



## President's Message

# Tenet Wants Emergency Physicians to Subsidize the Rest of the Hospital

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Tenet Health, one of the largest hospital networks in the country with 49 hospitals, recently put the contracts out for bid at 11 of its hospitals in California, to replace their emergency medicine (11), anesthesiology (11), and hospitalist (5) groups. Currently, most of the hospitalist contracts and some of the anesthesiology contracts include a subsidy from Tenet, while most of the emergency medicine contracts generate enough revenue through collected professional fees to be entirely self-supporting and quite profitable. According to some of the local groups involved, Tenet made it clear to the large contract management groups (CMGs) it is soliciting that it is looking for a no-subsidy arrangement for all 27 contracts (three specialties at 11 hospitals). Essentially, Tenet wants the profits from the emergency medicine contracts to cover its losses on the hospitalist and anesthesiology contracts. As only the largest CMGs can even hope to staff 27 new contracts at once, it looks like many local emergency medicine, anesthesiology, and hospitalist groups will be tossed out. This situation parallels the hospital-CMG joint ventures I wrote about a few months ago, since it is another attempt by hospitals — like CMGs — to feast on the professional fees of emergency physicians.

In the past, the quality of the care provided by a medical group was of paramount importance to the hospital. But for Tenet Health, a for-profit hospital network, it appears that minimizing expenses and maximizing profit trumps everything else. Tenet earned a profit of \$387 million in the first quarter of 2014. Perhaps by destroying the medical practices at 11 hospitals, Tenet will be able to cut its hospitalist and anesthesiology subsidies by a few million dollars in future quarters and make its investors happy. Of course, many of these groups have served their hospitals and their communities well for decades and built strong, productive relationships with their medical and nursing staffs. I've been told that many hospital CEOs are very supportive of their local medical groups, but the decision to put the contracts out for bid was made at Tenet's headquarters in Dallas. Tenet's corporate executives are not so easily swayed by simply providing excellent care — not when there is a chance to squeeze out more profit for investors and corporate officers.

If an emergency medicine group requires a significant financial subsidy from the hospital it serves, it will understandably be at risk of losing its contract. However, most of the ED contracts are quite profitable with a few requiring modest subsidies. Rather, the plan is to allow a large CMG to take over lucrative emergency medicine practices in exchange for taking over money-losing hospitalist and anesthesiology practices. Essentially, the emergency medicine practices will serve as a piggy bank to be raided by the CMG and the hospital. Of course the CMG needs to show a nice profit to its investors too, which is hard to do without the anesthesiology and hospitalist subsidies. So, we can expect a lot more

belt-tightening at the affected hospitals: less physician coverage, greater use of midlevels, and of course lower pay for physicians. The future is not bright for these emergency physicians, whose professional fees will now go towards subsidizing hospitalist and anesthesiologist salaries, in addition to satisfying investors in Tenet and the CMG — and to enriching the leaders of both corporations.

Federal fee-splitting laws, enacted to prevent kickbacks and abuse, prohibit the distribution of part of a physician's professional fee to any entity in excess of the fair market value of services provided to that physician. When part of a physician's professional fee is being distributed to a hospital or CMG, the parties involved may be in violation of those laws. If an emergency physician's professional fees were to go towards subsidizing other hospital-based specialists, or to pad the bottom line of a for-profit corporation, this would appear to be an extreme violation of federal fee-splitting laws. It is also important to recognize that California has some of the strongest corporate practice of medicine (CPOM) laws in the country. These laws, drafted to protect the public 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, prohibit non-physician, lay corporations from owning or controlling physician practices. Tenet Health is not a physician-owned corporation, and neither are EmCare and TeamHealth, two of the CMGs invited to bid on these contracts. Therefore, it seems to me and others within the Academy that if Tenet implements its plan, it will be in violation of both state and federal law.

If Tenet replaces the physician practices at 11 hospitals with one huge CMG, I expect the quality of care to suffer. I don't believe there is a group in existence that is capable of recruiting hundreds of highly qualified emergency physicians, anesthesiologists, and hospitalists to one state in a short period of time. In addition, highly qualified physicians are unlikely to join a practice where they will probably be underpaid, understaffed, and overworked — as will likely be necessary to cover both the eliminated hospitalist and anesthesiology subsidies and provide the CMG's profit. A pie can only be cut into so many slices. Most likely, the CMG will have to settle for whoever it can get to cover the schedule, which will include physicians who fall well short of the current community standard. In addition, the change will be highly disruptive to the hundreds of physicians who have learned the systems and processes of their practice over time, and have developed relationships with their hospitals and medical staffs — not to mention the disruption to local nursing staffs, patients, and communities.

Tenet's proposal to replace the physician practices at 11 hospitals is one of the largest attempted disruption of physician practices by a hospital

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network since the late 1990s, when Catholic Healthcare West (CHW), now Dignity Health, attempted to force EPMG and several other private emergency medicine groups at its hospitals to join Meriten, its wholly owned subsidiary, so that CHW would essentially own its emergency physicians' practices. In response, AAEM (with the support of the physician groups involved, California-AAEM, and the California Medical Association) filed suit, citing violations of corporate practice of medicine (CPOM) and fee-splitting laws. After initial unfavorable hearings in court, CHW sold EPMG back to its former physician-owners, who then reorganized into a fairer, more democratic, physician-owned group. This was a huge win for AAEM, for the private practice of emergency medicine, and for all the "pit-doc" emergency physicians involved.

The leaders of several groups affected by the current scheme have contacted AAEM and asked for our assistance. I have spoken at length with many of these physicians; have sent letters outlining AAEM's concerns to the relevant hospital leaders, hospital boards, and medical staffs; and have discussed the issue with local media. Several of the medical staffs at affected hospitals have contacted Tenet leadership and expressed support for their local groups, decrying any plan to replace those groups with out-of-state, for-profit corporations. Incredibly, Tenet is still considering moving ahead with its plan despite the opposition of local medical staffs. Apparently, corporate leaders in Dallas feel they know more about what Tenet's California hospitals need than do local hospital administrators and physicians. Local media have also been very supportive of the local medical groups. The emergency medicine practices at these hospitals are still on the chopping block, however, simply because they are to be cash cows for money-losing practices in other specialties.

The California Medical Association (CMA) recently announced its opposition to Tenet's takeover. AAEM and California-AAEM hope to repeat our success of 15 years ago, when we worked together with the CMA to resist the illegal takeover of emergency medicine in California. AAEM hopes that Tenet will come to its senses and realize that any imagined savings from destroying these group practices at 11 hospitals will be offset by new inefficiencies, decreased quality of care, staffing shortages, and backlash from nursing staffs, medical staffs, community leaders, and patients. Tenet should make the smart move and walk away from this plan. It is bad for Tenet, bad for its hospitals, bad for physicians, and bad for patients. Several of the local medical groups have told AAEM they do not intend to stand idly by while they lose their practices. If they choose to fight this seemingly illegal takeover, AAEM and California-AAEM will support them in any way we can.



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