Re-Engineering Physician Collaboration for Mutual Success
In an Era of Health Care Reform
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Introduction
What Facilities Want: Structural Physician Collaboration

- Cancer programs seek greater collaboration
- Survey of Facilities - Either already implementing/are considering within 2 years:
  - Co-Management Relationship: 22%/27%
  - Office Leasing: 40%/22%*
  - Equipment Lease: 15%/14%*
  - Joint Venture: 21%/37%
  - Under-Arrangement: 18%/10%*

*Discouraged after most recent Stark regulatory changes

Current Models for Physician/Cancer Center Alignment

**Alignment organized from weakest to strongest**

- Medical Directorships
- Co-Management Model
- Gainsharing Arrangement
- Chemotherapy Services Agreement
- Physician/Cancer Center Joint Venture
- Acquisition/Physician Employment
Current Legal Issues to Consider

• Stark Law
  – Prohibits physician self-referrals for certain designated health services, including radiology and pathology
  – Exceptions promulgated by statute and by Centers for Medicare and Medicaid Services (“CMS”)
  – Required disclosure of self-referral in an era of health care reform

• Anti-Kickback Statute
  – Prohibits soliciting, receiving, offering or paying, directly or indirectly, for referrals
  – Safe harbors promulgated by CMS

• Tax-Exempt Hospitals
  – Ensure activities maintain tax-exempt purposes, especially joint ventures
  – Community benefit considerations in an era of health care reform
Current Patient Flow Model: Breast Cancer Treatment Case Study

Patient Flow

OB/GYN
Single Specialty Group

Medical Oncologist at Group Practice I

Surgeon Group Practice II

Inpatient Lumpectomy

Chemotherapy/Radiation at Cancer Center

Radiation Oncologist Group Practice III

Medical Oncologist Group Practice I

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Current Payment Flow: Breast Cancer Treatment Case Study

Payor

- **OB/GYN Single Specialty Group**
  - Professional Fee

- **Medical Oncologist at Group Practice I**
  - Professional Fees pre/post surgery

- **Surgeon Group Practice II**
  - Professional Fee

- **Inpatient Lumpectomy**
  - Part A Facility Fee

- **Radiation Oncologist Group Practice III**
  - Professional Fee

- **Chemotherapy/Radiation at Cancer Center**
  - Hospital Outpatient Part B Facility Fee or Stand-Alone Cancer Center Facility Fee

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Breast Cancer Treatment in a Bundled World – Clinically Integrated Supergroup ("CIS")

Professional Patient Flow, Electronic Medical Records ("EMR") Implications

- Access to health records by individual physician and group
- Access by all physicians in CIS
- Access between groups

Implications

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Breast Cancer Treatment in a Bundled World – Clinically Integrated Supergroup ("CIS")

Patient Flow

- OB/GYN
- Medical Oncologist
- Radiation Oncologist
- Radiation Therapy
- Chemotherapy
- Surgery
- Surgeon

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1. Results in “supergroups” and clinically integrated PHOs
2. Hospital owns/controls/contracts with all facilities
3. Why should physicians and hospitals collaborate?

Payor

professional fees
bundled facility fees

Downstream Risk

Inpatient Lumpectomy

Chemotherapy/Radiation at Cancer Center

OB/GYN
Radiation Oncologist
Medical Oncologist
Surgeon

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1. Hospital owns/controls/contracts with all facilities

2. Hospital owns/controls/contracts with physician practices

3. Can an independent Group be strong or large enough to survive?

4. Foundation Model/ACO as End Game?

5. Is there capacity for Foundation/ACO everywhere?

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Do Bundled Payments Work in Complex Cancer Care? Merkel Cell Carcinoma Case Study

Patient Flow

PCP at Group Practice I Ohio → Medical Oncologist at Group Practice I Ohio → Thoracic Surgeon Hospital Employee Michigan

Inpatient Chest Wall Surgery Ann Arbor, MI → Medical Oncologist Group Practice I Ohio → Outpatient Chemotherapy at Group Practice I Cancer Center Toledo, OH
How Will Bundled Payments Impact Treatment for Merkel Cell Carcinoma?

120 days later…

Medical Oncologist at Group Practice I Ohio

Neurosurgeon Hospital Employee Michigan

Inpatient Brain Surgery Ann Arbor, MI

…second tumor found.

Radiation Oncologist at Group Practice II Ohio

Outpatient Radiation Therapy at Hospital Toledo, OH

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How Will Bundled Payments Impact Treatment for Merkel Cell Carcinoma?

Later…?

Home Health
Skilled Nursing
Hospice

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How Does Complexity Impact Bundling?

- Multiple bundles?
- How is each bundle defined?
- Referrals outside the CIS?
- Does it work?
- Outlier approach
- Touch points for collaboration
How do Bundled Payments impact Legal Issues?

- Stark Law
  - What are the incentives to self-refer? How does the “game” change?
  - In-Office Ancillary Exception
    - Same/Central Office requirement may be replaced by Care Coordination

- Anti-Kickback Statute
  - Protects against under-utilization
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APPENDIX
Current Physician/Cancer Center Alignment Strategies
Medical Directorship

• Cancer center enters into a personal services agreement with physician or group
  – May hire separate Hematology/Oncology, Radiation/Oncology, and/or other medical directors
  – Role of Medical Directors and other Administrator(s) should be clearly defined

• Important to ensure physician has meaningful involvement in administration
Medical Director Leadership

- Medical Director
  - Medical Oncology
  - Radiation Oncology
  - Surgical Oncology
  - Urology
  - Gynecology Oncology
  - Radiology

- Executive Director
  - Infusion Center
  - Patient Support Services
  - Cancer Registry
  - Radiation Oncology Manager
  - Oncology Nursing Unit
  - Budgeting
  - Human Resources
  - Managed Care Contracting

- Source: Advisory Board Oncology Roundtable

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Medical Directorship Legal Issues

• Stark personal services exception and Anti-Kickback personal service safe harbor

• Each agreement must be in writing, for a term of at least one year, and the compensation must:
  – Be set in advance
  – Be consistent with fair market value
  – Be commercially reasonable
  – Not vary with the volume or value of referrals
Clinical Co-Management

- Physicians (and potentially hospital or management company) form an LLC management entity to contract with and manage the cancer center
- Physicians, through the LLC, provide medical management services for the cancer center
- Compensation is performance-based in part, tied to achievement of specific quality objectives
Co-Management Leadership

LLC Management Company

- Medical Oncology
- Radiation Oncology
- Surgical Oncology
- Urology
- Gynecology Oncology
- Radiology
- Infusion Center
- Patient Support Services
- Cancer Registry
- Radiation Oncology Manager
- Oncology Nursing Unit
  (dotted line?)

Executive Director

- Budgeting
- Human Resources
- Managed Care Contracting

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Co-Management Structure

Service Contract to Manage Cancer Center

Management Company LLC

Specialists

Cancer Center Pays the LLC for:
- Base management fees
- Expense reimbursement
- Incentive compensation meeting service line management benchmarks

Equity

Equity Return (Incentive Payout)

Specialists

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Co-Management Structure – Joint Venture

Service Contract to Manage Cancer Center

Cancer Center Pays the LLC for:
- Base management fees
- Expense reimbursement
- Incentive compensation meeting service line management benchmarks

Management Company LLC

Specialists

Hospital/Management Company

Equity

Management Contract

$£

Equity Return (Incentive Payout)

Specialists

Hospital/Management Company

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Co-Management Activities

- Medical directorships
- Infusion Center
- Patient support services
- Cancer Registry
- Radiation Oncology management
- IP Oncology Nursing Unit
- Efforts devoted to clinical care guidelines and protocol development and operation
- Clinical outcomes and customer service evaluations
Co-Management Activities (cont.)

- Quality improvement services
- Direct supervision of staff, including teaching and in-service education
- Cost reduction benchmarks
- Medical technology evaluation, use management, vendor selection and relationship management
- Drug formulary assessment and management
- Management time spent in capital and operating budget formation, review and evaluation
- Physician recruiting, mentoring, specialized training
- Referral source development and management
Co-Management Benefits

- Physicians are reimbursed for activities such as committee participation, increasing buy-in
- Physicians may earn financial performance incentives based on pre-determined outcomes
- Provides a higher quality of patient care due to a more organized process of service line management
- Provides access to equipment such as IMRT/IGRT
- Aligns hospital or management company and local physicians
Co-Management Legal Issues

• Like Medical Directorship, agreement must conform to the Stark Law personal services exception and the Anti-Kickback Statute personal services safe harbor

• Each agreement must be in writing, for a term of at least one year, and the compensation must:
  – Be set in advance
  – Be consistent with fair market value
  – Be commercially reasonable
  – Not vary with the volume or value of referrals

• Must comply with securities regulations when selling units of the LLC
Gainsharing

- Contractual arrangement allowing physician to share in cancer center’s cost savings attributable to physician’s efforts
- Allows physicians to participate in efficiency of the cancer center
- Civil Monetary Penalty provisions prohibit payments to physicians that may induce physicians to reduce or limit items or services furnished to Medicare and Medicaid beneficiaries.
- Gainsharing relationships must therefore meet a number of requirements, including:
  - Direct link of physician action to hospital or cancer center cost reduction
  - Actions leading to savings are specifically identified
  - Valid quality of care indicators
  - Independent verification of cost savings, quality of care
  - Short term arrangement
Hospital/Physician Group Chemotherapy Services Agreement

- Private physician practice with infusion services enters into services agreement with 340b eligible hospital
- Hospital leases space, equipment, staff for infusion services from group
- Infusion center structured provider-based
- Practice receives fair market value compensation from Hospital, and Hospital assumes all billing and collections responsibilities for infusion
Chemotherapy Services Agreement

Hospital

Investment & Staffing of Dept (unless leased)

Facility Revenue

Services Agreement

Group Practice

Other Income

Practice collects:
Services Agreement Compensation
Other Income

Practice pays:
Physician salaries
Practice Overhead

Profits Distributed to Group Practice Physicians

Source: Joint 2009 Charis Healthcare/Squire Sanders & Dempsey L.L.P. Client Presentation

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Physician/Hospital Joint Venture

Joint Ownership

Equity

Cancer Center

Equity Return (Incentive Payout)

Specialists

Hospital

Specialists

Hospital

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Joint Venture Benefits

- Share the upfront and ongoing capital expenditure for service expansion and purchase of equipment such as IMRT/IGRT
- Maximize efficiencies and convenience to patients and physicians
- Enhance the delivery of patient care while improving access and quality of services
- Create more patient-friendly environment through dedicated, conveniently-located outpatient services
- Improve hospital/physician relations, attract new physicians and facilitate outreach programs
Joint Venture - Stark Law

- **In-Office Ancillary Exception**
  - Physician-owner must personally perform services at the cancer center
  - Must meet certain location requirements
  - Physician group must bill for services
  - Physician group must meet Stark “group practice” definition

- **Rural Exception**
  - Physician ownership or investment is not prohibited in a rural area
  - Therefore, cancer center may be structured under-arrangements
Joint Venture - Anti-Kickback

• Small Entity Safe Harbor
  – Two significant requirements:
  – Referring physicians’ ownership share is limited to 40%
  – No more than 40% of revenue related to the furnishing of health care can come from investors

• Intent-Based Statute – even if a safe harbor is not exactly met, an arrangement may still be in compliance

• Real investment risk required
Joint Venture - Tax-Exempt Hospital Investor

• To maintain the tax-exempt nature of its income, Hospital must maintain sufficient control over the joint venture

• Sufficient control requires that Hospital have veto power over significant actions, such as:
  – Acquisitions, mergers, and significant sale of assets
  – Changes to governing documents
  – Entering into management agreements with physicians
Physician Employment

• Hospital or cancer center directly employs oncologists and other physicians

• Anti-Kickback Statute does not regulate employment compensation

• Stark Law employment exception
  – Compensation consistent with fair market value and commercially reasonable
  – Compensation does not vary with the volume or value of referrals, except productivity bonuses based on services personally performed
Other Legal Issues

- State Law
  - Anti-Kickback
  - Physician Self-Referral
  - Certificate of Need
- Antitrust
- Medical Ethics (AMA)