



President's Message

Hospital-Contract Management Group Joint Ventures: A Disturbing Trend

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In recent years the largest hospital network in the country, Hospital Corporation of America (HCA), has entered into a joint venture with the largest emergency physician contract management group (CMG) in the country, EmCare. Although not all of the details of this transaction are publicly known, under many such joint venture arrangements the hospital and the CMG own the emergency physician group and split the profits coming from emergency physician professional fees. Although many CMGs have profited handsomely from emergency physician professional fees for decades, this is new territory for hospitals. If such an arrangement is considered legal and legitimate, hospitals throughout the country will have great incentive to restructure their emergency physician agreements along these lines, so they can capture part of the emergency physicians' professional fees rather than allowing the physicians to profit fully and fairly from their own labor — joining the CMG in reaping the spoils of the emergency group's work.

Already, over the past two years, many private emergency physician groups have lost their contracts in Florida, Virginia, and Tennessee and have been told that their new employer will be the hospital-CMG joint venture. In return for being able to keep working in the same emergency department, many of these physicians are forced to take significant pay cuts and lose much of their independence and job security.

Many new hospital-CMG joint venture arrangements have many similarities to Catholic Healthcare West's (CHW) attempt in the late 1990s to force the private emergency physician groups contracting with its hospitals to join Meriten, its wholly-owned subsidiary, so that CHW would essentially own the emergency physician practices. In response, AAEM — with the support of the physician groups involved, the California Chapter of AAEM, and the California Medical Association — filed suit, citing violations of corporate practice of medicine (CPOM) and fee-splitting laws. After initial court hearings went against it, CHW sold EPMG back to the physicians, who then reorganized into a fairer, independent, physician-owned group. This was a huge win for AAEM and for the private practice of emergency medicine. However, we now see this disturbing issue recurring.

Hospital-CMG joint ventures may violate corporate practice of medicine (CPOM) laws in many states. These laws — drafted to protect the public — often prohibit non-physician lay corporations from owning or controlling physician practices, due to the potential for abuse when a corporation's fiduciary duty to its shareholders is in conflict with a physician's duty to his or her patients. Since hospitals and CMGs are typically not physician-owned corporations, having a hospital-CMG joint venture owning or controlling a physician practice may violate CPOM laws. In addition, federal fee-splitting laws prohibit the distribution of any portion of a physician's professional fee to any entity in excess of the fair market value of services provided to that physician. In situations where profits from physician professional fees are being distributed to a hospital or CMG, this raises a concern for violation of federal fee-splitting laws.

AAEM has been monitoring the recent development of hospital-CMG joint ventures and has spoken with many of the affected physician groups. AAEM is actively investigating potentially illegal activities and hopes to provoke enforcement of prohibitions on such activity. If a hospital-CMG joint venture is now affecting your group or occurring in your area, please contact AAEM to further discuss the matter. I highly encourage our members to make a donation to the AAEM Foundation, where the funds raised can be utilized by AAEM to help protect the private practice of emergency medicine. ■

AAEM Antitrust Compliance Plan:

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