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Exclusive Contracts and Closed/Open Departments

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It is important to understand that an exclusive contract for anesthesiology services, no matter how well it is constructed, is not the panacea for job security that most anesthesiologists believe it is. Exclusive contracts can present substantial legal impediments to prevent competitors from exercising anesthesiology privileges. But exclusive contracts can be lost, terminated, and outbid at a variety of intervals.

What is the difference between a closed department and an exclusive contract?

A medical staff and hospital can "close" a department by following a procedure which the courts have recognized as adequate to divest individuals of the right to exercise their privileges. The department in question then becomes "closed" to any new qualified physicians outside the current members of the department. Outside providers, regardless of qualifications, cannot be granted privileges in the closed department.

An exclusive contract is a contract granted to an individual, group or company (of any size) that gives the contract holder exclusive rights to provide specified services in a specified department.

Exclusive contracts can be granted for the entire spectrum of anesthesiology services, or they can be for specific service lines, i.e. OB, general OR, cardiac, pain management, etc.

At the moment, there is no new trending in exclusive contracts or closing departments. The exception to this is the growing takeover or purchasing of anesthesia groups by very large multi or single specialty company practice consolidators who generally require exclusive contracts and closed departments.

Pros and Cons of Exclusive Contracts:

Pros:

1 – Exclusive contracts can present legal barriers to non-contract providers exercising their privileges.

2 – They can foster a more collegial relationship with the hospital since the contract holders are the hospital's "preferred providers."

3 – They make staffing easier since there is an exact known quantity and quality of providers for a known volume and case-severity mix.

Cons:

1 – You can lose an exclusive contract. For all anesthesia groups, job security is based on quality, service, and more recently cost. Many anesthesia groups receive some type of subsidy from hospitals, who are strongly interested in reducing that subsidy. Competing groups or companies often approach hospitals with business plans that severely reduce or eliminate the subsidy, and since quality and service are assumed to be excellent no matter who the provider, the decision for the hospital comes down to cost. If your hospital privileges are tied to an exclusive contract, when the contract is terminated, your ability to continue to exercise your privileges depends on your relationship with the new contract holder.

2 – The contract holder will eventually experience pressure from the hospital to contract with all payers that the hospital contracts with. In fact that is often a clause in the exclusive contract itself.

3 – In response to increasing volume, you may need to supply additional providers as part of the exclusive contract, regardless of efficiency measures or payer mix.

Note: There is no benefit to a hospital to close a department without granting an exclusive contract. However, an exclusive contract (for defined services) can easily exist in an open department.