5 keys for physicians unwinding contractual arrangements

MAR 28, 2019

Kevin B. O'Reilly
News Editor

Not all relationships go the distance, and that is sometimes the case for physicians who have contractual arrangements with hospitals, health systems or other entities. But with the proper planning, experts say, physicians can successfully unwind or change their relationships with other entities in a way that works for both parties.

The AMA has compiled expert resources to help physicians unwind existing arrangements with hospitals, health systems or large group practices that are owned or controlled by health systems or payers. The central AMA resource, “How to Evaluate Contractual Agreements: Unwinding Existing Arrangements,” covers critical areas that need to be considered when it’s time to end the relationship.

The resource addresses billing practices, potential limitations on patient relationships, professional liability coverage, noncompete provisions, practice infrastructure and governmental or payer-reporting obligations. The AMA also offers a model checklist to guide physicians who are considering unwinding an existing relationship, as well as a snapshot of the topline issues to address.

Here are five key considerations to keep in mind.

Available options. You may be unhappy with the current arrangement, but what would the next step be? Would you like to return to independent practice, explore venture capital or private equity investment, or investigate taking part in an accountable care organization, clinically integrated network or an employer model?

Costs. Figure out the short- and long-term costs—positive or negative—of unwinding the arrangement. Can you access patients—those who are established and new ones? That could depend on physicians’ ability to enter into contracts with plans that may have preferred provider relationships with the organization from which the practice is separating.

Then you have to account for any new costs for staff, infrastructure or compliance. And don’t forget that there could be bonuses or penalties to quality-reporting programs affected by the move. It will be
time for a frank conversation with the colleagues in the physician group about everyone’s financial risk tolerance.

**Patient portability.** Your patients like you and most will want to maintain their relationship with you, but if you are suddenly out of network following a break-up then their loyalty could be put to the test. Other issues, such as data retention and communications to patients about the unwinding of a relationship, can help or hinder the transition depending on how well they are handled.

**Contractual considerations.** Contractual provisions, such as noncompete agreements, that require physicians to leave a market if they are no longer employed or affiliated with a health system can be a big sticking point when trying to break away from an existing arrangement.

Physicians seemingly hemmed in by a noncompete clause can have room to negotiate if they want to keep working and living in the same area, especially if the medical services they provide are unique. This may especially be the case if it is the other party—for example, the health system—that wants to dissolve the relationship. State laws may also vary on which noncompete clauses can be enforced. Doctors also need to understand exclusivity provisions, as well as whether the unwind will have any impact on medical staff privileges.

**Timing.** The choice of when to leave can significantly affect compensation. Physicians who understand the contractual, financial and external factors that are driving the pressure to unwind a relationship are in a better position to smartly maneuver their way through the process.

The advice comes on the heels of rapid industry consolidation that has yielded a circumstance in which physician practice ownership is no longer the majority arrangement. According to data drawn from the AMA’s Physician Practice Benchmark Surveys, 47.1 percent of physicians are practice owners. The same percentage of physicians are employed, while 5.9 percent are independent contractors.

Bruce A. Johnson, a Denver health care attorney with the Polsinelli law firm, said the most common trouble spots he sees with clients looking to unwind arrangements are payer contracts and the transition of patient records.

“You really need to have some means to access to the clinical information to provide care to patients, and then you need to have the means to get paid,” he said.

Anecdotally, Johnson is seeing more instances of hospitals, health systems and physician groups looking to go their separate ways.
“I’m of the view that we will see it [deconsolidation] because the operational losses that are reflected health-system financial statements are such that they’re probably going to rethink it,” he said. “It’s like with any relationship. Not every relationship works.”