Co-Management Arrangements:
Getting Beyond a Medical Director Arrangement
to a True Accountable Care Stepping Stone

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Objectives

• Distinguish co-management arrangements from medical director and gainsharing arrangements
• Highlight compliance concerns of co-management arrangements
• Illustrate how co-management can serve with gainsharing and as a stepping stone to accountable care
• Case example
Medical Directorships

- Predecessor to co-management
- Focused more on hours worked than results achieved
- Fewer physicians are affected, so there are not as many interested stakeholders involved in trying to bring about efficiency and cost savings

Co-Management

- Co-management is a type of gainsharing
- These arrangements emphasize achievement of quality and performance metrics in addition to day-to-day management activities
- The goal is to reward participating medical groups for efforts in developing, managing and improving quality and efficiency of a hospital service line.
Benefits

• Improved quality of care, patient access, and patient satisfaction
• Improved physician loyalty
• Acceleration and increased magnitude of best practice initiatives
• Shared risk and capital requirements
• Improved delivery models
• Increased standardization of protocols and practices

Co-Management Model

• Organizational structure
• Ownership structure
• Management agreement
• Compensation structure
Organizational Structure

- Typically a limited liability company
- Governance delegated to a Management Board
- Board committees may be created to facilitate performance under the Management Agreement
Ownership Structure

- Physician ownership dictated by investment criteria
- Individual physicians or entities owned by individual physicians
- Hospitals may also be owners
- Commonly are formed and operated on a 50/50 basis, but if hospital wants to retain control, it is not uncommon to see 60/40 split in favor of the hospital

Management Agreement

- Covered services
- Co-Management Company obligations
  - i.e. oversee day-to-day operations; participate on Board of Managers; supervision of personnel; operational reporting
- Compensation
- Term
- Non-compete
Compensation Structure

- Base management fee
  - Board committee participation, medical directorships, administrative costs
- Incentive compensation
  - Budgetary objectives, operational efficiency incentives, quality of service metrics, new program development
- Fixed, Fair Market Value

A Note on Medical Directorships and the Co-Management Model

Fair Market Value Considerations

Medical Director

Manager

Bake Hostetler
Important Compliance Concerns

- Anti-Kickback Statute
- Stark Law
- Civil Monetary Penalties
- False Claims Act
- Intermediate Sanctions

Anti-Kickback Statute

Prohibits the knowing and willful offer, payment, solicitation, or receipt of any remuneration in any form as an inducement or reward for either the referral of patients or the arranging of reimbursable services under the Medicare or Medicaid programs.
Anti-Kickback Statute Safe Harbors

- Safe harbor for management contracts and other personal services
- Payment cannot be based on volume or value of referrals expected from investors in the Management Company
- Obtain independent third party fair market value opinion
- FMV! FMV! FMV!

Stark Law

Prohibits a physician who has a financial relationship with an entity from referring a Medicare or Medicaid patient to the entity for “Designated Health Services” unless an exception applies.
Stark Law Exceptions

- Management services are not a designated health service, but Management Contract must still comply with a Stark Law exception because there is an indirect compensation arrangement between the hospital and participating physicians.
- Indirect compensation, personal service, and fair market value exceptions.
- FMV! FMV! FMV!

Civil Monetary Penalties

- Prohibits a hospital from knowingly making a payment, directly or indirectly, to a physician to induce the physician to reduce or limit services provided to patients who are entitled to benefits under federal health care programs.
- Analyze each Performance Standard under the CMP law
False Claims Act

Affirmative false claims:
- Knowingly filing, or causing to be filed, a false or fraudulent claim
- Knowing use of a false record or statement to get a false or fraudulent claim paid
- Conspiring to defraud the government by getting a false or fraudulent claim paid

Reverse false claims: affected by the Fraud Enforcement and Recovery Act of 2009

False Claims Act

Sample Calculation
- $100,000 damages x 3 = $300,000
- 3000 (# of claims) x 11,000 = $33,000,000
- Total Liability = $33,300,000!!!
Tax Exempt Issues


- Must be organized and operated exclusively for exempt purposes
- Hospital must have sufficient controls to ensure that the Management Company cannot cause the hospital to act contrary to its tax-exempt purpose.
- Any compensation must be reasonable

Accountable Care Organizations

Section 3022 of the Patient Protection and Accountable Care Act requires the Secretary of HHS to establish a Medicare Shared Savings Program that “promotes accountability for a patient population and coordinates items and services under Medicare parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery.”
Who is eligible to participate in an ACO?

- ACO Professionals in group practice arrangements
- Networks of individual practices of ACO professionals
- Partnerships or joint venture arrangements between hospitals and ACO professionals
- Hospitals employing ACO professionals
- Others as the Secretary determines

Leadership and Management Structure

- Demonstrated ability to influence or direct clinical practice to improve efficiency processes and outcomes
- Full time senior-level medical director
- Board certified and licensed in the state where the ACO operates
- Physically present on a regular basis at an ACO location
How Can Co-Management be a Stepping Stone to Accountable Care?

- Begin “quality” partnership with physicians
- Bring together what might otherwise be competitors to collaborate over quality, cost and responsiveness
- Empowers physicians to work with hospital administration

What is Gainsharing?

An arrangement whereby a hospital gives physicians a percentage share of any reduction in the hospital’s costs for patient care attributable in part to the physician’s efforts.
Combining Co-Management and Gainsharing

- Co-Management: Focused on Operational Improvements That May Lead to Cost Savings
- Gainsharing: Focused on Cost Savings That Does Not Reduce the Quality of Care

Combining Co-Management and Gainsharing Continued

- Gainsharing and Co-Management Can Be Combined
- More Complex Fraud and Abuse Analysis and Increased Level of Monitoring Associated with Combination
- Limited Service Lines
Case Example-Background

- Dewey Compensate them Hospital (DCH) and Surgery Department
- DCH is community hospital with employed physicians and large community physician presence
- Lost opportunities on alignment...need to better engage with surgeons to improve performance

Scope of Services

- Inpatient Surgical Services (to be defined by MS-DRG’s)
- Outpatient Surgical Services (to be defined by CPT or APC codes)
- Endoscopy Center and related areas
- Pre Admission Testing
- Pre – Operative Holding Area
- Post – Operative Holding Area
- Operating Rooms
Co-management Company Model

- **DCH**
  - Service Contract to Manage
  - Department of Surgery

- DCH Surgical Co-Management Company, LLC
  - Compensation
    - Base management fees
    - Medical Directorships
    - Board and Committee work
    - Incentive compensation
    - Expense reimbursement

- **DCH Surgical Management Group, LLC**

Operating Agreement Summary

- Company established as a Limited Liability Company ("LLC").

- DCH Surgical Management Group, LLC will be the physician owner of record for the physician units.

- Company is formed to provide management services and performance improvement services to DCH in order to improve the overall quality, efficiency, and effectiveness of the Department of Surgical Services at DCH.
Governance Structure

Board of Managers

- 8 physicians (Class A Managers) / 2 hospital representatives (Class B Managers) on the Board

Pre Op Committee
- 3 physicians / 1 hospital representatives on the committee

Intra Op Committee
- 3 physicians / 1 hospital representatives on the committee

Post Op Committee
- 3 physicians / 1 hospital representatives on the committee

Clinical Quality Committee
- 3 physicians / 1 hospital representatives on the committee

Finance and Marketing Committee
- 3 physicians / 1 hospital representatives on the committee

Co-Management Model Compensation Components

<table>
<thead>
<tr>
<th>Base Management Fee</th>
<th>Committee Participation</th>
<th>Medical Director Fees</th>
<th>Special Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Participation</td>
<td>Committee Participation</td>
<td>Day-to-Day Operations Oversight</td>
<td>Special Projects</td>
</tr>
</tbody>
</table>

Incentive Compensation

- Incentive payments are allocated across improvement areas
- Amount of incentive payouts are based on predetermined goals
- Each incentive benchmark must be met to receive payment for that component

Source: PricewaterhouseCoopers
Management Agreement Summary

Responsibilities of the management company are to provide development, management and performance improvement services for and on behalf of DCH with respect to the Surgery Service Line.

- Service Line operations to include certain inpatient and outpatient services provided at DCH, to include the following:
  - Inpatient Surgical Services
  - Program for care and management of inpatient surgical services. Specialties include, general surgery, ENT, GYN, Urology, Plastic, Colorectal, Oncology.
  - Outpatient Surgical Services
  - Endoscopy Services
  - Department of Surgery General Support Areas (PAT/Post-OP)

Management company compensation summary, 70% MD Ownership, 15 Physician Investors

<table>
<thead>
<tr>
<th>Base Management Fee Detail</th>
<th>Low Range</th>
<th>High Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board and Committee Participation</td>
<td>$198,000</td>
<td></td>
</tr>
<tr>
<td>Medical Directorships</td>
<td>$100,000</td>
<td></td>
</tr>
<tr>
<td>Special Projects</td>
<td>$42,000</td>
<td></td>
</tr>
<tr>
<td>Administrative Fees</td>
<td>$10,000</td>
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<tr>
<td>Total Base Management Fee</td>
<td>$350,000</td>
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</tr>
</tbody>
</table>

| Maximum Incentive Payout Ranges         | $0        | $150,000   |
| Total Management Company Compensation Ranges (1,2) | $350,000 | $600,000   |

1. The compensation and distributions presented are for example purposes only. Actual distributions will vary based on the actual performance of the management company and the financial decisions made by its members and board of managers.
2. The above example does not take into account any operation expenses incurred by the LLC (i.e. legal and accounting expense)
3. Board and Committee compensation is paid directly to individuals participating on the Board at a rate of $165/hour and is subject to receipt of proper documentation
4. Base oversight proceeds available for per unit distribution can and will be impacted by ancillary special projects and assignments as determined by the board to be compensated on an hourly basis.
5. Special Projects assume all dollars are utilized by physicians on hourly assignments for projects.
6. Compensation amounts do not include reductions for joint venture company expenses
## Base Management Fee Summary

### Board/Committee Structure

<table>
<thead>
<tr>
<th>Component</th>
<th># of Participants</th>
<th>Hours per Meeting</th>
<th>Total Meetings</th>
<th>Rate¹</th>
<th>Total Compensation</th>
<th>Per Physician</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board</td>
<td>11 (8 P, 2 H)</td>
<td>4</td>
<td>12</td>
<td>~$165</td>
<td>$79,200</td>
<td>$7,920</td>
</tr>
<tr>
<td>Pre OP Committee</td>
<td>4 (3 P, 1 H)</td>
<td>3</td>
<td>12</td>
<td>~$165</td>
<td>$23,760</td>
<td>$5,940</td>
</tr>
<tr>
<td>Intra OP Committee</td>
<td>4 (3 P, 1 H)</td>
<td>3</td>
<td>12</td>
<td>~$165</td>
<td>$23,760</td>
<td>$5,940</td>
</tr>
<tr>
<td>Post OP Committee</td>
<td>4 (3 P, 1 H)</td>
<td>3</td>
<td>12</td>
<td>~$165</td>
<td>$23,760</td>
<td>$5,940</td>
</tr>
<tr>
<td>Clinical Quality Committee</td>
<td>4 (3 P, 1 H)</td>
<td>3</td>
<td>12</td>
<td>~$165</td>
<td>$23,760</td>
<td>$5,940</td>
</tr>
<tr>
<td>Finance / Marketing Committee</td>
<td>4 (3 P, 1 H)</td>
<td>3</td>
<td>12</td>
<td>~$165</td>
<td>$23,760</td>
<td>$5,940</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$198,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

## Base Management Fee Summary – Medical Directors

<table>
<thead>
<tr>
<th>Component</th>
<th>Hours per Week</th>
<th>Total Hours</th>
<th>Rate¹</th>
<th>Total Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Surgical Services</td>
<td>~3</td>
<td>150</td>
<td>~$165</td>
<td>$25,000</td>
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<tr>
<td>IP Surgery</td>
<td>~3</td>
<td>150</td>
<td>~$165</td>
<td>$25,000</td>
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<tr>
<td>Endoscopy</td>
<td>~3</td>
<td>150</td>
<td>~$165</td>
<td>$25,000</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$75,000</strong></td>
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# Base Management Fee Summary – Other

<table>
<thead>
<tr>
<th>Component</th>
<th>Total Hours</th>
<th>Rate(^1)</th>
<th>Total Compensation</th>
<th>Per Physician</th>
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</thead>
<tbody>
<tr>
<td>Special Projects</td>
<td>250</td>
<td>~$165</td>
<td>$67,000</td>
<td>~$4,500</td>
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<tr>
<td>Administrative Fees / Other Expenses</td>
<td>n/a</td>
<td>n/a</td>
<td>$10,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$77,000</strong></td>
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</tr>
</tbody>
</table>

\(^1\) Hourly rate of $165 is subject to FMV appraisal being completed.

## Incentive Metrics

<table>
<thead>
<tr>
<th>Incentive Metric</th>
<th>Allocation</th>
<th>Upper Payment Limit</th>
<th>Current Performance</th>
<th>Target Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality of Service Incentive</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patient Satisfaction</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCIP Core Measure Composite Compliance</td>
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<tr>
<td>Post Procedure Complication Rates</td>
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<tr>
<td>Comprehensive Protocol/Pathway Development &amp; Standardization</td>
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<tr>
<td>Efficiency Incentives</td>
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<tr>
<td>First Case on Time Starts</td>
<td></td>
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<tr>
<td>Room Turn Over Times</td>
<td></td>
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<tr>
<td>Block Schedule Utilization</td>
<td></td>
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<tr>
<td>H&amp;P's Completed Prior to Surgery</td>
<td></td>
<td></td>
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<tr>
<td>Sharps Injuries / 100 Surgeries</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Surgery Supplies - % of Unused to Total Items Opened</td>
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</tr>
<tr>
<td>New Program Development Incentive</td>
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<tr>
<td>Strategic Planning</td>
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</tr>
</tbody>
</table>
Incentive Definition and Performance Ranges

Patient Satisfaction

Patient Satisfaction: The Management Company will be entitled to receive an incentive in the event certain targeted levels of patient satisfaction are attained. The Hospital will conduct satisfaction surveys for the Department on a routine basis with the results compared to targeted levels of patient satisfaction on an annual basis for the purpose of determining the incentive. It will be the Management Company’s discretion as to which Press Ganey question(s) will be used to determine the incentive.

<table>
<thead>
<tr>
<th>Range Floor</th>
<th>Range Ceiling</th>
<th>Annual Payout</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;76.0%</td>
<td>&gt;65.0%</td>
<td>76.0%</td>
</tr>
<tr>
<td>&gt;65.0%</td>
<td>65.0%</td>
<td></td>
</tr>
<tr>
<td>52.0%</td>
<td></td>
<td></td>
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<tr>
<td>&lt;52.0%</td>
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<td></td>
</tr>
</tbody>
</table>

Current Performance  Goal

Questions?

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  - 216.861.7903