REPORT OF THE BOARD OF TRUSTEES

B of T Report 9-I-22

Subject: Employed Physicians

Presented by: Sandra Adamson Fryhofer, MD, Chair

Referred to Reference Committee F

INTRODUCTION

At the November 2021 Special Meeting of the House of Delegates (HOD), Resolution 615, "Employed Physicians," was introduced by the Oklahoma, Alabama, District of Columbia, Georgia, Mississippi, New Jersey, North Carolina, South Carolina, and Tennessee delegations and referred for report. In brief, Resolution 615 asks the AMA to:[*]

1. dedicate full-time staff to address employed physician issues, which would include providing legal assistance to physicians on contractual matters;
2. increase the representation of "employed physicians" (a term that would need to be defined) in the HOD by allocating additional representation to the Organized Medical Staff Section; and
3. increase representation of employed physicians in AMA leadership by adding OMSS representatives (who would be employed physicians) to the Board of Trustees and to each AMA council and committee.

Testimony on Resolution 615 reflected concern with the proposed representation scheme. Nevertheless, it was clear that the HOD seeks, in the words of the reference committee, "a workable plan for supporting employed physicians." This report examines how the voice of employed physicians might best be heard within the organization.

BACKGROUND

The AMA supports the needs of physicians in all modes of practice, including employed physicians. Moreover, the AMA has long recognized that employed physicians as a category have unique needs that can and should be met by the AMA. In particular, AMA Policy G-615.105, "Employed Physicians and the AMA," states that the AMA will:

- "strive to become the lead association for physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities;"
- "provide…assistance, such as information and advice, but not legal opinions or representation, as appropriate, to employed physicians, physicians in independent practice, and independent physician contractors in matters pertaining to their relationships with hospitals, health systems, and other entities…" and
- "work through the Organized Medical Staff Section and other sections and special groups as appropriate to represent and address the unique needs of physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities."

[*] See Appendix A for full text of Resolution 615-N-21.

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The AMA's work on behalf of employed physicians has included the creation of model employment contracts, offering of multiple education opportunities on employment matters, development of the seminal "AMA Principles for Physician Employment" (AMA Policy H-225.950), and legislative, regulatory, and judicial advocacy on employment concerns such as non-compete agreements, due process rights, and so forth.

Defining "employed physician"

There is at present no universally acknowledged definition of what constitutes an employed physician relative to one that is not employed. While employed physicians could be understood to be physicians who are paid for their services by another party, the simple act of receiving a paycheck is not necessarily determinative of a physician's employment status.

For the purposes of this report, we propose the following working definition of what it means to be an employed physician:

> An employed physician is any non-resident, non-fellow physician who maintains a contractual relationship to provide medical services with an entity from which the physician receives a W-2 to report their income and in which the physician does not have a controlling interest, either individually or as part of a collective.

Trends in physician practice ownership and employment

For many years, physicians have been moving away from private practice and toward employment by health care entities. The AMA's Physician Benchmark Survey found in 2020 that for the first time fewer than half (49.1 percent) of physicians surveyed reported that they worked in physician-owned private practice (as opposed to self-identifying as employees or contractors), which was down from 2018 when 54 percent of physicians surveyed worked in physician-owned practices.[1] As of May 2022, there are just under 1.1 million active primary care and specialist physicians working in the US,[2] implying that roughly 537,000 physicians are employed.

The benchmark survey showed that the trend toward employment varied widely across specialties. Surgical subspecialties and radiology held the lowest percentages of employed physicians, both under 40 percent. At the other extreme, family medicine, pediatrics, internal medicine subspecialties, general surgery and emergency medicine physicians all reported that greater than 50 percent of physicians were employed, with family medicine and pediatrics having the lowest rates of practice ownership.

The Covid-19 pandemic potentially confounds the study of trends in physician employment during the last two years. During the pandemic, physician overhead costs increased while payments failed to keep pace,[3] which likely accelerated the trend toward physician employment and practice acquisition by health care entities. Indeed, a 2021 study examining growth trends in physician practice ownership and employment between January 1, 2019, and January 1, 2021, found that more than 48,000 physicians left independent practice to become employees of a health care entity during that time, a 12 percent increase in the number of employed physicians. At the same time, hospitals and other health care entities acquired 20,900 physician practices, a 25 percent increase in corporate-owned practices.[4]

DISCUSSION

As the number of employed physicians continues to grow relative to the number who are in private practice, our AMA will continue to represent and otherwise meet the needs of employed physicians, as it does the needs of physicians in all practice settings. Resolution 615 proposes two key areas for AMA action, which we evaluate here before offering an alternative approach to ensure the voice of employed physicians continues to be heard within our organization.

Dedicated staffing to address employed physician issues

Resolution 615 asks the AMA to dedicate full-time staff to address issues of concern to employed physicians, with the authors going so far as to suggest in their Statement of Priority that AMA ought to establish a new stand-alone business unit ("office of the employed physicians"). We agree that employment relationships create unique challenges for physicians who choose this mode of practice and further, that AMA ought to be aware of these challenges and seek to address them. However, we do not believe that establishing a staffing entity dedicated to employed physicians is the correct approach.

The needs of employed physicians are addressed across the existing staffing entities of the AMA. For example, AMA section staff, advocacy staff, and legal counsel form a center of expertise around physician-hospital relations, including contracting and medical staff bylaws protections for employed physicians. Similarly, in tackling physician burnout, the Professional Satisfaction and Practice Sustainability unit ("PS2") considers how systemic deficiencies in healthcare organizations drive burnout among employed physicians. This pattern is borne out across the AMA, leading us to conclude that the needs of employed physicians would be better served by encouraging the various components of our organization to continue to consider the specific needs of physicians in all practice settings, including employed physicians, as they go about their work.

Relatedly, Resolution 615 asks the AMA to provide a greater level of service to employed physicians in contracting matters—specifically, to provide legal opinions. AMA Policy G-615.105, which the resolution seeks to amend to achieve its goal, states explicitly that the AMA will not provide legal opinions or representation:

> As a benefit of membership our AMA will provide, through the Sections and Special Groups, assistance, such as information and advice, but not legal opinions or representation, as appropriate, to employed physicians, physicians in independent practice, and independent physician contractors in matters pertaining to their relationships with hospitals, health systems, and other entities, including, but not limited to, breach of contracts including medical staff bylaws, sham peer review, economic credentialing, and the denial of due process.

While it is appropriate for our AMA to provide some level of guidance to physicians in contractual matters (e.g., AMA's model annotated employment contracts for group practice employment and hospital employment, both of which are currently undergoing updates), AMA itself is not positioned to provide legal opinions or representation for individual physicians across U.S. states and territories, each with its own nuances of employment law. AMA has previously explored partnering with a third party to provide such services to physicians at a discounted rate but ultimately found such an arrangement to be cost prohibitive.

Expanded representation of employed physicians across AMA governance

Resolution 615 asks the AMA to expand the representation of employed physicians across AMA governance, including in the House of Delegates, on the Board of Trustees, and on all AMA councils and committees. This expansion would be accomplished by granting OMSS proportional representation in the HOD and set-aside seats on the Board and councils/committees.

The resolution purports to base this proposed structure on the proportional representation granted to medical students and residents/fellows in the HOD (i.e., regional and sectional delegates, respectively), and on the inclusion of medical students, residents/fellows, and young physicians on the Board and councils. However, the resolution misconstrues the nature of the relationship between these leaders and the sections of which they are members. Medical student regional delegates and resident/fellow sectional delegates do not represent the MSS or the RFS. Nor do the medical student, resident/fellow, and young physician members of the Board and councils represent the MSS, RFS, or YPS. Rather, they simply give voice to those particular segments of AMA membership. For this reason, it is inappropriate to route increased representation of employed physicians through OMSS, even if OMSS may be a logical home for employed physicians.

More broadly than concerns with the proposed representation structure, we believe it is generally inadvisable to create additional governance set-asides. Medical students, residents/fellows, and young physicians are granted special representation because without dedicated positions, and owing to their relatively short AMA tenure, it is unlikely that there would be many of them in AMA leadership positions. Employed physicians, as individuals, do not face the same barrier. While they might not have been elected to explicitly represent the interests of employed physicians and while they might be proportionally underrepresented, there are in fact employed physicians at every level of AMA leadership. We fear that an additional carve-out for any group, including employed physicians, would spark an interest arms race wherein physicians in other practice arrangements seek proportional representation.

An alternative solution: employed physician caucus

AMA Policy G-615.002, "AMA Member Component Groups," defines a "caucus" as "an informal group of physicians (from specialty and/or geographic medical groups or focused interest areas) who meet at the Annual and/or Interim meetings to discuss issues, pending resolutions and reports, candidates, and possible actions of the HOD." Caucuses are a critical component of the AMA governance structure, giving voice in the AMA policymaking process to many groups that are not explicitly represented in the HOD. Examples of recently constituted caucuses include the obesity caucus and the mobility caucus.

The creation of an employed physician caucus would validate the supposition that employed physicians as a category have unique needs and interests that should be heard within our AMA. But it would do so without creating problematic set-asides and while conforming to established pathways for recognition of viewpoints within our AMA.

While it is beyond the scope of the Board to establish caucuses, the Board fully supports the creation of an employed physician caucus. It is our understanding that OMSS leadership has begun to engage other interested parties to convene an inaugural meeting of an employed physician caucus at the 2022 Interim Meeting. We are eager to see how this group will amplify the voice of employed physicians in our policymaking process and ultimately help our organization best meet the needs of the growing ranks of employed physicians. Additionally, while it is beyond the scope

of the Board to recommend the establishment of a new AMA section, we note that a caucus is an appropriate starting point for that level of representation, with multiple sections having originated as caucuses.

RECOMMENDATIONS

Your Board of Trustees recommends that the following recommendations be adopted in lieu of Resolution 615-N-21, and that the remainder of this report be filed:

1. That our AMA adopt the following definition of "employed physician":

   An employed physician is any non-resident, non-fellow physician who maintains a contractual relationship to provide medical services with an entity from which the physician receives a W-2 to report their income, and in which the physician does not have a controlling interest, either individually or as part of a collective. (New HOD Policy)

2. That our AMA re-examine the representation of employed physicians within the organization and report back at the 2024 Annual Meeting. (Directive to Take Action)

Fiscal Note: Modest - between $1,000 and $5,000

REFERENCES

1. Kane, C. (2021) Policy research perspectives Recent changes in physician practice arrangements: Private practice dropped to less than 50 percent of physicians in 2020; American Medical Association.
2. Kaiser Family Foundation. (2022); Professionally active physicians; State Health Facts. Accessed August 8, 2022: https://www.kff.org/other/state-indicator/total-active-physicians/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D
3. Gillis, K. (2021); Impacts of the COVID-19 pandemic on 2020 Medicare Physician Spending; Policy Research Perspectives; American Medical Association; Accessed 7/12/2022: https://www.ama-assn.org/practice-management/sustainability/covid-19-financial-impact-physician-practices.
4. Avalere Health; (2021); COVID-19's impact on acquisitions of physician practices and physician employment 2019-2021; Prepared for Physicians Advocacy Institute; June 2021.

Appendix A: Full text of resolve clauses of Resolution 615-N-22

RESOLVED, That our American Medical Association dedicate full-time staff to the Employed Physician to aggressively address relevant AMA Policy pertaining to the Employed Physician (Directive to Take Action); and be it further

RESOLVED, That our AMA study amending Policy G-615.105 to read as follows:

Employed Physicians and the AMA G-615.105

1. Our AMA will ~~strive to~~ become the lead association for physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities.

2. As a benefit of membership our AMA will provide~~, through the Sections and Special Groups,~~ assistance, such as information, ~~and~~ advice, ~~but not~~ and legal opinions ~~or representation~~, as appropriate, to employed physicians, physicians in independent practice, and independent physician contractors in matters pertaining to their relationships with hospitals, health systems, and other entities, including, but not limited to, breach of contracts, contract negotiations and contract renewals, ~~including~~ medical staff bylaws, sham peer review, economic credentialing, and the denial of due process.

3. Our AMA will also work through the Organized Medical Staff Section and other sections and special groups as appropriate to represent and address the unique needs of physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities. (Directive to Take Action); and be it further

RESOLVED, That the representation of the Organized Medical Staff Section (OMSS) in the AMA House of Delegates be increased from the current one Delegate to many Delegates based on AMA membership numbers of employed physicians using the mathematical model(s), to calculate the numbers of the New OMSS Delegates, currently being used at AMA for the Medical Student and Resident and Fellows Sections to calculate the numbers of Regional Medical Students and the numbers of Regional Resident/Fellows in the AMA House of Delegates. The AMA would develop a practical meaning of the phrase "Employed Physician" for the purposes of AMA membership counting, but as an editorial comment, the SED suggests starting with employed Non-Resident/Non-Fellow physicians who have no ownership interest (or, say, less than 1% ownership each) in their employer organization (New HOD Policy); and be it further

RESOLVED, That the Organized Medical Staff Section have one designated member who is a defined employed physician on all AMA Boards and Committees and Councils to match the MSS, the RFS and the YPS. (New HOD Policy)

Appendix B: Relevant AMA policy

G-615.105, Employed Physicians and the AMA

1. Our AMA will strive to become the lead association for physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities.

2. As a benefit of membership our AMA will provide, through the Sections and Special Groups, assistance, such as information and advice, but not legal opinions or representation, as appropriate, to employed physicians, physicians in independent practice, and independent physician contractors in matters pertaining to their relationships with hospitals, health systems, and other entities, including, but not limited to, breach of contracts including medical staff bylaws, sham peer review, economic credentialing, and the denial of due process.

3. Our AMA will work through the Organized Medical Staff Section and other sections and special groups as appropriate to represent and address the unique needs of physicians who maintain employment or contractual relationships with hospitals, health systems, and other entities.

G-615.002, AMA Member Component Groups G-615.002

…

A "caucus" is an informal group of physicians (from specialty and/or geographic medical groups or focused interest areas) who meet at the Annual and/or Interim meetings to discuss issues, pending resolutions and reports, candidates, and possible actions of the HOD. With the exception of AMA Section caucuses, these groups will not have a reporting relationship or resources allocated by the AMA.