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Physician employment: Build a contract that suits you

When a doctor's contract expires, it's time to negotiate a more desirable employment package. Here are 5 steps to help.

By VICTORIA STAGG ELLIOTT, amednews staff. **Posted Jan. 14, 2013.**

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Sometimes the best thing about a physician's employment contract is that it allows him or her to get ready for the second contract — and make it a better deal.

“When you first sign an employment contract, they don't really know you, and you don't really know how it's going to work out,” said Jodi Laurence, a founding partner with the Florida Health Law Center in Davie. “If you have been there for a while, done a good job, been productive and accomplished what they wanted you to, a second contract is your best opportunity to get everything you desire. You are so much harder to replace at this point, and you have great bargaining power.”

Even well-written contracts may need alterations to respond to health system changes, prevent contravening any relevant laws, and take into account a physician's age and life stage. Hospitals will take their own steps to make sure they get a good deal, but employed doctors have significant leverage if they take appropriate action — namely, making a case for how valuable they are.

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Tom Ferkovic,

RPh, managing partner with SS&G Healthcare, a practice management consultancy based in Cleveland.

The majority of physician employment contracts expire after 2 to 4 years.

Hospitals recognize a physician's leverage because they don't want to lose doctors, especially given how long it takes to find replacements. Assn. of Staff Physician Recruiters data indicate that primary care physician jobs took 151 days to fill in 2011. This was an increase from 125 days in 2010 and 115 days in 2009.

"Most employers know that they will do better retaining physicians even under different terms than to start over with someone else," said Tommy Bohannon, divisional vice president in Merritt Hawkins' department of academics.

Analysts say physicians need to consider five key issues to ensure that a new contract fits as well or better than the previous deal.

1. Know your renewal date

The majority of physician employment contracts expire after two to four years. But that doesn't mean negotiations start automatically. Most contracts have evergreen clauses, meaning they renew automatically if no action is taken by the physician or the employing health system. This also means a physician can get trapped in a contract that needs to be changed or even ended. Or a health system can sue a physician for not complying with the contract's termination terms. Most contracts require a physician to give notice within a certain time frame to negotiate a new one.

Doctors need to know "when you need to do what," said Sidney Welch, a partner with the health care practice of Arnall Golden Gregory based in Atlanta. "Don't wait until the renewal date and you're under the gun."

In addition, although some health systems are well-organized and will notify physicians when it is time to renew, not all will.

"This is absolutely something a physician needs to keep track of, because the automatic renewal gives hospitals the advantage," said Christopher E. Brown, an associate with The Health Law Firm in Altamonte Springs, Fla.

2. Use data to support your request

After a physician figures out the renewal date, he or she needs to collect data to support the compensation requested, whether or not it is higher than the original salary. This is important, because hospitals are limited in what they can pay physicians by Stark regulations. All compensation must be set at fair market value without regard to referrals to the hospital. If it is not, both the physician and the hospital can be in legal hot water.

"You're getting contracts based on your productivity and how much volume you see," Ferkovic said. "If you're significantly below projections, your leverage goes away. If your numbers are high, you're certainly in a better position. You need to make sure that whatever you ask for is supported very, very clearly."

Incentive pay can make up 3% to 5% of the total compensation of employed physicians.

To determine an appropriate salary, data on how productive a physician is along with how he or she measures up on quality metrics should be gathered from the employing entity. Most are forthcoming because a requirement to provide this data usually is in the initial employment contract.

"If they don't have the numbers — that does happen — you need to continue to demand them in a professional way," Ferkovic said.

The data should be compared with benchmarking data from the medical practice association MGMA-ACMPE, other medical societies or consulting agencies. Practice valuator and lawyers specializing in health care also may be a source of this information.

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“You may realize that you are generating a lot more money than they thought you would generate, and you are not being appropriately rewarded,” Bohannon said.

American Medical Association principles for physician employment state that when compensation is related to revenue generated or similar factors, the employer should be clear on how that formula is devised.

3. Consider how pay is structured

Figuring out physician compensation is more than setting a number. It’s determining how to get there.

“With all the changes in health care, certain types of compensation arrangements are more in vogue than others,” Bohannon said.

Physician compensation already has moved away from straight salary to productivity payment formulas based on work relative value units. Physician compensation is expected to increasingly incorporate factors such as quality, outcomes and patient satisfaction. Incentive pay makes up 3% to 5% of the total compensation of employed physicians but is expected to be between 7% and 10% in the next few years, according to a survey of 424 health care organizations released Jan. 10, 2012, by Sullivan, Cotter and Associates.

In addition, many hospitals and large health systems are establishing accountable care organizations, patient-centered medical homes and other value-based payment arrangements that change how they are paid for physician services. They also are working to reduce readmissions to avoid Medicare penalties. Consultants believe these changes will trickle down to affect physician compensation models.

“The majority of compensation that we see is still based on volume, but we do see more and more quality measures coming into play,” said Jennifer Snider, vice president of operations with Halley Consulting Group.

Consultants say any at-risk pay should rely on factors that physicians can control. For example, productivity pay should be based on the number of patients seen rather than a percentage of collections. Quality metrics should measure aspects of patient care that are within a physician’s purview.

“You need to make sure you are being measured appropriately and accurately,” Welch said.

4. Ask about pay for nonclinical duties

Contract experts say administrative duties can creep in, especially as hospitals and large health systems turn to physicians to help establish accountable care organizations and other novel care delivery models. A contract renewal is a good time to step back and ensure that all work, even nonclinical, is being paid appropriately.

“Often physicians are requested to serve on committees, become medical directors or take on additional administrative duties,” Laurence said. “Sometimes they’re working a lot harder than they anticipated. They need to be paid fairly for this work.”

Physicians interested in nonclinical work outside the health system, such as public speaking, teaching and expert witness appearances, may take contract renewal as an opportunity to make sure they are allowed to do so and will be able to keep any money earned. Some hospital employment contracts prohibit outside activities or state that earnings from them must be handed over. This is open to negotiation.

“Most employers are willing to carve those out of the agreement if they’re not going to interfere with a physician’s main duties,” Brown said. “But this needs to be addressed ahead of time.”

5. Bring up retirement and other personal matters

Consultants say contract renewal time is an opportunity to think about how it should change to accommodate work-life balance, a physician’s life outside the office and any future plans.

“Ask yourself: Where do I see myself today?” said Beth Lincow Cole, a partner with Astor Weiss Kaplan & Mandel in Philadelphia and Haddonfield, N.J. “Where do I see myself in three years? Where do I see myself in five

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years?”

For example, a physician looking to retire in a few years may want a contract that slowly reduces his or her hours. The noncompete clause may need to be adjusted to allow part-time practice elsewhere in the community.

“There are plenty of physicians who are not quite ready to retire,” Laurence said. “They’re nervous about what is going on in the market, but everyone has to think long term.”

Physicians with young children or are looking to have offspring may want options for reducing hours and the call schedule. Those with grown children may opt to work more hours.

Contract experts say these five areas should help take what was learned in the first go-round, along with what is known about changes in a doctor’s life and the health system, and lead to an updated, more workable arrangement. The new contract may be with the current employer. But if need be, the information gained can be used to negotiate with another one.

“Figure out what has worked and what has not worked,” Welch said. “Ask yourself if you’re willing to walk if push comes to shove.”

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ADDITIONAL INFORMATION:

7 principles for protecting physicians in contract negotiations

The American Medical Association adopted principles for physician employment at its Interim Meeting in November 2012, including several points addressing contracting challenges. On the subject of contracts, the document states:

- Physicians should never be coerced into employment with hospitals, health care systems, medical groups, insurance plans or any other entity.
- Both parties should receive legal counsel during the negotiation.
- An employer should make it clear on what factors compensation is based.
- If an employer ends a physician’s employment, patients should be informed of the situation and given new contact details as well as the choice to continue with the same doctor in a new setting.
- Physician employment agreements should protect the right to due process before termination for cause.
- Physicians should not enter into agreements that restrict the ability to practice medicine for a specified period or in a certain area after the contract ends.
- Employment contracts should include provisions governing dispute resolution.

Source: AMA Principles for Physician Employment, American Medical Association (ama-assn.org/go/employmentprinciples)

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5 red flags in doctor employment contracts

No matter if physicians are negotiating employment contracts for the first time or the 10th time, there are always words or phrases that should give them pause. Among the terms contract experts say doctors should watch out for:

- Any provision allowing a hospital or other employer to clawback money for any reason.
- Restrictive covenants that are extremely long or cover a wide geographic area.
- Contracts requiring a physician to give more than 120 days’ notice to end the arrangement without cause.
- Contracts that run longer than five years.
- No requirement for the hiring entity to provide regular data on a physician’s productivity and performance.

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Physician employment agreements, American Medical Association
(www.ama-assn.org/go/employmentagreement)

AMA Principles for Physician Employment (www.ama-assn.org/go/employmentprinciples)

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