Dollars and sense

Creating win-win physician-hospital arrangements

As physician reimbursement decreases and the cost of running an independent practice increases, physicians are constantly looking for new ways to diversify their revenue, and joint ventures are increasingly attractive options. Many physicians maintain their privileges and membership on their hospital’s medical staff while developing a profitable business on the side, but heated competition can lead hospitals and physicians to make decisions that leave one party out in the cold.

The following tips will help medical staff leaders and physicians develop win-win agreements that benefit the hospital, physicians, and, most of all, patients:

➤ Take time to reflect on the effect of a physician joint venture. Michael Schutz, MD, who operates Jersey Urology Group, an independent practice in New Jersey, and serves as the medical staff president at Shore Memorial Hospital in Somers Point, NJ, says that before engaging in a joint venture agreement with their peers, physicians should ask themselves:

– How far am I willing to affect my relationship with the hospital?
– How much do I need the hospital?
– How much does the hospital need me?

Physicians who create an independent practice that diverts significant revenue away from the hospital might cause a rift between themselves and the hospital. For example, Schutz explains that a joint venture among a group of neurosurgeons who want to open a neurosurgery center would have a much bigger financial effect on the hospital than a joint venture between urologists who want to open an outpatient urology practice. Why?

“Ninety-five percent of urology services can be done outside of the hospital and do not require hospital admission. One cannot perform the great majority of neurosurgery procedures on an outpatient basis,” he says.

➤ Remember, half a loaf is better than no loaf. Most institutions would rather reap a portion of the revenue from an ambulatory surgery center than be left high and dry. To ensure fair distribution, physicians and hospitals might decide to compete for some services and collaborate on others. For example, Jersey Urology contracts with an anesthesiology group to perform certain procedures in the office that have traditionally been performed at the hospital.

Although Jersey Urology is directly competing with Shore Memorial Hospital for these services, the two entities have created collaborative arrangements as well. They have joined forces to bring a company that provides lithotripsy services (a process that breaks up kidney stones) to the hospital to provide the treatment locally. “The hospital wins because people are coming in for treatment. The patients win because we are able to provide this service in town, instead of 40–50 minutes away,” Schutz says. The urology practice wins because it is able to provide service locally, saving doctors in the group, who previously traveled 50 minutes to provide these services, time and fuel.

When creating collaborative arrangements between physicians and the hospital, Stewart M. Hamilton, MD, vice president of medical affairs and chief medical officer at Yuma (AZ) Regional Medical Center (YRMC), has remained as flexible as legally possible. Several years ago, a group of physicians at YRMC wanted to start their own catheterization lab, but the hospital proposed an alternative deal in which it too could benefit, Hamilton explains. Today, those physicians own the catheterization labs and equipment and employ their staff, but they lease their space from YRMC.

These physicians provide services for hospital patients via a “directed under service” arrangement, a type of arrangement in which a hospital contracts with a third party (a physician-owned entity or a physician-hospital joint venture) to provide a hospital service. Directed under service arrangements are helpful when a hospital wants to start offering a new service, and purchasing that service from an existing third party is more
effective than starting one from scratch. In addition, such an arrangement qualifies as “safe harbor” under the Stark regulations.

➤ Don’t pursue a physician-hospital joint venture unless it will add value to patient care. Whenever Hamilton and others at YRMC hear that members of the medical staff are planning to start their own potentially competitive facility or service, they willingly explore collaborative arrangements to benefit both parties. However, the hospital pursues such arrangements only if both parties can bring something to the table.

➤ Create a physician advisory group to address key issues. Hamilton explains that one way YRMC’s board of directors has addressed physician-hospital competition is by forming a physician advisory group (PAG). This committee was created to facilitate discussions about difficult issues and consists of board members, elected medical staff leaders, and informal physician leaders. “PAG is not a forum for voting. Issues are discussed thoroughly and openly, and we try to reach a consensus whenever possible,” Hamilton explains. Through the PAG, the hospital and its physicians have already ironed out several potentially contentious issues related to physician-hospital competition.

➤ Be flexible for the sake of the physician-hospital relationship. Hospital leaders and administrators need to be flexible when creating collaborative agreements with physicians or risk losing out on a potentially valuable source of revenue, Hamilton says. For example, several years ago, a group of surgeons at YRMC founded its own surgery center. A few years later, the physicians sold the center to YRMC. In the purchase agreement, YRMC and the physician-owners struck a deal in which the physicians could maintain an interest in the center through ownership of participating bonds. These bonds are supported by the hospital and create tax-free income for their holders. Allowing the physicians to maintain interest in the surgery center helped cement a mutually beneficial relationship between those surgeons and the hospital, says Hamilton.

➤ Go easy on practice restrictions for employed and contracted physicians. A hospital might restrict where its employed physicians can practice or what types of entrepreneurial activities they can become involved in through stringent non-compete clauses, says Bruce Armon, Esq., an attorney with Saul Ewing, LLP, in Philadelphia. Although hospitals that do this are trying to protect themselves, restricting employed physicians too much might cause discontent.

Hamilton says that when YRMC creates exclusive contracts with physicians, it includes a non-compete clause that grandfathers in physicians who already have competing businesses. From the date the contract is signed, physicians under an exclusive contract are not allowed to start a competing entity. “But if they already have a business on the side, we forgive them that and allow them to continue,” he says.

➤ Beware of legal pitfalls. Hospitals need to be aware of anti-kickback statutes when creating joint ventures with physicians, Armon says. The anti-kickback statute is a federal law restricting hospitals from paying physicians for referrals. Nonetheless, several types of business relationships are permissible under safe harbors. Hospitals should always check with their legal counsel to determine whether a proposed business relationship falls into a safe harbor.

➤ Understand that economic credentialing can stir up hard feelings. According to Medical Staff Leaders’ Practical Guide, Sixth Edition, published by HCPro, Inc., economic credentialing is the practice of assessing the financial effect of accepting a physician onto a hospital’s medical staff. Generally, economic credentialing assesses the physician’s ability to control costs, but hospitals sometimes resort to economic credentialing when revenue drops due to physician competition.

YRMC’s board of directors once considered implementing what was interpreted by the medical staff as economic credentialing, but discussions during PAG meetings thwarted the initiative. The board did not want to jeopardize the mutually beneficial relationships developed over many years, Hamilton says.