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LIKE YOUR EXCLUSIVE ANESTHESIA PACT? BETTER LEARN TO DEFEND IT

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Texas Challenge Creates Political Peril for Group Agreements

Earlier this year, a member of the Texas legislature attacked the one-year-old exclusive agreement, and its provisions for stipend support, between Pinnacle Anesthesia Consultants and the Baylor Health Care System in Dallas. The lawmaker's claim: Exclusive contracts are noncompetitive and drive up the cost of health care.

It would be easy to write off this attack as populist pandering: re-elect me, something must be done! But playing to fears makes for good sound bites, and, hospital administrators might attempt to take advantage of the same arguments to gain leverage in their negotiations with groups:

"*In this political climate, you're lucky that we're willing to take the heat from granting you an exclusive, but there's no way we can explain to the public why we're paying stipend support when so many can't even*

afford health care coverage. Sure, we understand that you need to pay your anesthesiologists in order to provide us with the 24/7/365 coverage we demand and that if you didn't meet the market they would leave, but certainly the needs of the 47 million uninsured outweigh the needs of your 30, wealthy physicians."

Well-managed anesthesia groups must be prepared to address the arguments being made against exclusive contracts and coverage stipend support. To do so requires an understanding of the rationale supporting exclusivity and financial assistance.

Understand The Attack

The argument used in the attack on contracts and stipends goes as follows:

- Competition is good and it reduces prices.
- Multiple anesthesiologists practicing independently at a hospital compete for cases, leading to lower prices.
- Allowing a group of anesthesiologists to hold an exclusive contract prevents other anesthesiologists from rendering services at the hospital and allows one group to control pricing. This drives up prices.
- Hospital coverage stipends increase the hospital's cost of business, raising prices.

Conclusion: Exclusive contracts and hospital incentives to assure coverage should be prohibited.

Understanding the Counter Arguments

Foes of exclusive agreements ignore that a hospital's purpose in entering into them is not to grant a particular group a favor. The purpose is to assure the hospital coverage of anesthesia services, 24 hours a day, seven days a week, 365 days a year.

Remember the days before exclusives, when anesthesia departments were open staffed, membership available to anyone who met credentialing requirements? Without a business structure linking the department's independent physicians, hospitals had no means of obtaining a commitment from those physicians to be available to provide services as the hospital judged that need.

Of course, the result of that arrangement was that there was no way to assure that all patients would be treated equally, or even treated at all. The provision of charity care was unenforceable, as was the availability of an anesthesiologist for a case in which reimbursement was less than desirable.

In other words, the force that prompted hospitals to enter exclusive contracts with anesthesia groups was not the "greed" of entrepreneurial physicians who wanted a closed market. Rather, the impetus was pressure from the hospitals themselves to obtain the benefits of assured coverage at a price they could at least partly control.

The formation of anesthesia groups in response to these business needs and, importantly, in response to the need to comply with antitrust laws, and the resulting exclusive arrangements, did not do away with competition. It merely shifted competition from the individual providers to the group level.

The Texas offensive ignores the fact that groups compete against each other both for contracts and for the services of individual anesthesiologists. A regional, and often even more geographically specific, market exists for anesthesiologists—. Not convinced? Ask anyone trying to recruit two providers, one to a large metropolitan area and the other to a small, agricultural community. Unless the group can pay at or above the going rate, it will not be able to recruit or retain physicians. And if the income a group generates is insufficient to pay its staff at the prevailing rate, the only solution short of a financial death by a thousand cases is financial support from the hospital.

Lastly, the attackers ignore that payment for physician services is almost always dictated by the payor, not by the group, and that hospital stipend payments have little to no impact on the prices actually received by hospital.

Houston, We Have a Problem

Foes of exclusive contracts and coverage stipends cannot have it every which way. They want charity care and they want physicians to work for low governmental program and managed care rates. They want the assurance of payment parity for patients. They demand compliance with antitrust laws. Yet they attack the notion of hospital-contracted groups, when group formation, and exclusive contracts, are required to achieve those ends. They pass antikickback laws, prohibitions on "self-referral" (e.g, Stark), and prohibitions on private remuneration. But those legal restrictions permit exceptions for deals made at fair market value, therefore acknowledging that there is a market which must be met. Yet those making the attack choose to ignore that hospitals *must* pay fair market value stipends to permit contracted anesthesia groups to recruit and retain anesthesiologists. Without fair market value support, anesthesiologists would not provide the around-the-clock, facesheet neutral coverage the hospital requires and the politicians demand.

Two Simple Analogies

Imagine the Texas legislator's chagrin if he and his family checked into a hotel and took two identical rooms for a one-week stay. After the first night, room 1 was cleaned but room 2 was not, because the housekeeper decided to take an early lunch. Identical breakfasts were ordered for each room on day 3, but the ham and eggs delivered to room 2 cost 43% more, as the chefs working in the kitchen each set their own prices.

Imagine that the firefighters in Houston were paid only for their physical effort in fighting blazes but not for maintaining their equipment or waiting for a call. And when they were paid, they received only what the insurers of the burning houses were willing to pay. Would the firefighters agree to be tethered to the station or would they look for better opportunities? Would the town be able to recruit new firefighters under such a system?

Well Mr. Legislator, the hotel is a hospital and the hospital is on fire. The choice is *not* whether to grant an exclusive contract or to pay a stipend; it's whether to have anesthesia coverage and a functioning operating room, or not.

More Than Knowledge Required

Well-managed anesthesia groups must be prepared to address the arguments against exclusive contracts and coverage stipends. Doing so requires that they understand the rationale supporting exclusivity and financial assistance. But the reality is that the strategic groups will counter these mistaken assumptions well before the face-to-face stage of negotiations on their next exclusive contract begins. Simply knowing what to argue in opposition to these attacks is not sufficient. Groups must develop, as a part of their ongoing business strategy, the tactics to co-opt the argument from the start.

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