FAEGRE & BENSON LLP

Integrated Delivery System Legal and Organizational Structures

	Hospital Direct Employment Model	Hospital-Captive Physician Practice Legal Entity Model	Health System Parent-Subsidiary Legal Entity Model
Legal Structure	One legal entity. Existing hospital legal structure. Direct employment of physicians.	Two legal entities. Subsidiary physician practice legal entity ("Hospital Subsidiary"), with direct employment of physicians	Three or more legal entities. Subsidiary physician practice legal entity ("Health System Subsidiary") is "brother/sister" organization with hospital under Health System parent. Subsidiary employment of physicians.
Governance/ Physician Influence	Hospital Board. Physician "Operations Committee" or similar structure to provide physician influence and input; subject to board ultimate authority.	Captive Subsidiary separate board of directors. "Operations Committee" or similar structure available for physician influence and input. Hospital Board reserve powers over major issues e.g., physician compensation, budgets, strategic plans, major corporate actions.	Health System Subsidiary separate board of directors. "Operations Committee" available to provide physician influence and input. Health System Parent reserves powers over major issues e.g., physician compensation plans, budgets, strategic plans, major corporate actions.
Tax Status	No change to Hospital tax status.	No change to Hospital tax status. Captive Subsidiary may be tax-exempt or taxable.	No change to Health System Parent or Hospital tax status. Health System Subsidiary may be tax exempt or taxable.
Financial Statements and Transparency	Hospital financial statements with physician practice(s) treated as department or division. Limited transparency.	Captive Subsidiary has separate financial statements that are consolidated with Hospital. Separate financials provide greater transparency.	Health System Subsidiary has separate financials that are consolidated with Health System Parent. Separate financials provide greater transparency.

	Hospital Direct Employment Model	Hospital-Captive Physician Practice Legal Entity Model	Health System Parent-Subsidiary Legal Entity Model
Joint Commission Standards	Hospital accreditation standards apply to Hospital and to physician practice locations.	Hospital accreditation standards typically apply to Captive Subsidiary as a Hospital-owned practice, and to provider-based clinic facilities.	Hospital accreditation standards do not directly apply to Health System Subsidiary or parent. Standards would apply to any provider-based clinic facilities, and may apply if Health System Subsidiary is presented as part of Hospital organization.
Implications for DRG "Three Day Window"	Services provided by Hospital, or entity wholly-owned or operated by Hospital, to patient during 3 days preceding inpatient Hospital admission are included in DRG payment to Hospital if services are diagnostic in nature or are other services that relate to the admission.	"Three day window" applies to services provided by Captive Subsidiary for Hospital inpatients within the 3 day window, so Captive Subsidiary cannot bill separately for such services.	Three day window does not apply to services provided by Health System Subsidiary to Hospital inpatients within 3 day window unless the Hospital operates Health System Subsidiary or Health System Subsidiary provides the services "under arrangements" with Hospital.
Physician Billing Options	Provider-based or free-standing clinic billing possible, with reimbursement, patient co-pay and other differentials.	Provider-based or free-standing clinic billing possible, with reimbursement, patient co-pay and other differentials.	Provider-based or free-standing clinic billing possible, with reimbursement, patient co-pay and other differentials.
Incident To Services	Incident to billing not allowed at Hospital or in provider-based facilities.	Permitted in non-provider-based facilities. Not allowed in provider-based facilities.	Permitted in non-provider-based facilities. Not allowed in provider-based facilities.
Physician practice culture/ compensation practices	Potential use of "team" oriented compensation practices under Stark employment exception, coupled with department, specialty and system-wide incentive structures. All compensation must be FMV and reasonable.	Clear use of "team" oriented compensation practices under Stark in-office ancillary services exception (and potentially under employment exception under Stark), coupled with practice, specialty and system-wide incentive structures. All compensation must be FMV and reasonable.	Clear use of "team" oriented compensation practices under Stark in-office ancillary services exception (and potentially under employment exception under Stark), coupled with practice, specialty and system-wide incentive structures. All compensation is FMV and reasonable.

	Hospital Direct Employment Model	Hospital-Captive Physician Practice Legal Entity Model	Health System Parent-Subsidiary Legal Entity Model
Employee Benefits	Existing Hospital 403(b) or 401(k) retirement plans may be supplemented by 457(b), 457(f) or other non-qualified retirement plans. Benefit programs subject to nondiscrimination testing.	Hospital 403(b) or 401(k) retirement plans may be supplemented by 457(b), 457(f) or other non-qualified retirement plans. Benefit programs subject to nondiscrimination and other testing as part of single controlled group or affiliated service group rules.	Health System sponsored 403(b) or 401(k) retirement plans may be supplemented by 457(b), 457(f) or other non-qualified retirement plans. Benefit programs subject to nondiscrimination and other testing as part of single controlled group or affiliated service group rules.
HR policies and practices	Hospital HR system and benefit programs (e.g., paid time off and other). Separate physician employment contracts typically used.	Captive Subsidiary separate HR practices possible, permitting variation in HR management, wage scale and other benefits (e.g., paid time off). Separate physician employment contracts typically used.	Health System Subsidiary separate HR practices possible, permitting variation in HR management, wage scale and other benefits (e.g., paid time off). Separate physician employment contracts typically used.
Practice Operations	Hospital operation of physician clinics within Hospital management and infrastructure systems. MSO relationships also possible.	Captive Subsidiary operation of free-standing (non-provider-based) physician clinics. Lease or purchase of space and equipment, direct employment or lease of non-physician personnel etc. MSO relationships also possible.	Health System Subsidiary operation of free-standing (non-provider-based) clinics, including lease or purchase of space and equipment, direct employment or lease of non-physician personnel etc. MSO relationships also possible.
Growth and Recruitment Support	Hospital direct financial support of new physician recruitment via employee compensation.	Captive Subsidiary financial support of new physician recruitment as part of employment compensation. Costs could be covered via overall financial support provided to Captive Subsidiary. If Hospital provides recruitment support through a contract involving a particular physician, Stark recruitment exception must be met.	Health System Subsidiary financial support of new physician recruitment as part of employment compensation, with costs covered via overall Health System financial support provided to Subsidiary. If Hospital provides recruitment support through a contract involving a particular physician, Stark recruitment exception must be met.

OT092308