



# Model Checklist: Unwinding Existing Arrangements

Physicians, including independent physicians and those in group practices, who are contemplating or undergoing an unwinding of an existing relationship (like an employment contract, professional services agreement, or a model integrating the physicians practice into another entity) with a Health Organization (such as a hospital, health system, or a large physician practice controlled by another party) should be cognizant of key issues when negotiating with the other party. The checklist below covers top issues to consider:

## **Billing Practices**

### **Payer Contracts**

Physicians whose practices have been acquired by a Health Organization or who have joined a Health Organization may have relationships with payers which have been negotiated as part of the Health Organization. Unwinding from that Health Organization, therefore, could mean that the physicians will need to renegotiate contracts directly with payers, or identify a different entity or partnership opportunity that has those agreements already in place. Physicians should consider timing and market leverage when evaluating this aspect of the unwinding.

## **Limitations on Patient Relationships**

### **Patient Retention**

Continuity of patient care should be evaluated closely and understood. Some contracts may restrict activities which would market the services of a newly-formed physician practice to patients of the other party. However, requirements related to care quality, cost and patient satisfaction promulgated by payers in recent years may change the parties' willingness to reevaluate these provisions.

### **Patient Records**

Retention of patient records and the ability to continue to use the same electronic health record (EHR) system or to migrate patient files to a new system should be considered. There may be associated privacy issues related to the transfer and/or retention of protected health information (PHI). See the larger discussion of "Practice Infrastructure" below.

## **Professional Liability Coverage**

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As part of the arrangement, physicians may have agreed to obtain professional liability coverage through a Health Organization. In these cases, physicians will need to obtain new liability coverage. However, physicians should also understand their coverage for any claims that arise after the termination of the arrangement. "Tail coverage" may be required to ensure that the physicians are not exposed to the risk of uncovered claims after the arrangement ends.

## **Non-Compete, Non-Solicitation & Exclusivity**

### **Market Competition**

Certain contractual terms, such as non-competes and exclusivity provisions, may prove challenging when considering an unwinding. Negotiating these provisions as part of the unwind process should be considered because clinical need for both primary and specialty care can be persuasive in renegotiating these terms or modifying them in a way that is acceptable to both parties. Physicians and practices should also consider the possibility that the organization it is leaving may attempt to recruit or retain some of the practice's former clinicians upon the unwinding of the relationship, to provide the services previously provided by the departing physicians/practice. This could complicate efforts to return to a prior level of services, and may result in new competition with the former employer or partner.

### **Staff Retention**

If the Health Organization directly employs physicians' staff, physicians may need to negotiate the carry-over of those employees, as well as compensation and benefit costs. If the physicians' employment agreement has a non-solicitation clause, it could prevent physicians from negotiating directly with their former staff.

### **Medical Staff Privileges**

Some employment or affiliation agreements, once terminated, will also terminate medical staff privileges. Negotiating to retain these privileges, or planning to obtain new privileges with the same or new Health Organization, may take time. Understanding the other party's need for services within the physicians' specialty, as well as what medical staff bylaws require, may help physicians plan for this component of the negotiation.

## **Practice Infrastructure**

### **Office Space**

The lease-holder of a practice's office space may be an entity other than the practice itself. Understanding and negotiating the terms by which

the lease may be assumed or terminated early is important. Additionally, the value of the lease and any associated equipment or ancillary leases and services (e.g. IT equipment, laboratory services) will likely need to be valued by an independent valuation firm. Understanding who should value these assets and the overlay with any state or federal fraud and abuse laws is key. It is critical to determine early which party(ies) to the relationship that is being unwound is/are responsible for negotiating early termination agreements and for paying any penalties resulting from early termination.

### **IT and Billing Infrastructure**

A benefit of an affiliation or arrangement with a Health Organization is often the use of their IT and billing technology (or vendor capabilities) which may be expensive for physicians to maintain on their own. Understanding these underlying costs and how they may be addressed after unwinding is a key to subsequent negotiation. Alternate arrangements, such as participation in a network or as part of management services organization (MSO) that makes their resources available, can be evaluated.

Some Health Organizations provide a full Practice Management System integrated aspects of EHR, billing and coding, scheduling, and other practice tools. Physicians exiting such Health Organizations practices should be aware of the business functions provided by the Practice Management System and either identify alternative solutions to replace these functions or negotiate with the Health Organization for a license to continue to access this system.

## **Ownership, Use, and Creation of Materials**

### **Intellectual Property**

Confidential material or new intellectual property may be created over the course of an arrangement, particularly for entities that are engaging in innovative health care models or specialties in which physicians may develop new patentable devices. Terms of the arrangement which may

prevent or limit the continuing use of ownership rights should be considered and may be the subject of negotiations.

### **Governmental or Payer Reporting Obligations and Other Timing Considerations**

- **Quality and Value-Based Program Reporting**  
Increasingly, physicians are required to participate in quality reporting programs or are subject to adjustments in payment rates based on patient care costs or other metrics. The shift from a Health Organization or accountable care organization (ACO) reporting on behalf of a physician or practice to independent reporting may have multiple impacts, including potential exclusion from such programs and/or a new cost of reporting. Because such reporting may occur on an annual or semi-annual basis, understanding how data will be submitted, when, and by which party will be an important part of the unwinding process.

More information about these items, including contractual terms and language to consider, are available at <https://www.ama-assn.org/system/files/2019-03/unwinding-existing-arrangements-how-to.pdf>.