Legal Issues Related to the Business of Nurse Anesthesia

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CRNA Models
- CRNA’s employed by anesthesia group
- CRNA’s employed by hospital
- CRNA’s employed by other physicians
  - GI docs, ophthalmologists
- CRNA’s self-employed
  - Locums/independent contractors
  - Own the contract and hire anesthesiologists
  - Own the contract and have no anesthesiologists

Which Model is Best?
- What do you want out of life?
  - Draw a good check and go home?
  - Be an entrepreneur and control of your destiny?
What Choices Do You Have?

- Where do you live?
  - Opt-out states give you more opportunity
    - Don’t need an anesthesiologist
    - Or a physician to supervise you
    - You can compete directly with anesthesiologists
    - You can get the exclusive contract with facility
  - Why would hospital contract with you?
    - Save on millions in subsidies

Pro’s & Con’s of Starting Your Own Anesthesia Business

- Pro’s
  - More control of your own destiny
  - As a partner, you make $ off the employees
- Con’s
  - More exposure b/c you are making decisions
  - More administrative responsibilities
  - More administrative costs

Goals in Starting Business

- Be in Control
- Make $
- CYA
CYA – Exposure Areas

- Exposure Areas
  - Payers – Overbilling & Compliance
  - Patients - Malpractice
  - Partners or Employees - Clinical, Sex Harass, Administrative
  - Privacy/HIPAA - Improper Disclosure
  - Problem Contracts – Kickback Exposure
- Some Exposure Areas Can be Protected by Insurance
  - Some cannot

10 Steps to Protecting Exposure

- Establish Corporate Structure (corporation, partnership, LLC)
- Determine Specifics (Membership model, Compensation, Buy-in, Exit Strategy)
- Get Operating Agreement Signed
- Implement Employment Contracts
- Have the Facility Contract Reviewed for Legality & Compensation
- Understand and Get the Right Kind of Insurance
- Get the new Entity credentialed and Link Your Numbers
- Retain Billing Company & Have their Contract Reviewed
- Set up HIPAA Compliance Plan
- Set up Billing & Coding Compliance Plan

Establish Corporate Structure

- Sole Proprietor - No corporate shell
- General Partnership - Too much liability
- Limited Partnership - Not enough control
- C Corp (APMC) - Double taxation
- S Corp - Structure too rigid
- LLC/PLLC - Just right
Operating Agreement

- Ownership Model
  - CRNA only vs CRNA/MD
  - Owners only vs Owners + Employed Providers

- Compensation Model
  - Equal share
  - Eat what you kill (based on RVU’s not actual collections)

- Buy-in Model
  - No buy-in vs Payment for Your % of the outstanding A/R

- Management Model
  - Single Managing Member vs Multiple Member Managers

Operating Agreement: Exit Strategy

- Does the withdrawing member get any A/R?
  - Did he buy into the A/R

- Penalty for early voluntary withdrawal
  - Want to encourage longevity
  - Vesting schedule: 20% per year for 5 years re A/R

- How is A/R paid upon withdrawal?
  - Don’t pay the A/R – pay the collections from the A/R
  - Pay it as collected, not all up front
  - Cap the time frame of collectability to 12 months

Exit Strategy Continued:
Post-termination Liabilities

- Numerous provider liabilities after withdrawal
  - Medicare/Medicaid Audit for 4 years
  - DOJ/FCA suit for 6 years
  - Malpractice claims
  - Cost of tail policy
  - Credit balance refunds
  - Sexual harassment or other lawsuits
  - Promissory notes or other corporate indebtedness
Employment Contracts

- **Two Models**
  - Permanent Employees
  - Employees on Partnership Track
- **Compensation Models**
  - Straight salary & benefits
  - Incentive, based on RVU’s billed
- **Post-Termination Responsibilities**
  - Hold harmless for fraud & abuse
  - Non-compete and non-solicitation clauses
  - Malpractice tail cost

Insurance

- **E&O (Malpractice)**
  - For the entity (your LLC)
  - For each provider
- **GL Policy w/ endorsements**
  - Sex discrimination/harassment
- **Billing Company**
  - Make sure they have $1mm for billing mistakes

Other Insurance

- **FCA Cost of Defense Rider**
- **HIPAA Cost of Defense Rider**
- **Miscellaneous**
  - Workers Comp
  - Health & Life
  - Disability
Billing Company Issues
- Do they specialize in anesthesia billing?
- Do they handle credentialing?
- Will they help with payer contracting?
- What is their rate (4%-6%)?
- Do they have $1mm in coverage for billing errors?
- What reports do they provide?
- Do they provide electronic access to their billing?
- Have their billing contract reviewed?
- Will they pay for you to audit their claims annually?

HIPAA Compliance: Required
- Applies to anyone sending electronic claims
- Two separate components
  - Privacy Policies & Procedures – 2003
    - Need self-assessment, policies, and forms
  - Security Policies & Procedures - 2005
    - Separate self-assessment, policies, and forms
- Patient complaints: OCR asks for all the above
- Inservice Training for each employee

Billing Compliance Plans: Recommended
- Written compliance plan
- Billing and documentation policies
- Each state Medicare carrier has its own anesthesia policies
- Each state BCBS has its own anesthesia policies
Prophylactic Audits
- HIPAA consultant to do a walk through
- Coding consultant to audit sampling of claims
- Compliance Officer
  - In charge of HIPAA and billing compliance

Kickback Issues
- What is a Kickback
  - Paying or giving something to a referral source
- Primarily GI docs
  - They want a piece of the anesthesia pie
  - Contract might say they pay you a flat fee and you reassign the fee for service $ to them
  - Typically, they end up trying to keep 40%
  - That could be a kickback: paying referral source

Government Auditing Agencies
- HIPAA
  - Office of Civil Rights (OCR), DHHS
- Stark/Kickback
  - OIG/DOJ
- Billing/Coding
  - MAC, ZPIC, RAC, OIG, DOJ
  - BCBS – thinks they are a government agency
- Narcotics
  - DEA
- Medicaid
  - State AG (Attorney General)