

PHYSICIAN UNIONS -- The Solution or Just Another Problem

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Around the state, union organizers are recruiting physicians. These organizers are seeking to capitalize on the frustration and feelings of powerlessness of physicians faced with the challenges of managed care and stiffer competition. As hospitals and mega medical groups set up practice across the street from established community-based practices, and national chains gobble up practices, physicians are looking for some relief. But are unions the answer?

Some physicians, who believe that strength in numbers will be enough, have been quick to embrace unions. They believe that by joining a union they become one of many and will have voice in national and local political debates and have a friend at the collective bargaining table when healthcare benefit packages are negotiated and forms of coverage selected. The theory is that unions with physician members will be hostile to managed care plans and resist negotiating contracts with national employers that encourage employees (the union's members) to select managed care plans for their healthcare needs. But is this realistic? Unions and management have been this nation's biggest supporters of managed care. Indeed, managed care could not have gotten a foothold without their combined efforts to promote cost containment and lobby the federal government to do likewise. Unions, also, run many benefit plans on their own. Each year, organized labor negotiates with carriers, managed care companies and mega-medical groups for the care of union members not covered by employer-based plans. Even if unions could serve as a forum for physicians collectively to bargain with managed care plans (and they cannot as noted below), it would not be in their best interest to do so. Unions have an interest in keeping healthcare costs low, even if that means that physicians will suffer.

But, some believe that the unions of late have cooled on managed care now that they see that managed care may mean rationed care. So, why not join a union and present a united front to managed care companies and bargain for better reimbursement and greater coverage? The simple answer is that physicians who are not employed by the same employer cannot bargain with a single voice on reimbursement or any other economic terms of their care. Federal antitrust law makes it a crime for any group of independent businesses or professionals to bargain collectively for the sale of their goods or services, or to refuse to sell their goods or services to any purchaser. The law refers to such collective bargaining as a "conspiracy to fix prices" and the collective withholding of goods and services as a "group boycott." Both are serious federal offenses and as one group of Arizona dentists can attest, vigorously prosecuted. (These unfortunate and ill-advised dentists were faced with the sobering prospect of having their homes, bank accounts and office equipment seized if they did not plead guilty to federal charges for their part in a "group boycott" of a managed care plan.) There is no blanket exception to the antitrust laws that allows union member physicians to bargain collectively UNLESS they are all employees of the same employer. No matter what the organizers might say, sole practitioners and other self-employed physicians cannot bargain collectively whether they are union members or not.

Is there a place for unions in medicine? Well, the answer to that question is a qualified "it depends." Where physicians find themselves working for an employer--whether after selling their practice to a hospital or some management company, or joining the payroll of healthcare chain right out of residency--a union might be a good idea. Residents and house officers and medical school faculties in some areas have been unionized for years, and they have found unions many times to be an effective counter weight to the arbitrariness of hospital administrators and medical school deans. So, it is only reasonable to expect that employed attendings or other physicians joining the ranks of the salaried will also look to organize. In these settings, a union may make a difference. And for that reason, employers can be expected to resist any effort to organize. Principally, they will charge that the physicians involved are supervisory employees whom federal law does not allow to organize. But, even if they lose on those grounds, they will fight on and challenge each phase of the unionization process. The stakes will be high. If the physicians organize, what is to stop the rest of the staff. It is hard to "downsize" or arbitrarily increase the number of patient "encounters" when a managed care plan lowers reimbursement if your entire staff is organized.

For those physicians who cannot unionize, there are other answers. They need not stand by and be picked off--one by one--by the managed care plans, mega-groups or chains. Solos and small groups can and, in most cases, should give some thought to merging or forming collective management companies they will allow them to compete better with bigger entities. Physician-owed and -controlled practice management companies are becoming more common and hold the promise of allowing physicians to collectively bargain with managed care plans and suppliers, while reaping the benefits of professional management and marketing they could never afford on their own. Instead of selling out and going to work for some large impersonal company, physicians who set up their own management companies can by "going public" (that is,

by selling a small percentage of their companies' shares to the public) get others to invest in their future while they, the physicians, retain control. These physicians are not running away from their patients and all that they have worked for; they are taking responsibility for their own destiny and proving that physicians do have a place in healthcare management.

Also, physicians should not forget that their state and county medical societies are there to help them meet these challenges as they have been in the past. For example, when the PROs and OSHA threatened the practice of medicine who was there: The state and county medical societies. The societies and the state's physician political action committees (PACs) should be rallying points for physicians. Unfortunately, though, too many physicians do not join the societies or contribute to the PACs. Some are turned off by what they believe to be the overtly political nature of the societies or the costs of participation. Yet, unions are not going to be any less political or costly. Whatever, physicians have got to stop making excuses and join together. First, they should join their state and county medical and speciality societies and then, get moving on further organizing-whether as a collective management company, union or merged group. The future will not be kind to the timid.