UWHC Business in Medicine

Contracting For Physicians Services
February 3 and 4, 2010

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Introductions and Disclaimers

Physicians View

- Most important document you’ll sign.
- First Job often described as “worst job” you’ll ever have.
- NFL/NHL Example.
Employers View

- Protect institution.
- Protect patients.
- Uniformity.
- Reduced leverage for physicians saves costs in disputes.
Goals of Negotiations

a) Get a contract
b) Fair
c) Reasonable
d) At market rates
Important Features of Contract Law

1. Where a contract exists, it will govern.
2. Can’t go outside the contract to create terms.
3. Can’t ignore the contract – “but he said it’s in all their contracts – they never enforce it.”
Fundamental Terms

Boiler Plate:

1. Identification of the parties
2. Duration of the contract
3. Termination
   - early termination may be tied to a bonus claw back.
   - termination under the contract versus termination pursuant to medical staff bylaws.
Status of Physician

Status of Physician may be:

a) Employee
b) Employee At-Will
c) Probationary Employee
d) Independent Contractor
Benefits

a) Health insurance
b) Retirement Plan contributions
c) Vacation
d) Sick Leave
e) Payment/Time off for CME
f) Signing bonus
g) Productivity/Performance Bonus
h) Professional Liability Premium
i) Other
Malpractice Insurance

A. Ordinarily employer funds.
B. Employer’s obligation to make timely contribution.
C. Physician will normally be required to cooperate in obtaining insurance and remaining insurable.
D. Briefly describe Wisconsin Injured Patients and Families Compensation Fund (the “Fund”).
E. Repayment of pro-rated liability insurance contribution upon termination.
F. Tail.
Credentialing

- Most employers hire physicians as a specialist or sub-specialist.
- Maintaining eligibility and obtaining credentials will be physician’s obligation.
- It should be clear who pays for memberships, CME etc.
- Hospital practice privileges.
  - Generally required, physician’s obligation to obtain and maintain.
  - Loss of hospital privileges usually grounds for termination.
Credentialing (continued)

- State Licensure
- DEA Licensure
- Board Certification/Eligibility
- Medicare/Medicaid Certification
Advancement

- Depending on employer, physician may become a part owner or partner or obtain senior status with longer notice, more rights and benefits.

- Tip: get statistics on number of physicians who advance and criteria for advancement. Interview recent hires.
On Call

1. Typically new MD gets worst part of call schedule.

2. Important to understand for family and personal reasons.

3. Reference or attach call schedule to contract.
Confidentiality, Trade Secrets and Medical Records

1. Most contracts require promise of confidentiality as to patient records and trade secrets.

2. Most contracts describe the patient’s records as “the property of the employer” – Comment.

3. Some litigation in this area but not much.
Expected Level of Productivity

Several of measures of productivity

- Old method hours/patient visits/fees billed or received.
- Newer method RVU expectations coupled with patient satisfaction.

Tips:
- (1) Get productivity data for physician in specialty.
- (2) Get productivity data for physician in specialty at prospective employer.
- (3) Seek information on hires/departures.
Employer Enforcing Contract

- Most try to get expenses paid by physicians if employer has to enforce the contract.

- Most seek to withhold compensation or return of any signing bonus.
Covenants Not-To-Compete

- Fairly common.
- Law differs from state to state.
- Wisconsin typically has disfavored covenants not-to-compete. A recent case suggests employers may have a more favorable climate for enforcement.
Things To Look Out For

Incorporations by reference

- HR Manual
  - Committee Decisions -- e.g. compensation after year number one as determined by [Sub-specialty] Committee.
  - Compliance with Future Rules -- as set by the employer.

- Medical Staff Bylaws
Questions?

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