THE FRIENDLY PC MODEL:

How MSOs can streamline their insurance portfolios

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Healthcare providers have utilized a model for many years known as the "friendly PC model" to help address laws that prevent non-healthcare providers from controlling healthcare delivery. These laws apply to various types of licensed professions, ranging from medicine to dental services, and are frequently referred to as the corporate practice doctrine. The friendly PC model has been in existence since at least the 1980s. Many physician practice management companies (referred to as PPM platforms) utilized this model in the 1990s, as the aggregation of physician practices became the norm. The structure involves contractually affiliating a management services organization (MSO) with a professional corporation (PC).

SURVEYING THE LEGAL LANDSCAPE

The structure of the friendly PC model involves two separate and distinct entities—an MSO and a PC. The prevalence of this model is often dictated by state-specific regulations. "Many states have enacted laws which directly or indirectly are viewed as prohibiting the 'corporate practice' of medicine. While variations exist among states, the doctrine generally forbids a person or entity, such as a general business corporation, other than a licensed physician, PC or a professional limited liability company (PLLC), from owning an interest in a medical practice or employing physicians for the purpose of practicing medicine."[1]

Corporate practice of medicine (CPOM) laws vary from state to state. "These state laws are designed to prevent non-clinicians from interfering with or influencing the physician's professional judgment in providing care to patients. CPOM statutes act as a safety mechanism for the general public to ensure the care they receive is uninfluenced by corporate interests (which are typically shareholders instead of patients)."[2]

TAKING CUES FROM TELEMEDICINE

The friendly PC MSO model is a common structure utilized by hundreds of telemedicine providers today. "Under the friendly PC model, a PC, PLLC or other state-approved legal entity with 100% physician ownership, employs the licensed healthcare professionals and then contracts with an MSO to provide management services to the PC in exchange for a fee."[3] The MSO management contract and associated services usually involve nonclinical functions like billing, human resources, accounting, information technology, and procurement of supplies and services. It is common that the agreement also includes the procurement of insurance by the MSO on behalf of the PC. When placing insurance for telemedicine companies such as medical professional liability, it is desirable to include all entities under a single program, thus providing a structure that covers the MSO and the friendly PCs under the same policy or policies. However, insurance carriers have traditionally only allowed for the addition of true subsidiary companies, in which the parent organization has a controlling interest (greater than 50%) as additional named insureds. The designation of additional named insured provides the entity the same rights to the policy as the first named insured, which is usually the MSO.

Examples of a few states that prohibit CPOM:

- **California**
- **Colorado**
- **Illinois**
- **Iowa**
- **New Jersey**
- **New York**
- **Ohio**
- **Texas**

Friendly PCs are not subsidiaries of the MSO and must have separate physician ownership. In the formal sense, the friendly PC is a third-party business that would normally require a separate and distinct insurance program and not be combinable with the MSO for insurance purposes. Organizations with an MSO and multiple PCs are then faced with the potential of having to create separate insurance programs for each entity and incurring increased expenses.

THE CASE FOR INCLUDING FRIENDLY PCs UNDER AN MSO INSURANCE PROGRAM

An MSO usually has strong management influence over the operations of a friendly PC, often appointing their medical director to serve as the PC owner. The PC will most often serve exclusively on behalf of the MSO to provide medical services to patients. Additionally, MSOs are usually contractually obligated to procure insurance on behalf of their friendly PC or PCs.

While not a defined subsidiary of the MSO, the friendly PC structure can certainly resemble that of a parent company/subsidiary relationship with the MSO. Accordingly, many insurers have granted exceptions to allow for combinability on certain insurance coverages and endorsed them as additional named insureds on the policies. This allows for a seamless program with substantial premium savings, and has been utilized for nearly all types of property and casualty insurance, including medical professional liability, general liability, cyber liability and others if the carrier agrees to the structure.

THE IMPORTANCE OF PROPER CLAIM EXPENSE ALLOCATION

In combining the MSO and PCs on an insurance program, it is important to properly allocate any self-insurance expenses to the proper entity or entities involved in the suit or action. There are generally two forms of retentions or self-insurance for insureds to assume risk, and the term retention is often used synonymously with the term deductible.

Retention (deductible) model

Claims are paid first by the insurer with reimbursement subsequently sought from the insured.

Self-insured retention model

The insured pays claim expenses until the agreed-upon retention is exhausted and the attachment is reached. The insurer then either pays further claim expenses on behalf of the insured or reimburses the insured for amounts paid.

In either scenario, it is important to properly allocate claim expenses to the appropriate entities. Should the MSO absorb all the costs, then there is the potential for allegations of illegally operating as an unlicensed insurance company by state regulatory authorities.

CONCLUSION

A combined insurance program for an MSO and associated PCs makes for a clean and seamless structure with increased efficiencies and substantial premium savings. While some state regulations may present challenges to adopting this insurance approach, each MSO's situation is unique. A conversation with your broker can help provide clarity and help you determine whether the friendly PC model is a viable option.

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Lisa has counseled hundreds of clients on the development and implementation of telemedicine programs, including advising on issues related to professional licensure, scope of practice, informed consent, prescribing and reimbursement. She has represented academic medical centers in the formation and operation of telestroke and other telemedicine programs with multiple hospital and clinic participants.

Some of Lisa's accolades include Chambers USA, 2021 to 2022; the Best Lawyers in America, Health Care Law, 2020 to 2023; and Law360, Rising Star: Health Care, 2021.

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[1]Epstein Becker & Green, P.C., Corporate Practice of Medicine: The Unseen Hurdle in Telehealth | Health Law Advisor

[2]MedLink, Friendly PC Models for Telehealth Companies

[3]Chapman and Cutler, LLP, Chapman Insights, "Health Care Regulatory Primer: Management Services Organizations," October 12, 2017

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