An Idea Whose Time Has Come – Organized Delivery Systems in New Jersey

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I. Introduction

Organized Delivery Systems deserve another look. When enacted 15 years ago, the law which created organized delivery systems in New Jersey (See N.J.S.A. 17:48H-1 et seq., hereinafter, the "ODS Statute") was an unwelcome bureaucratic (and potentially financial) burden, as many New Jersey IPAs discovered they had become subject to reporting and approval requirements of the New Jersey Department of Banking and Insurance (DOBI). Now, those same IPA, physician group leaders and physician entrepreneurs view ODSs as a buoy, if not a life raft, in the current high seas of health care delivery reform and provider restructuring.

The NJ HIP HMO bankruptcy in 1998 (along with the related bankruptcies of PHP Healthcare Corporation and Pinnacle Health Enterprises LLC) affected nearly 200,000 New Jersey residents and 9,000 health care providers. That event led to withering attention on global risk arrangements involving non-regulated management companies. The New Jersey legislature responded by, among other initiatives (*e.g.*, creating the HMO Guaranty Fund), enacting the ODS Statute.

II. Trends

Physician led organizations, such as large, statewide single specialty practices, large regional multi-specialty practices and IPAs, have been struggling to exist as independent entities. More and more physicians have sold their practices to New Jersey hospital systems. They have traded in their lives as business owners to become employees of hospital sponsored physician groups, challenging, if not threatening, the viability of the IPA and large, independent group model.

These effects are exacerbated by: (1) rapid consolidation of hospitals and hospital systems in New Jersey; and (2) provider alignment dynamics triggered by regional ACO strategies.

Moreover, improvements in EHR technology and state-of-the-art electronically based clinical management systems create opportunities for forward thinking, innovative physician leaders to become first to market with highly effective and efficient practice management models. Those innovative clinical practice models hold promise to bend the cost curve and maintain, if not improve, quality. Thus, whomever captures these technologies and efficiencies first will be best positioned to survive and thrive. The Organized Delivery System, although not created in this environment, may be the best vehicle for large physician groups to survive it.

III. Two Types: Licensed and Certified

There are two types of Organized Delivery Systems: one, a "licensed" ODS, is permitted to enter into risk arrangements with HMOs, insurance companies, health service corporations and

similar entities licensed by DOBI; the other, a "certified" ODS, cannot. Neither can market health insurance products directly to consumers. An ODS, therefore, is essentially an in-network provider group for an existing licensed health insurance carrier.

IV. Pros and Cons of Licensed versus Certified

Having the legal authority to enter into risk based health care agreements is unquestionably the primary reason why licensure, rather than certification, is sought by provider sponsored organizations. However, obtaining a license involves the concomitant burden of having to meet strict financial requirements imposed by DOBI (discussed below). In light of the difficulty, if not impossibility, of meeting DOBI's financial requirements for licensed ODSs, many IPAs that formed ODSs in order to comply with this law chose to become certified. The certification process is significantly less onerous because it poses no substantial financial obstacles.

V. Application Process for Organized Delivery Systems

Certified ODS

The application to become a certified ODS involves submitting an application fee of $2,500 along with an application (application checklist is available on DOBI's website) to the DOBI Valuation Bureau. The application requires submission of certain specific documents (*e.g.*, Appointment of Attorney for State of New Jersey and Financial Risk Affidavit) and numerous other materials, such as organizational documents, bylaws, rules and regulations governing the applicant's internal affairs; biographical affidavits for key individuals; business plan (further specified on the application checklist); specimens of provider agreements; specimen management contracts; list of carriers that the applicant intends to enter into agreements with; and a list of all states in which the applicant operates. The applicant must also inform DOBI of the type of certification being sought (e.g., network management, credentialing, member complaints, utilization management, etc.), the names of all providers and their locations, and copies of policies relating to the type of certification being sought (which must comply with specific and detailed regulatory requirements). (See N.J.A.C. 11:24B-2.2, N.J.A.C. 11:24B-2.3, N.J.A.C. 11:24B-2.4, N.J.S.A. 17:48H-3, N.J.S.A. 17:48H-4, N.J.S.A. 17:48H-5).

Licensed ODS

Applications to become a licensed ODS must be submitted with an application fee of $2,500 to the Commissioner of the Department of Banking and Insurance. The application form (also available on DOBI's website) comprises three sections: Part A requires submission of numerous types of organizational documents and standard forms of contracts (*i.e.*, bylaws, management agreements, biographical affidavits of key individuals, organization chart, business plan, narrative statements describing the applicant, geographical area services, reinsurance and stop loss arrangements, insolvency plan, agreements with carriers, data reporting to carriers, standard forms of provider agreements, and other related documentation); Part B requires submission of financial information (*i.e.*, audited financial statements, three-year projections with assumptions, description of sources of working capital and other sources of funding for contingencies, copies of reinsurance and stop loss contracts); and Part C requires submission of a range of documents which DOBI refers to as "quality of care information" (*i.e.*, list of

providers by zip code, enrollment projections, affiliations, description of health services, complaint and appeal procedures, continuous quality improvement procedures, utilization management program and UM appeals process, credentialing procedures, health care services available 24/7 and other related information). (See N.J.A.C. 11:22-4.4, N.J.A.C. 11:22-4.5, N.J.S.A. 17:48H-11, N.J.S.A. 17:48H-12, N.J.S.A. 17:48H-13).

Notably, applicants for licensure must also meet certain financial and insurance risk requirements which include having at least $100,000 of net worth (which can increase), depositing $25,000 in cash, and maintaining a fidelity bond of not less than $100,000. Additionally, as a result of recently enacted State legislation (See P.L. 2014, c. 81,), the amounts of capital and surplus required by DOBI can be revised based on numerous factors. (See N.J.S.A. 17:48H-22.3).

Also, licensed ODSs, unlike certified ODSs, are subject to the New Jersey Holding Company Act. (See N.J.S.A. 17:48H-16 and N.J.S.A. 17:27A-1 et seq.). The Holding Company Act is intended to provide DOBI with additional information about the relationships between and among licensed insurers and their affiliated entities. Accordingly, compliance with it involves additional notice and disclosure requirements that apply not merely to the ODS, but also to its "affiliates" (*i.e.*, entities that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the ODS; See N.J.S.A. 17:27A-1a).

VI. Conclusion

ODS laws were foisted on New Jersey's IPAs approximately 15 years ago in the aftermath of specific failures in the HMO industry. Originally enacted as an antidote to those failures, the ODS model now appears to be coming into its own as a viable, if not necessary, strategy for the survival of physician led organizations. Large physician groups and IPAs with effective leadership are good candidates for forming an ODS. Those that: (i) can meet DOBI's capital and surplus requirements; (ii) are capable of instituting state-of-the-art best clinical practice management programs; and (iii) appreciate the need to obtain qualified actuarial expertise, are good candidates for licensure and risk-based reimbursement under existing New Jersey ODS laws.

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