

# South Carolina Association of CPAs 2010 Valuation & Litigation Conference

## MEDICAL PRACTICE SALES ISSUES

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### I. Why Clinical Integration?

1. Changing CMS payment models (i.e. fee for service (FFS) vs. wellness and clinical outcomes)
2. Create mass:
  - a) Facilitates physician recruitment and Centers of Excellence
  - b) Promote sub-specialization
3. Economies of scale for:
  - a) EMR costs
  - b) Malpractice insurance
  - c) Payor contracts
  - d) Facilitate recruiting of M.D.s
4. Expand outreach and referral base - with Hospital capital
5. Improve quality of care and clinical outcomes
6. Job security – compensation protection
7. Avoid Fragmentation of inpatient and outpatient service
8. Financial pressures
  - a) Bundled payments coming
  - b) Escalating operating costs must be reduced
9. Continuity of care
10. Improve patient care
11. Avoid malpractice liability for physicians
12. Reduce physician exposure to fraud-abuse audits/liability

### II. Employment Agreement

1. Compensation
  - A. Base
    - a) Methodology to set initial Base
      - i) MGMA Median – RVUs  
v
      - ii) historical production/salary and effect of high O/H
    - b) “Guaranteed Base” – (i.e. 80% floor)
    - c) Adjustments – quarterly/annually

- d) Reevaluations – periodic
  - i) Review production
  - ii) Review MGMA median

B. Other Compensation

- a) Productivity Bonus
- b) Net Profit Bonus
- c) Qualitative Bonus
  - i) Patient Surveys
  - ii) Timely completion of charts
  - iii) Peer review
  - iv) low infection ratio
  - v) low complications
  - vi) low re-admissions
- d) Medical Director Agreement
- e) ER Call Coverage
- f) Signing Bonus - OK
- g) Retention Bonus – Not Permissible

2. Term

- a) 3 v. 5 years
- b) Evergreen rollover

3. Termination or Non-renewal

- a) For Cause or Without Cause
- b) If Without Cause:
  - i) After initial year
  - ii) After initial Term (3-5 years)
  - iii) Notice
    - a) 6 mo
    - b) 1 year
  - iv) Severance (6 mo – 18 mo) from Hospital
  - v) Liquidated Damages from M.D.
- c) Medical Staff Privileges – Termination issue

4. FMV Opinion

- a) HAI, Coker Group, Integrated Health Services
- b) MGMA Statistics or Sullivan Cotter Survey

### **III. Asset Purchase Agreement**

#### 1. Assets

- a) Tangible
- b) Intangible - No goodwill – can't pay for referrals (Antikickback, Stark)
  - i) Work Force
  - ii) Medical Records (\$6-12/chart)
  - iii) "License" use of Name
  - iv) Restrictive Covenants
- c) Requires FMV opinion

#### 2. Tax Issues

- a) Rates in 2010 versus 2011
- b) PA – Double taxation issue
  - i) Allocation to assets or
  - ii) Allocation to higher RVUs = compensation
- c) Amortization of Intangibles
  - i) IRC 197
  - ii) 15 years

#### 3. Exit Strategy

- a) Unwind –Requires FMV opinion of depreciated assets
- b) Put or call – Mandatory or Discretionary

### **IV. Standstill Agreement & Exclusivity**

### **V. Contract Assignment and Assumption**

- 1. Leases – Requires FMV rental opinion
- 2. Other

### **VI. Practice Management**

Control/Autonomy issues