?
- MIPS impact on future salary?

Final Thoughts

Commitment to value-based payment?

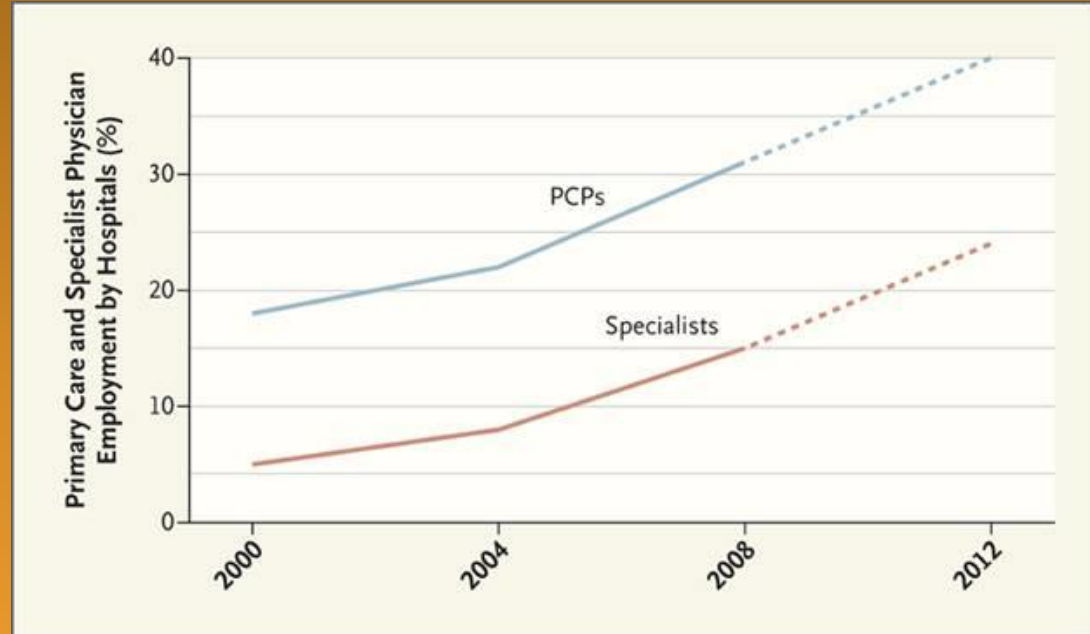
- Future = population-based, patient-centered teams
- Is your employer on the transformation path?
 - Evaluation of current patient population?
 - Appropriate evidenced-based clinical guidelines
 - Measurement of results/implementation of changes
 - Commitment to optimizing referrals/care coordination
 - Functional CEHRT/HIT – transition to 2015 standards



Hospital Employers

Special issues

Percentages of Active U.S. Primary Care Physicians (PCPs) and Specialist Physicians Employed by Hospitals, 2000–2012



Data are from the Physician Compensation and Production Survey, Medical Group Management Association, 2003–2009.

Hospital Perspective

Pressure to Integrate

- ACOs
- Bundling
- Global payments
- Securing referrals and patients
- Gainsharing
- Simplest structure for hospitals—physician employment



Hospital Perspective

Legal Issues

- Antikickback Statute (42 U.S.C. 1320a-7b)
- The Stark Law (42 U.S.C. § 1395nn)
- The Internal Revenue Code Section 501(c)(3) for non-profit employers
- Corporate Practice of Medicine
- State mini-kickback and self-referral statutes



Hospital Employment

Unique Issues

- Loss of independence—lack of physician governance
- Poor physician group management
- Hospital competition
- Compensation issues
 - Fair market value requirements
 - Loss of ancillary income
- Financial strength of hospital
- Physician friendly? Protection from evolution
- If things go awry - non-competes and other restrictions



Hospital Employment

Key Provisions: Autonomy

- Who controls decision-making?
 - Clinical?
 - Administrative?
 - Assets and support services?
- Where, how, and how strong is physician voice?
 - Governance
 - Deadlock?



Hospital Employment

Key Provisions: Termination

- How easy/hard is it to unwind
 - For “cause”
 - Without cause
 - Ongoing obligations and impact
 - Restrictive Covenants
 - Pro-rated compensation
 - Managed care participation
 - Practical (assets, start-up, patients, PLI)

Hospital Employment

Key Provisions: Termination (cont)

- Due process
 - Corporate reality/mentality
 - NPDB reportability
 - HCQIA immunities
 - State peer review protections

Hospital Employment

Key Provisions: Medical staff

- Due Process
- Peer Review
- Quality/Economic Credentialing
- Unbiased Officers/MEC



Hospital Employment

Key Provisions: restrictive covenants

- Non-Compete
- Non-Solicitation
- Confidentiality, Non-Disclosure, Trade Secrets
- Intellectual Property
- Clean Sweep



Hospital Employment

Key Provisions: compensation

- Trend is to use RVUs or wRVUs
- Issues:
 - Base salary or pure production?
 - Some measure other than RVUs?
 - Fair market value measure?
 - What to do with ancillaries?
 - How long are amounts/formulas fixed?
 - Is physician being paid for all services?





DREAM JOB

Are you sure?

Hospital Employment

Key Provisions: risk payments

- Straight salary
 - Salary based on productivity (work relative value units – wRVUs)
 - Individual or departmental productivity + bonus (quality metrics, patient satisfaction scores, administrative duties, chart completion, citizenship)
 - Incentives aligned with system goals (efficiency, readmission rate, never events)
 - Individual capitation



Evolving Compensation

New Delivery System Goals

- increased patient engagement
- improved care coordination, especially in transitions of care
- use of evidence-based medicine
- cost containment
- population health and disease management programs
- improved quality and demonstrable outcomes
- avoidance of preventable readmission, in-hospital medication errors, hospital-acquired conditions, never events
- NCQA recognition and “meaningful use” of CEHRT



Evolving Compensation

Pay for Performance

- Extended hours and appointment availability (effective only if tied to demonstrable reduction in ED use and admits which exceed the higher costs of primary care)
- Panel size for physicians receiving integrated or fully capitated reimbursement (e.g., commercial/senior mix of 2,000 patients where seniors are weighted 3:1)
- Effective mid-level provider management and supervision
- Disease management (often combined with a case management/care coordination program)



Evolving Compensation

Primary care metrics

- shift differentials for evening and weekend office hours
- secure email communication/ patient management services
- mid-level provider supervision and panel size
- meaningful use
- community outreach and education programs
- use of care guidelines, disease management programs
- P4P measures: HEDIS criteria, coding accuracy, ED



Evolving Compensation

Population measures

Preventative measures

- Well Visits, Risk Assessments
- Age, gender and patient appropriate screenings and tests
- Vaccinations

Patient and Population Health Management Measures

- Timely follow-up and recordation of blood pressures, blood sugar, cholesterol and medication reconciliation
- Active monitoring of certain drugs for potential side effects



Evolving Compensation

Outcome measures

- A1C and LDL levels
- Hypertension control
- Depression remission
- BMI
- Back to work
- Fall rates



Evolving Compensation

Qualitative measures

Qualitative Measures - Improvement or minimum levels on

- Patient satisfaction
- Peer and staff reviews or phone surveys

Good Citizenship Measures

- Meeting Attendance
- Risk Management Education
- Community Outreach, Protocol Development, Research, Administrative/Leadership, Teaching





DREAM JOB

Are you sure?



Evolving Compensation

Data you must know

- Specific quality and resource utilization metrics or standards that will be used to evaluate performance (or better yet, be able to help define those metrics)
- Employer's overall compensation methodology
- Data used to determine both ultimate performance results and actual payment amounts
- The appraisal methodology being used to set (and perhaps cap) physician income
- Income guarantee (amount, duration, advertising)?



Evolving Compensation

Issues to consider

- Are there dedicated administrators?
- Do physicians have control (including incident-to and ancillary services) necessary to assume accountability?
- Are incentives patient-centered and clinically sound?
- Will excess wRVUs be recognized at a higher or lower \$/wRVU level?
- Are “mid level provider” eligible wRVUs included in measuring the supervising physician’s productivity?
- Call coverage
- Expert witness fees, independent medical exams



Subsequent Terms

Are you protected?

- non-market rate renewal offers?
- non-compete clauses which force out of area relocation?
- adequate time to assess options or address challenges?
- physician governance rights ensure fair decision-making?
- transparency in future appraisals/ ability to provide independent data or use of an agreed data set?
- adequate capital and other resources to support the practice?
- role in recruitment of new physicians to assure culture remains patient centered, collaborative, accountable and





DREAM JOB

Are you sure?



Final Thoughts

Before you leap....

- Know the financials (yours and theirs)
- Know the politics, philosophy and the reality
 - Collaboration versus dictatorship
- Consider the long-term picture
 - What do you think is going to happen if hospital/practice reimbursement continues to decline
 - Who controls the dollar?
- Protect, protect, protect
 - Get an attorney





DREAM JOB

Eureka!



ANY
QUESTIONS
?

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