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Physician negotiation
Quick questions checklist

This American Medical Association resource is intended to help provide strategic guidance to help physicians navigate key operational, business and legal questions that frequently arise when operating physician practices. Often, it can be challenging for physicians to know where to start in identifying and evaluating business opportunities. In particular, it can be difficult to understand how to evaluate contracts that are often complex and highly technical.

This document is a brief introduction to some common questions that physicians may consider in assessing new business opportunities. It is intended as a useful at-a-glance reference to help physicians take the first steps in evaluating common contractual arrangements. Physicians also have access to additional AMA resources on contracting.

Because this checklist is a high-level resource, not all of its topics will apply to each physician's situation. In some cases, physicians may choose to begin negotiations without finalizing answers to applicable questions. However, this checklist is intended to provide a starting point for a physicians' investigation into contractual opportunities.

Parties and nature of agreement questions

- ☐ What is the nature of the arrangement—for example, payer reimbursement, employment, investment or some other financial relationship?
- ☐ Who is the counterparty of the arrangement? For example, a practice, hospital or health system, commercial payer, an intermediary entity or another entity?
- ☐ What kinds of services are involved? Payment for your professional services? Administrative or medical director services? Call coverage?
- ☐ Are you negotiating individually or through a larger group like a practice, Independent Practice Association or Clinically Integrated Network?
- ☐ What are your rights to renegotiate or re-evaluate the arrangement? When does the term end? Are there any explicit terms prohibiting renegotiation (for example in the first year)?
- ☐ What kinds of obligations are you taking on as part of the arrangement? Are you required to make a financial investment, divest from competing arrangements, adopt certain information technology tools, report data or take on other responsibilities?

Employment and professional service arrangement questions

- ☐ Is the agreement with an independent practice, hospital-aligned practice, directly with a hospital or a less traditional entity, such as a network of providers?

- ☐ How is compensation structured? Flat fee, productivity (based on wRVUs, visits or some other measure), bonuses based on quality or performance metrics, holdbacks, shared savings or similar quality bonuses? Do you understand the exact formula, data and timing of calculating these amounts?

- ☐ Some agreements are required to be at "fair market value" (such as most agreements with hospitals). If so, has the entity calculated a fair market value range with upper and lower bounds? How so? Does their analysis reflect all the services you will be providing and all relevant facts (including, for example, your experience, the location, clinical need)?

Fair market value means the value in an arm's-length transaction, consistent with the general market value of the subject transaction. Generally, this means the amount that would be paid as a result of *bona fide* bargaining between well-informed parties that are not in a position to generate business for each other.

- ☐ Does the arrangement place limits on your practice, for example, "directed" requirements to refer within a health system or network or to use particular surgery centers? Are you permitted to work outside the arrangement—and if so, are there limits?

- ☐ Does the arrangement include administrative tasks outside of professional services, such as medical director services, call coverage or participation in clinical quality committees? How is this work addressed in the compensation formula?

- ☐ What are the key timing elements of your agreement? For example, what is the term and when can you review and potentially renegotiate any terms? How frequently is compensation adjusted? What are the rules around termination? Are you expected to purchase an ownership interest in the practice after a set number of years?

- ☐ Are there limitations on your ability to change aspects of your practice? Noncompetes or other restrictions on termination, obligations to repay a signing bonus or income guarantee?

Payer arrangement questions

- ☐ What is the nature of the payer, for example, commercial, employer-sponsored, governmental managed care plan?

Different types of payers have different regulatory and business goals.

- ☐ What is the payment mechanism under the agreement, for example, fee-for-service, bonuses for quality or performance, shared savings, partial or full capitation?

- ☐ Are you able to access all information relevant to your performance under the agreement? Are you able to review manuals, websites, etc., referenced in the contract? Do you have access to information used to calculate any non-fee-for-service elements, such as shared savings, attribution and risk adjustment? If not, is the methodology and data source described anywhere?

- ☐ If you are in a value-based agreement where you take responsibility for a population, will the payer provide any support, for example, advance payments, infrastructure payments, care coordinators or other personnel? When and how frequently will it provide data, and how will it ensure accuracy?

- ☐ What is the lifecycle of the agreement? Does the payer offer prompt payment discounts or similar timing commitments?

Consider the timing of events like payments, performance reporting, bonus payments, appeal timelines and notice requirements.

- ☐ What are your rights and responsibilities concerning pre-authorization and medical review? Does the payer offer a Gold Card program or something similar, and do you qualify?

Managed practice arrangement questions

- ☐ What are the economic terms of the practice management arrangement for all impacted physicians—including practice owners, employees and physicians who intend to retire?

- ☐ How will the management or administrative agreement be structured? What kinds of restrictions or limitations may be placed on physicians' practice (including indirectly through things, such as volume expectations)?

- ☐ Will management by a third-party entity change aspects of the practice's employee benefits? For example, an entity managing many practices may roll employees onto its centralized health plan, with a different network and different coverage and cost sharing rules.

- ☐ How will the arrangement affect the practice's assets? Will the management entity assume control over practice space, key equipment, relationships with vendors, ancillary services, such as ASCs, non-physician personnel and practice's brand?

- ☐ What are the physicians' transparency rights? How much information and control will physicians continue to have around payer negotiations, non-clinical staffing, compensation policy, employment matters, infrastructure investment and similar practice management functions?

- ☐ Does the arrangement have any explicit "unwinding" provisions, such as a process for repurchasing practice assets, or the ability to influence a manager's further sale to other entities?

☐ As part of the arrangement, will the manager require the practice to modify compensation plans? If so, how much control do employed physicians have over ongoing administration, modification and adjustment of compensation plans?

☐ What kinds of liability shifting or indemnification provisions are included in the various agreements?

Note that, under a managed practice arrangement, the practice and physicians may continue to hold certain kinds of liability related to licensure or federal programs.

☐ How much authority will the manager have over the practice's payer relationships, particularly long-term agreements that may include significant practice obligations, such as taking on downside risk?