



INDEPENDENT PRACTICE ASSOCIATIONS

A Viable Option for Home Care?

Structured properly, an Independent Practice Association (IPA) may be an effective way for providers to achieve economies of scale and competitive advantages that will assist them in the transition to managed care, while maintaining independence.

1. What is an IPA?

An IPA is an entity formed for the limited purpose of contracting with managed care organizations (MCOs) for the delivery of health services by licensed or certified entities that are members of the IPA in exchange for payment. IPA participants do not combine their individual businesses.

An IPA is a legal entity (corporation or limited liability company) formed by filing with the New York Department of State. Documents filed to establish an IPA must disclose pertinent information about its members and governing body. Formation of an IPA also requires approval, consent or a waiver from the NYS Departments of Health, Insurance and Education. Members of an IPA will become parties to a participant agreement that will govern the operations of the IPA and the participants' relationships to the IPA and to each other.

Because one of the activities of an IPA is the negotiation of contracts that will involve multiple competing businesses, when considering forming an IPA, participants must pay close attention to the structure of the IPA so they are not viewed as engaging in "anticompetitive behavior" (i.e., price fixing or group boycott). An IPA formed for the sole purpose of negotiating rates with MCOs will, in all likelihood, be faced with legal proceedings against it by the Federal Trade Commission, could have its contracts terminated and could face civil monetary penalties.

2. Safety Zones

The FTC has set out "Safety Zones" to give guidance to IPAs. To overcome FTC scrutiny, an IPA must demonstrate that it meets the requirements of a Safety Zone. The main Safety Zones are Clinical Integration and Financial Integration.

- **Clinical Integration:** Clinical Integration can be evidenced by the presence of organized processes to control costs and improve quality and by the significant investment of monetary and human capital in these processes (for example, adopting and implementing clinical practice guidelines and measurable performance goals relating to the quality and appropriateness of services rendered to patients).

In assessing whether an IPA is Clinically Integrated, the FTC can look for:

- Participants' commitment and effort to engage in activities necessary to achieve the beneficial objectives of a program.

- Reasons why the participants, on their own, cannot achieve the same efficiencies.

Critical to any qualifying Clinical Integration arrangement by an IPA is that contract negotiations involving pricing or rates must be **reasonably necessary** to the group's achievement of efficiencies, so the IPA is not viewed as engaging in "anticompetitive behavior".

- **Financial Integration:** Financial Integration involves risk sharing that provides strong incentives for the IPA participants involved to cooperate in controlling costs and improving quality by managing the provision of services by participants (for example, an agreement by the IPA to provide services to an MCO at a "capitated rate").

3. Why Form an IPA?

The proposals of New York's Medicaid Redesign Team were adopted in the 2011 Budget. A goal of the MRT is to transition New York's Medicaid population to a managed care model from the fee for service model. As a result, home care service agencies that have historically contracted with local Departments of Social Services must now sign contracts with the MCOs that will be coordinating care for the Medicaid population. Since MCOs are paid capitated rates on a per member per month basis, their primary goals are to consolidate the number of providers they deal, reduce their administrative costs and create efficiencies.

Smaller providers must overcome the challenges inherent in the transition to managed care. A potential way to overcome the MCOs' goal of creating efficiencies can be to form an IPA that provides the MCOs with the ability to serve and manage a large number of patients while dealing with a single entity – the IPA. Properly structured, an IPA comprised of several smaller providers can offer MCOs a single entity that will have the capacity to provide consolidated:

- Billing
- Credentialing / In-Service
- Quality Assurance
- Emergency Case Coverage
- Patient Assessment (on a centralized basis for the IPA)
- Cultural Expertise
- Technological Advancements

If desired by its members, the IPA can also incentivize MCOs to contract with it by agreeing to assume or share the obligation to provide services to enrollees of the MCO for capitated rates. Obviously, this assumption of risk should be carefully considered and, depending upon the level of the risk that is assumed, the IPA may have to demonstrate that it has satisfactory insurance and reserves (which could include maintaining a security deposit) to meet its obligations.

The formation of an IPA will take time and consideration by the IPA members and its counsel as to how the IPA will operate, the services that it will offer to the MCOs and the methods by which it will demonstrate Clinical or Financial Integration. The end result of a well-structured IPA can be continued business viability at this time of change within the industry.

Please contact Glaser & Weiner, LLP with any questions regarding the formation of an IPA.

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