Should your practice join a hospital ACO? What to consider

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Accountable care organizations (ACOs) and other options allow physicians and hospitals to work together to deliver better care at lower costs. In addition to mergers, affiliations based on clinical or financial integration can be the route to success.

The intricacies of these complex arrangements include creating the economies of scale needed to acquire and implement information technology systems that not only facilitate better care at lower cost, but generate the data that proves better clinical and financial outcomes are being produced. Navigating these arrangements into foggy safe antitrust harbors is also not an easy task.

Partnering with hospitals to create an accountable care organization updates previous physician-hospital guidance from the AMA.

“Leaders will be challenged with assembling a delivery system that is committed to achieving best outcomes through the use of best practices and evidence-based medicine,” the guidance states. “The starting point for an ACO to even have a chance to tackle these challenges will be for hospital and physician leaders to develop a business model grounded in the spirit of physician and hospital collaboration.”

How to assess a potential partner

Hospitals and health systems vary significantly in myriad ways, such as financial strength, market position, payer mix, service offerings, technology implementation and management style. But the most important variable to consider could be a hospital or system’s “willingness and effectiveness in partnering with physicians,” the AMA resource says.

The guidance suggests a good first step for physicians approaching a collaborative agreement with a hospital is to understand what the other side is hoping to achieve. Then doctors can evaluate the
management and board dynamics of their potential partner and assess how that may color their willingness to collaborate with physicians to achieve these aims and the extent to which strong physician governance is held as a core value.

*Partnering with hospitals to create an accountable care organization* describes key considerations that physicians should take into account when evaluating a hospital as a potential partner. These include dealing with compatibility and alignment, financial strengths, management strengths, perceived synergies and other considerations that can help physicians do a thorough job in determining whether collaborating with a particular hospital might be the right fit for them.

**Why hospitals collaborate with physicians**

A number of factors are driving physicians to collaborate with hospitals to create ACOs and similar integrated arrangements. These factors include:

- The need for physician cooperation to manage inpatient quality—avoidance of never events and costly readmissions.
- The need for interoperable electronic health records (EHRs).
- The need for improved coordination in the transitions of care.
- The need to offset lower reimbursements by taking advantage of opportunities to negotiate for increased payments based on quality/efficiency or reduced total cost of care metrics.
- The need for physicians’ cooperation in managing inpatient quality while minimizing length of stay and unnecessary costs.
- The need to demonstrate—not just provide—quality care, and the need to address reduced overall demand.
- The need for alignment with physicians who can execute bundling arrangements or shared savings programs.

Options for physician-hospital collaborations mentioned in *Partnering with hospitals to create an accountable care organization* include creating a physician-owned ACO that can contract with hospitals and other lay institutional providers. It also notes the development of risk- and gain-sharing agreements in which physician groups collaborate to successfully reduce hospitalizations, worker absenteeism or emergency department use.

Overall, 44 percent of physicians in 2016 reported they were in practices that belonged to at least one type of ACO, according to a recently released AMA Policy Research Perspectives, which used data from the Association’s Physician Practice Benchmark Survey.
The benchmark survey showed:

- 31.8 percent were in practices that belonged to a Medicare ACO.
- 20.9 percent were in practices that belonged to a Medicaid ACO.
- 31.7 percent were in practices that belonged to a commercial ACO.

Many ways to partner with hospitals

There are many opportunities for physicians and hospitals to affiliate and clinically integrate so as to enable both parties to improve their service delivery and positively impact their financial viability. The ACO concept requires, at a minimum, enforceable contractual clinical integration.

In many cases, ACOs may involve complete integration in which both the physician, hospital and other outpatient services are provided by one or more entities under common control. There is no single approach to partnering with a hospital or hospital health system that is uniformly applicable or recommended.

It is likely that ACOs will be established under one of the following structures:

- An arrangement in which the physician-owned entity contracts with hospital and skilled nursing providers to furnish the required services, and payments are distributed pursuant to these contractual arrangements.
- A joint venture entity in which (at least) the hospital and physician providers are members and participate in the governance of the ACO with payments distributed under contractual arrangements and through distributions to members.
- An integrated delivery system with physicians generally employed within the system and potentially having additional independent contractor arrangements with physicians and other health providers.
- A hospital or health system with physician participation via contract.
- A hospital or physician-owned entity joint venture with a health insurer.

Each structure will raise complex antitrust, tax exemption, fraud and abuse, and contractual issues.

Good conduct model

*Partnering with hospitals to create an accountable care organization* discusses the five safe harbors.
relative to ACO activities. These safe harbors require significant transparency, strong conflict-of-interest policies and lengthy documentation retention.

A related resource, “Strengthen Your Practice: How to collaborate with peers and other practices,” available as part of the AMA’s Physician Payment Resource Center, also discusses relevant antitrust concerns implicated by ACO creation and implementation. These include avoiding antitrust pitfalls, finding safe harbors and examination of the joint statement issued by the Federal Trade Commission and U.S. Department of Justice on ACOs participating in the Medicare Shared Savings Program. Among other issues, the October 2011 statement includes a “conduct to avoid” section outlining the agencies’ concerns about anticompetitive practices between ACO participants outside the ACO.

“Improper exchanges of prices or other competitively sensitive information among competing participants could facilitate collusion and reduce competition in the provision of services outside the ACO, leading to increased prices or reduced quality or availability of health care services,” the two agencies noted. “ACOs should refrain from, and implement appropriate firewalls or other safeguards against, conduct that may facilitate collusion among ACO participants in the sale of competing services outside the ACO.”

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