

Group Practice Dynamics

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What Will Be Covered Today:

- Practice Formation Considerations
- Individual Physician Arrangements – Owner and Non-Owner
- Group Compliance Documents –
 - (1) HIPAA
 - (2) General Compliance



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Forming a Group Practice – Who May Own?

- **Pennsylvania Prohibition on the Corporate Practice of Medicine**
 - Dates back to *Neill v. Gimbel Bros., Inc.* (Pa. 1938)
 - Has been interpreted to extend to some management relationships – see *OCA, Inc. v. Hodges* (E.D. La. 2009)



Forming a Group Practice – Entity Choice

- Professional Corporation – all of the “ultimate beneficial owners” of shares must be licensed persons. 15 Pa.C.S. 2923
- Restricted Professional Companies – all of the “ultimate beneficial owners” of membership interests must be licensed persons. 15 Pa.C.S. 8996
 - Consider annual registration fee.

Forming a Group Practice – Entity Choice (cont'd)

- Pennsylvania licensure laws and regulations may further restrict ownership
 - E.g., “ A medical doctor may form a professional corporation with other medical doctors or other health care practitioners who treat human ailments and conditions and who are licensed in this Commonwealth to provide health care services ***without receiving a referral or supervision from another health care practitioner***, if the boards which regulate those practitioners also permit the formation.” 49 Pa. Code 16.21 (emphasis supplied).
- Other considerations – officers and directors

Impact of Federal Stark Law

- **Applicability of the Stark Law – in office ancillary services**
- **Definition of “Group Practice”:**
 - A single legal entity;
 - At least two physicians (medical doctors or dentists);
 - Each physician furnish substantially the full range of patient care services through the joint use of shared office space, facilities, equipment and personnel;
 - With certain exceptions, at least 75% of the total patient care services of the group practice members must be furnished through the group and billed through the group’s billing number;

Impact of Federal Stark Law (cont'd)

- Overhead expenses and income from the group must be distributed according to a method determined before the receipt of payment for services;
- A unified business with centralized decision making and consolidated billing, accounting and financial reporting;
- No physician member may be compensated based on the volume of his/her referrals, except as explicitly permitted by the regulations; and
- Members of the group must personally conduct no less than 75% of the physician-patient encounters of the group.

Compensation of Doctor-Owners

- Typically based on a net income division formula
- Many options of formulas.
Broad categories:
 - All paid equally
 - Relative productivity
 - Combination of productivity and equal
- What is included in “net income?”



Buy Out Considerations

- How to value the practice?
- Reduction for “bad acts”?



Compensation of Non-Owners

- **Any Number of Formulas:**
 - Straight base salary
 - Pure productivity compensation (e.g., wRVUs or % of collections)
 - Combination of base + productivity bonus
 - Quality bonus
- **Employee Safe Harbor to Federal Anti-Kickback Statute gives a lot of flexibility. Bona fide employment exception to Federal Stark Law requires fair market value.**

Employment/Member Services Agreement Terms

- Professional liability insurance
 - Occurrence versus claims-made: Who pays the tail?
 - Approaches to tail



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Employment/Member Services Agreement Terms (cont'd)

- **Term & Termination**
 - Is there a “path to partnership”?
- **Termination provisions to consider:**
 - Loss, suspension, restriction or non-renewal of: medical license; DEA registration; staff privileges
 - Failure to obtain board certification
 - Exclusion from Federal health care programs
 - Loss of payor credentials
 - Improper coding
 - Practice beneath the standard of care
 - Non-insurability



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Employment/Member Services Agreement Terms (cont'd)

- Restrictive Covenants
 - Non-Compete
 - How long?
 - How far?
 - From where measured?
 - Non-Solicitation (patients)
 - Non-Solicitation (employees)
 - Non-Interference



Employment/Member Services Agreement Terms (cont'd)

- Practice Duties
 - Which offices?
 - Scheduling working hours and “on call” hours
- Outside work
 - Any permitted?
 - If yes, what is permitted?
 - Who keeps the \$?



Employment/Member Services Agreement Terms (cont'd)

- Possible doctor-specific “perks”
 - License/DEA fees
 - Continuing education – time & costs
 - Board examination and renewals
 - Computer
 - Phone reimbursement



Group Compliance Documents

- HIPAA – Privacy, Security and Breach Notification
- Fraud & Abuse Compliance



The Health Insurability and Accountability Act of 1996 (HIPAA)

- **Brief Overview**
 - Statute enacted in 1996
 - Key regulatory components:
 - Privacy Standards
 - Security Standards
 - Breach Notification
- Medical practices that are covered entities need documented policies and procedures for each!



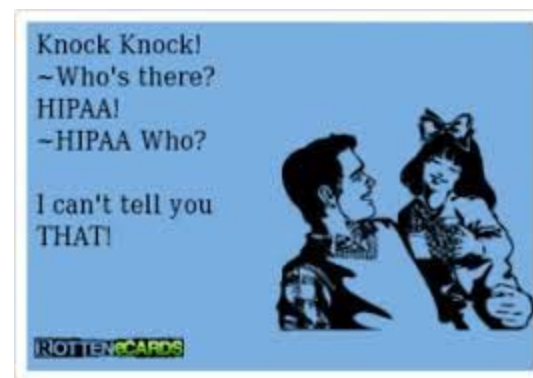
What is a “covered entity”?

- Health Care Providers that transmit health information in electronic form in connection with a covered transaction
 - Pure cash pay practices may be excluded, although other federal and state laws may still apply
- Health Plans
- Health Care Clearinghouses



What Should Privacy Rule Policies and Procedures Address?

- **Uses and disclosures of PHI:**
 - What is permissible to do without consent or authorization?
 - What uses and disclosures require consent?
 - What uses and disclosures require prior authorization?
- **Individual Rights:**
 - Access
 - Amendment
 - Accounting
 - Request restrictions
 - Alternative means of communications



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What Should Privacy Rule Policies and Procedures Address? (cont'd)

- Notice of Privacy Practices (NPP)
- Business Associate relationships and contracts
- Privacy officer designation
- Model forms
- Many others!

What is the Security Rule?

- The Security Rule establishes standards to protect individuals' electronic PHI (e-PHI)
- The Security Rule requires administrative, physical and technical safeguards to ensure the confidentiality, integrity and availability of e-PHI
- Flexible approach



HIPAA Security Rule Standards

- **9 Administrative Safeguard Standards**
 - 12 Required Implementation Specifications
 - 11 Addressable Implementation Specifications
- **4 Physical Safeguard Standards**
 - 4 Required Implementation Specifications
 - 6 Addressable Implementation Specifications
- **5 Technical Safeguard Standards**
 - 4 Required Implementation Specifications
 - 5 Addressable Implementation Specifications
- **ALL need to be addressed in the policies and procedures!**

HIPAA Breach Notification Rule

- Covered entities are required to report breaches of unsecured PHI to the individuals involved, the Secretary of HHS and possibly the media



What Should Breach Notification Rule Policies and Procedures Address?

- Definition of “breach”
 - Exclusions
 - Risk assessments when low probability of compromise
- Internal team responsible
- Timing requirements – who do you notify when?



HIPAA Resources

- Summary of Privacy Rule:
<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
- Summary of Security Rule:
<https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>
- HIPAA Audit Protocol:
<https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/audit/protocol/index.html>

Compliance Plans – Why Have One?

- Affordable Care Act mandated compliance plans for doctors who treat Medicare and Medicaid beneficiaries
- Reduce potential for fraud and improve billing performance



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Compliance Plans – What is Included?

- **The Office of Inspector General (OIG) has established 7 components for an effective compliance program for a small medical practice:**
 - (1) Conducting internal monitoring and auditing;
 - (2) Implementing compliance and practice standards;
 - (3) Designating a compliance officer or contact;
 - (4) Conducting appropriate training and education;

Compliance Plans – What is included? (cont'd)

- (5) Responding appropriately to detected offenses and developing corrective action;
 - (6) Developing open lines of communication; and
 - (7) Enforcing disciplinary standards through well-publicized guidelines.
- Flexible approach.



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Compliance Plan Resources

- **OIG Compliance Guidance:**
<https://oig.hhs.gov/compliance/compliance-guidance/index.asp>

