GUEST

Entrepreneurial medicine

Motivated by sweeping changes to Medicare and the continuous change of payment rates for various health care services, physicians and hospitals are developing new types of providers. "Entrepreneurial medicine" is used to describe the business of physician groups, traditional acute care hospitals and others in investing in new types of providers.

Much of that activity has been physician groups investing in hospital facilities that provide care focused on particular services or conditions. Physician groups have developed specialty hospitals for cardiac, orthopedic, neurological or other specific surgeries and procedures.

There has also been a big increase in the development and ownership by physicians and traditional hospitals in other types of hospitals that provide treatment for particular conditions. Such "focused-care" facilities include long-term care, rehabilitation and psychiatric hospitals, and are often located within a larger, acute care hospital. An attractive aspect to those is that the Medicare program generally provides a higher rate of payment.

A facility is considered a long-term care hospital if it has an average inpatient stay of greater than 25 days. Long-term care hospitals typically provide extended care for patients who suffer from multiple chronic conditions. Physicians are also developing hospitals or units within hospitals that are classified by Medicare as "inpatient rehabilitation" facilities. These rehab hospitals must provide at least 75% of their services to inpatients who require intensive rehabilitation for one or more of 10 specified conditions.

Physicians and hospitals are also creating partnerships to jointly provide services. These "service-line" joint ventures focus on specific types of care and have replaced similar departments within a hospital, such as cardiology departments. The partnerships are done through new companies jointly owned and managed by a hospital and physicians. For example, West Jefferson Medical Center near New Orleans gave a portion of the ownership of its hospital facility to a company partly owned by local doctors.

These new types of facilities face the longstanding regulatory issue of whether a physician may refer patients to another provider in which the referring doctor has an ownership interest. Compliance and reimbursement issues under fraud and abuse laws have generally prevented physicians from having an ownership interest in physical therapy providers, durable medical equipment providers and clinical laboratories.

A large obstacle to physician investment in some providers has been the federal Stark Law. The law strictly prohibits a referral by a physician to a provider in which the physician has a financial relationship for certain services to Medicare patients unless the relationship meets an exception. Physicians and other investors also are having their profit distributions and investments in these new providers scrutinized under anti-kickback laws.

Recently the Office of Inspector General (OIG) sent a demand letter for $31 million in civil fines against a Florida pharmaceutical company based on its purchase of a pharmacy in Virginia. The OIG claimed the Florida company paid $3 million more for the pharmacy than its actual value. That "overpayment" was remuneration to the pharmacy s owner for a seven-year exclusive services agreement that the pharmacy entered into with a chain of nursing homes in which the pharmacy owner also had an ownership interest, the OIG said. The exclusive services agreement was executed about a month prior to the sale of the Virginia pharmacy.

The lesson here is for doctors and other providers to ensure the valuation of a health care provider that they are selling—or even buying—doesn t include an amount for future or past business referred to either party.

Referrals can cause legal problems for doctor-owned facilities.

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