2022

Health Care Transactions

Resource Guide

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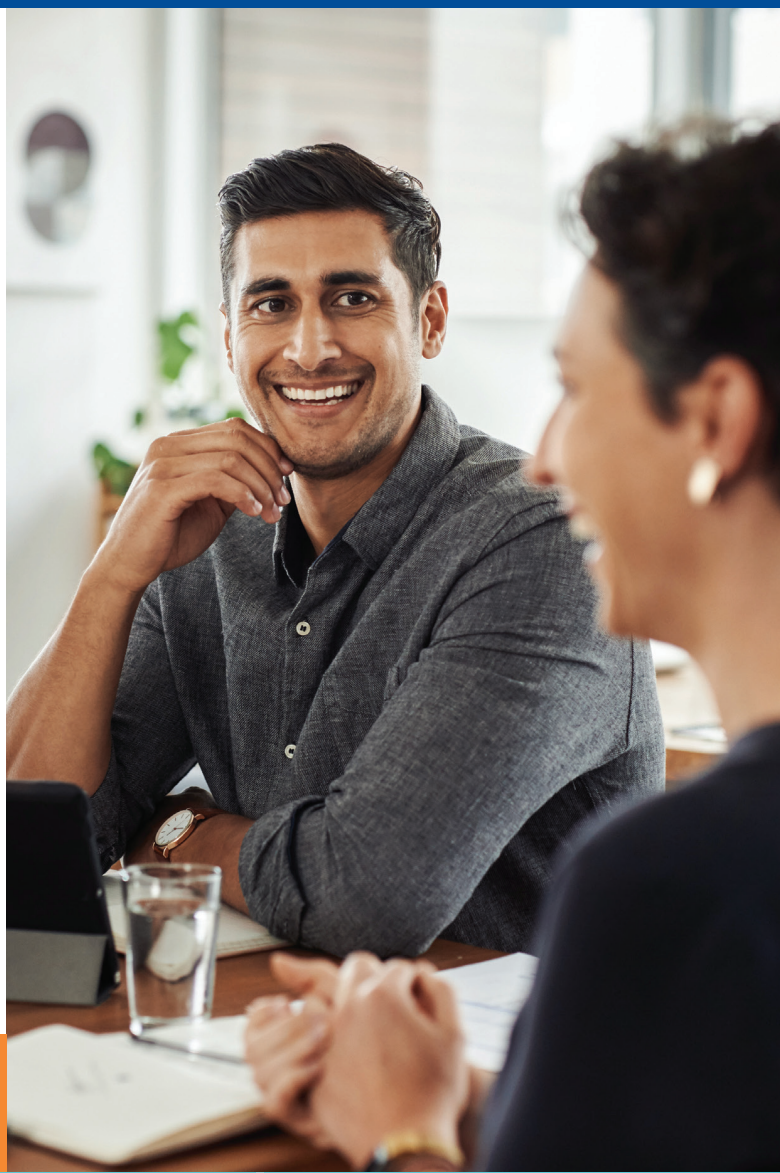

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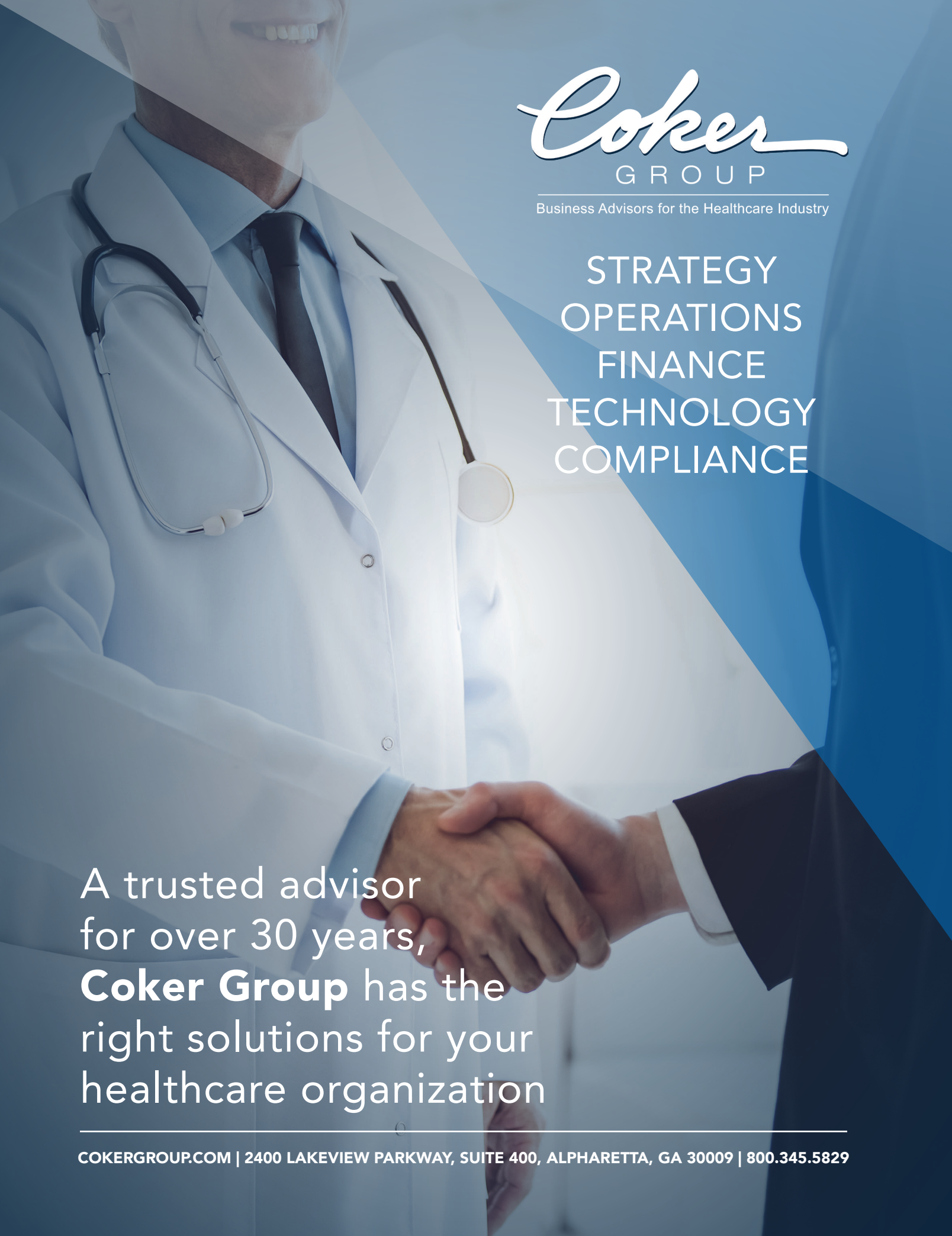

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Physicians in Practice: Ways to Align and Remain Independent

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Over the past several years, the rising trend in physician practice acquisitions is well documented and continues to climb. The latest study from the Physicians Advocacy Institute (PAI) reported that hospitals nationwide acquired approximately 8,000 additional practices from July 2016 to January 2018.[1] The percentage of hospital-owned practices increased by more than 70 percent over the entire study period from July 2012 to January 2018.[2]

PAI also conducted a study on COVID-19's impact on physician practice acquisition and employment from January 1, 2019, to January 1, 2021. The study found **only 30 percent of physicians in the United States practiced medicine independently** at the beginning of 2021, and hospital systems or other corporate entities employ 70 percent of U.S. physicians.[3] When we first published this article in 2019, there were signals in the marketplace indicating independent practices were poised to return. At the 2018 MGMA annual conference, a group of physicians shared some of the unintended consequences—higher costs, physician disengagement, flat or declining outcomes[4]—of the acquisition influx and predicted that independent practices might make a comeback.

However, in the aftermath of 2020 lockdowns and consumer hesitation to use health care services, many physicians thought COVID-19 would see the end of independent physician practices. According to a survey Merritt Hawkins conducted for The Physicians Foundation, **59 percent of physicians agreed COVID-19 would reduce independent physician practices**.[5] Although only 8 percent of physicians closed their practices because of the pandemic, there is significant concern more will follow suit.

But is employment the only option to keep physician practices alive?

We're here to remind you that employment isn't the only option when pursuing alignment between physicians and partnering entities. Depending on the situation, the structures described below may offer a similar upside to employment or acquisition without the same unintended consequences or risks.

Let's take a look at the options available outside of employment that independent practices and partnering entities can leverage to align for better outcomes.

Professional Services Agreement

For over a decade, our team has crafted and negotiated professional services agreements (PSAs) for physician enterprises of all sizes. Our (infamous) PSA white paper performs a deep dive into the many options available to those pursuing this model.[6] Back in 2012, when groups like accountable care organizations (ACOs) were still considered unicorns, *Becker's Hospital Review* also wrote about the increase in PSAs as a viable option for systems and practices.[7] Today, our team is observing steady, if not increasing, PSA activity and interest, and we'd like to remind you of the various types of PSAs, as well as provide some tips for those pursuing them.

The categories below represent general guidelines for the various types of PSA models, but agreements do not need to fit rigidly within each. We often work with clients who mix and match different components of each model to develop a solution that works best for their goals and market. Think of a PSA like a pizza: most can agree on the base ingredients, but different types of sauces, toppings, and crusts produce a delicious creation uniquely suited for each person (except maybe sardines).

- **Traditional PSA |** A traditional PSA is a contract, typically between a hospital or health system and a practice, for professional services reimbursed using a rate per wRVU generated. The hospital or health system assumes ownership of the practice support structure by employing staff, managing billing and revenue cycle functions, and overseeing leadership and governance related to the practice team. The PSA providers are aligned with the network but do not face the same oversight as their employed colleagues.
- **Global Payment PSA |** The contract for professional services is similar to the traditional PSA except for the rate per wRVU, which encompasses both provider compensation and benefits cost. The global payment also includes fixed and variable overhead expenses for the practice. Both parties collaborate to manage annual budgets and strategy through a management committee, and the practice retains control of its entity and support staff.
- **Practice Management Arrangement |** The partnering entity employs the providers within this arrangement, but the practice's legal entity is maintained. The practice continues

to manage its staff, which are not employed by the hospital, through a separate management services agreement, and the practice receives a fair market value (FMV) fee for the services. This model is essentially the inverse of the traditional PSA.

» **Carve-Out PSA |** The professional services within this model can be carved out based on practice location, subspecialty, or providers that fall within the agreement. For example, a gastroenterology (GI) group can align with a hospital to provide only endoscopy services. Related administrative costs are carved out, and the hospital reimburses them separately at an FMV rate.

» **Hybrid Arrangements |** Continuing with the pizza topping analogy, hybrid PSA arrangements allow both parties to mix and match the toppings. Any component from the previous models, such as medical directorships, quality incentive payments, compensation guarantees, and several payment or management services methodologies, can be leveraged in a hybrid model.

While there may be numerous ways to execute a PSA, compliance is one critical requirement. Compensation or professional service terms should meet FMV standards and be commercially reasonable, and the overall agreement should not violate any federal or state regulations (i.e., Stark, Anti-Kickback). As with any agreement, we recommend both parties work with legal counsel to execute the contract.

Clinical Co-Management Agreement

If PSAs feel too close to employment, partnering entities and practices might consider clinical co-management agreements (CCMAs) as a more moderate and attractive strategy. Unlike PSAs, the alignment mechanisms in CCMAs do not involve contracts for professional services or management of practice support structures. CCMAs typically focus on a collaborative effort between individual providers and partner leadership to achieve a predefined set of performance outcomes for a hospital service line.

We view these arrangements as a win-win for both parties to accomplish shared goals, often related to quality and the shift to value-based initiatives. CCMAs continue to mitigate a hospital's financial investment and limit any lost autonomy for independent providers.

While there are several structures around which to build a CCMA, all of these arrangements will include fees for the management services provided and a specific set of measurable outcomes for the CCMA entity to monitor and achieve. Fees often include a base rate, typically paid hourly and evaluated using an FMV calculation for administrative services within that specialty and an incentive rate for exceeding the outcomes within the agreement.

The descriptions below are for the various CCMA structures. Read our white paper for more detailed information on the formation, execution, and benefits of CCMAs.[8]

» **Traditional CCMA |** A management agreement exists between a physician practice entity and the hospital. The contracted management services relate to a specific service line. This model is common when one practice aligns with the hospital as that does not require the creation of a separate entity.

» **CCMA with New Entity |** This model involves creating a new professional corporation (PC) or limited liability corporation (LLC). The new entity administers management services and receives compensation for those services at fair market value. The agreement is between the client (i.e., a private practice) and the new entity, and typically there are multiple practices engaged with the new entity for those management services.

» **Joint Venture CCMA |** A physician or group of physicians and the hospital create a jointly-owned new entity to administer management services. This CCMA model is less common because the joint venture is subject to more regulation and a longer implementation timeline. Because the hospital and physician(s) own the entity, this type of CCMA is more permanent.

» **Joint Oversight CCMA |** Separate management agreements may exist between the hospital and physicians involved in this type of CCMA. Additionally, a formal oversight committee comprised of representatives from all parties manages the performance of the CCMA goals.

It is important to note that PSAs and CCMAs are not the only ways for independent practitioners to partner with hospitals, health systems, or other corporate entities. Joining managed care networks or ACOs (no longer unicorns!), setting up call coverage or medical directorship agreements, and creating or using management services organizations (MSOs) represent additional strategies for consideration among providers who want to align and remain independent.

Acquisition will not necessarily slow down or become less relevant in healthcare. Still, it is imperative for those who want to grow their provider network or expand the reach of their practice to be mindful of the alignment options outside of acquisition, particularly those who may be dissuaded by some of its more negative factors.

Coker Group works with physician groups to develop customized healthcare business solutions. Our advisors have the experience and creativity to find the right solution for any market. You can learn more about Coker's work in alignment strategy and physician services at cokergroup.com and contact us to speak with one of our experienced consultants.

Endnotes

1 Physicians Advocacy Inst., *Updated Physician Practice Acquisition Study: National and Regional Changes in Physician Employment 2012–2018*, 12 (Feb. 2019).

2 *Id.* at 6.

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6 Max Reiboldt, Aimee Greeter, and Taylor Cowart, *PSA Progression: What's Next in the Evolution of Professional Services Agreements?*, Coker Group (Oct. 2020).

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