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Dec. 30, 2016

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### Hospital Killing Provisions Of 21st Century Cures Act Boost Physician Entrepreneurship

Yes, there is a Santa Claus.

Oh, sorry for the typo. I meant Santa Clauses as in the two major pro-physician provisions of the 21st Century Cures Act, enacted in December by Congress and signed in to law.

Although coverage in the popular press centered on the Cures Act's primary focus, medical research, innovation and acceleration of the FDA's drug approval process, the Act contains two Medicare-related provisions of the utmost importance to physicians and their owned facilities.

Those same two provisions are additional nails in the coffin of traditional, bloated hospitals.

#### Price Transparency

The Cures Act requires the Department of Health and Human Services (HHS) to create a searchable website allowing the public to compare estimated Medicare payments for various procedures under each of the outpatient department fee schedule (i.e., the payment HOPDs receive) and the ambulatory surgical center payment system.

Importantly, the Act also requires the website to show the estimated Medicare beneficiary liability, the patient's out-of-pocket costs assuming no supplemental insurance, for those same procedures.

With limited exceptions beginning in 2017, Medicare pays in excess of 50% more for procedures in an HOPD than it does in the ASC setting. Outpatient procedure are Medicare Part B services, covered only as to 80% by Medicare meaning.

As a result, Medicare beneficiaries almost always have greater out-of-pocket costs for the same procedure performed in an HOPD as opposed to in an ASC.

The impact of the Care Act's price transparency will be that patients will clamor for their procedures to be performed at an ASC. Even if they're not interested in protecting Medicare's pocket book, they'll be motivated to reduce their own out-of-pocket expenditures.

Private payors are likely to follow this same transparency trend, accelerating the already existing flow of commercial cases from hospitals to ASCs.

At the risk of losing patients, physicians wishing to retain an outpatient surgery caseload should shift their work from the HOPD setting to ASCs. That's the case for both surgeons and for some hospital-based physicians such as anesthesiologists and radiologists.

In addition this signals the growing financial benefit from forming new ASCs to profit from outpatient procedures.

As technology continues to advance and CPT codes allowing ASC billing catch up to that reality, the independent outpatient business will become even more profitable.

#### Ending Physician Payment Disincentives

The second ASC-focused issue in the Cure Act facilitates the fiscal benefit to Medicare of shifting cases out of HOPDs to ASCs.

At issue was existing law pertaining to the use of certified electronic health record technology, referred to as certified EHR or CEHRT, that required physicians to use CEHRT for a minimum percentage of patients or suffer cuts in their Medicare reimbursement. Former law did not empower HHS to certify EHR platforms for the ASC setting. Accordingly, cases performed in an ASC would count against the minimum CEHRT percentage.

The Act authorizes HHS to certify EHR for the ASC setting, removing the payment disincentive for physicians who perform cases at an ASC.

#### The Bottom Lines For You

1. Patients will have financial information that compels them to have outpatient procedures in ASCs, not HOPDs.
2. Physicians' incomes will not suffer as a result of performing cases in ASCs as opposed to at hospitals.
3. Hospitals are getting sicker and the Cures Act is simply more of what ails them. Approximately 70% of an average acute care hospital's income comes from outpatient procedures and these procedures are streaming out the door to non-hospital facilities. (To learn more, download a complimentary copy of my book, [The Impending Death of Hospitals](#), or, if you'd like it in hard copy, purchase it on [Amazon](#).)
4. Physician practices dependent upon hospitals must make strategic decisions, now, for your own future.
5. Physicians should immediately investigate whether ASC formation makes sense for you. (We've established a strategic alliance with HDA Enterprises, Inc., one of the nation's most experienced and successful developers and managers of physician-owned outpatient facilities. Contact me immediately if you'd like to arrange for them to provide you with a complimentary initial analysis of how profitable an ASC will be for you.)

#### Wisdom. Applied. 96 - Don't Incentivize For What You Shouldn't Get

Bob, not his real name, was talking about one of his early post college jobs.

Just after graduation, he sold financial products over the phone. He was required to make 30 outbound cold calls each day.

**IS AN ASC  
OR OTHER  
OUTPATIENT CENTER  
RIGHT FOR  
YOU?**

IN COORDINATION WITH OUR STRATEGIC PARTNER, HDA ENTERPRISES, ONE OF THE MOST EXPERIENCED AND SUCCESSFUL DEVELOPERS AND MANAGERS OF PHYSICIAN-OWNED OUTPATIENT FACILITIES, WE'RE OFFERING A LIMITED NUMBER OF INITIAL ANALYSES.

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##### The Impending Death of Hospitals



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Having fallen for the fallacy that there's profit in mar share, hospitals have gorged on acquisitions and on employment and alignment of physicians. Many physicians have been willing participants through practice sales and the belief that there's safety in hospital employment. It's becoming evident that physician employment leads to losses and that integrated care delivers neither better nor lower costs. And now, technology is about to moot many of the reasons for a hospital's existence. How can you practice survive and even thrive in the post-hospital world?

The Impending Death of Hospitals is available for purchase in hard copy or in Kindle format on Amazon or you can download a complimentary PDF version here.

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#### Success Or Failure? Strategic Tools For Medical Group Leaders



#### COMPLIMENTARY BOOK DOWNLOAD

Today's medical groups must confront multiple challenges: The impact of Obamacare. Increasing commoditization. More competition, not just from other physicians and medical professionals, but also from hospitals, investor-owned groups, and disruptive ventures. Yet at the same time, the future of healthcare offers medical groups tremendous opportunity.



2017 New Year's Un-Resolutions

We all make New Year's resolutions. "I'll do this or that! Then January 5th rolls around and, well, you get the idea.

In keeping with our E-Alert New Year's Tradition, here's the hack. Flip things around: What will you not do, or stop doing, next year? Here are some suggestions for 2017:

- 1. Stop yearning for a return to the golden past; it wasn't golden and it's not coming back.
2. Stop putting all of your eggs in the basket called a hospital. Hospitals, as we know them, are an endangered species...
3. Stop believing the promoter who says the deal 'has been vetted by my lawyer and it's perfectly legal.'...
4. Stop reacting to others' proposals. Become proactive and lead with your own strategy, not simply tactics.
5. Stop settling for less. Don't believe those who tell you that you have to lower your expectations.

Oh, and one regular resolution: Resolve to have a very happy and successful New Year!

Recently Published Blog Posts

- Thursday, December 29: Why Your Past Doesn't Count
Wednesday, December 28: Do You Know This About Value?
Tuesday, December 27: What Price Are You Willing To Pay For Success?
Monday, December 26: Here Comes 2017 - Will You Lead, Follow, Or Get Out Of The Way?
Thursday, December 22: Why Document The Value Of A Group Member's Interest?
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Forward This!

Feel free to forward this newsletter to your friends. They can sign up for their own copy here.

Whenever you're ready, here are 3 ways I can help you and your business:

1. Download a copy of the Success or Failure? Book

My book Success or Failure? Strategic Tools For Medical Group Leaders provides you with a framework for thinking about your success. You can buy it on Amazon or, for free, download a copy at the following link - Click Here.

2. Be a guest on 'Wisdom. Applied.' Podcast.

Although most of my podcasts involve me addressing an important point for your success, I'm always looking for guests who'd like to be interviewed about their personal and professional achievements and the lessons learned. Email me if you're interested in participating.

3. If You're Not Yet a Client, Engage Me to Represent You.

If you're not yet a client, and you're interested in increasing your profit and managing your risk of loss, just reply to this message and put "One-on-One" in the subject line. I'll contact you to set up a call or meeting.

Mark F. Weiss

The Mark F. Weiss Law Firm, a Professional Corporation (Formerly known as Advisory Law Group, a Professional Corporation) markweiss@advisorylawgroup.com

This small book is a collection of essays, of thoughts as thinking tools for your success. Read. Think. Succeed. Repeat.

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Hospital-Based Medical Group Mergers, Acquisitions & Alternatives



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Some days, it seems as if everyone, from anesthesia gr to vascular surgery practices, is talking about selling the practice to a larger group, to private equity investors, or hospital.

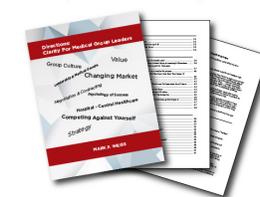
The reality is that some practices can be sold, some can never be sold, and some have nothing to sell.

The reality also is that there are a number of strategic alternatives to a practice sale.

A perfect storm of factors is accelerating the market for hospital-based medical group mergers and acquisitions.

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Directions: Clarity For Medical Group Leaders



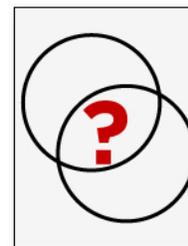
COMPLIMENTARY BOOK DOWNLOAD

The healthcare market is changing rapidly, bringing new of problems.

How can you find a solution, how can you engage in the development of strategy, and how can you to plan your, your group's, future without tools to help clarify your thinking?

Directions is a collection of thoughts as thinking tools, e intended to instruct, inform, and even more so, cause y give pause to instruct and inform yourself.

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Recent Interviews and Published Articles

Mark was quoted in the article ASC Regulatory Areas Developers Need To Pay Attention To published on N 2016 in The Ambulatory M&A Advisor. Read or downloa here.

Mark's article OIG Advisory Opinion Secrets and Strategies was published in the Summer 2016 volume of Communicate. Read or download here.

Finders keepers, losers weepers. Except in connection overpayments from Medicare, then it's a violation of federal False Claims Act leading to significant liability is, unless you repay the overpaid sum within 60 days. R CMS Resets the Clock for Return Of Medicare Overpayments published on AnesthesiologyNews.com May 2016. Read or download here.

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Mark's article **A New Strategy To Profit From Interventional Radiology**, co-authored with Cecilia Kronawitter, was published on [AuntMinne.com](http://AuntMinne.com) on May 2016. Read or download [here](#).

Three of Mark's blog posts were republished as column entitled **Practice Challenges** in the Spring 2016 issue of the Pennsylvania Society of Anesthesiologists Newsletter, the [Sentinel](#). Read or download [here](#).

Mark's article **Is There An Interventional Radiology A (irASC) In Your Future?** was published in the April/May 2016 volume of [Radiology Business Journal](#). Read or download [here](#).

Mark's article **Impending Death of Hospitals: Will You Anesthesia Practice Survive?** was published in the winter 2016 volume of [Communique](#). Read or download [here](#).

Mark was quoted in the article **Practice Patterns Change While Outcomes Remain Steady Among Older Anesthesiologists**, published in the December 2015 issue of [Anesthesiology News](#). Read or download [here](#).

Mark's article **Anesthesia Group Mergers, Acquisitions and (Importantly) Alternatives** was published in the summer 2015 volume of [Communique](#). Read or download [here](#).

Mark was quoted in the article **Anesthesiology Acquisition Rate Still at Fevered Pace**, published in the July 2015 issue of [Anesthesiology News](#). Read or download [here](#).

Mark's article **Seeking Certainty in Radiology: Mergers, Acquisitions and Alternatives** was published in June 2015 on [Imagingbiz.com](http://Imagingbiz.com). Read or download [here](#).