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Mergers & Acquisitions

Management Services Organization (MSO)

M&A activity involving medical practices is generally overseen by state legislatures with various state-specific compliance requirements.

Key Considerations and Critical Success Factors for Building a Management Services Organization (MSO).

In some states with more relaxed requirements, it is relatively easy for investors to acquire, own and operate medical practices. However, the process is much more complicated in other states that have laws limiting the involvement of businesses in the practice of medicine, such as the corporate practice of medicine (CPOM) doctrine. CPOM is an act that prevents non-medical practitioners from owning a medical practice.

Roughly 30 states follow CPOM with various levels of application. In those states, a popular approach for business to engage in the practice of medicine is to use a management service organization (MSO) model.

A MSO is a health care specific administrative and management engine that provides a host of administrative and management functions necessary to be successful in the ever changing healthcare environment.

With the MSO model, there are certain insurance considerations that should be made.

Malpractice coverage

- A common concern that comes up is how malpractice insurance should be structured.
- In short, the MSO itself does not need to have malpractice insurance since it's not supposed to be doing anything that's related to the practice of medicine. The clinical providers and professional entities, however, do need malpractice insurance.
- That being said, an MSO can agree to provide this insurance, especially if a physician is an owner in the MSO. It also provides added protection to the MSO.
- If the MSO does not provide the malpractice coverage for the professional entities and providers that it contracts with, then each of those entities and providers would need to secure their own coverage.

Physician coverage

- In the event of coverage consolidation, will the physicians want to give up their current coverage? This can be a sticking point, as many physicians are loyal to their incumbent carrier, are sensitive to choice of defense counsel, may have a financial incentive such as a carrier dividend or other reasons to be apprehensive about switching carriers.
- Physician buy-in should be obtained for a smooth transition, which may just be a matter of educating the physicians on the benefits of a consolidated program.
- Should limits be on a shared or separate basis? Sharing of limits is only effective as a method of reducing fixed cost. It drastically reduces the overall coverage available to the group and individual insureds, especially as groups grow in size.

Tail considerations

- With consolidation, there will likely be movement of coverage from one carrier to another. If you change insurers, be sure to take measures to prevent coverage gaps. Either purchase run-off ("tail") coverage from the old carrier or buy prior acts ("nose" or retroactive) coverage from the new one.

P&C coverage

- Most of the P&C lines of coverage may be placed at the MSO level.
- Workers' compensation may need to be split up depending on the employer-employee relationship. For instance, if the MSO employs administrative staff and the professional entity employs the clinical staff, separate policies may be needed for each employer.

Other coverage

- Like any healthcare business, in addition to the aforementioned coverages, an MSO should recognize and address its exposure to management liability and cyber liability. Depending on the organization, other coverages may be needed as well.

Regulatory issues

- MSOs are exposed to a heap of regulatory issues, including but not limited to, Medicare/Medicaid billing, Stark, and Anti-Kickback statutes.
- Coverage for these is generally not included or very limited on malpractice liability policies.
- The best way to protect against this exposure is by purchasing a separate regulatory liability E&O policy.