# NETWORKS

Traditional physician practices have afforded physicians with professional autonomy, financial independence, and self-determination. However, in an era of health care reform, reduced reimbursements, increased overhead, and additional administrative and regulatory burdens, physicians have been forced to consider alternatives. Developing strategic alliances with other physician practices and/or hospitals, physicians may be able to preserve individual autonomy while creating advantages in contracting with private payers, reduce practice costs, increase administrative efficiency, and increase revenues. However, there are significant regulatory constraints that must be considered prior to affiliation.

## LEGAL STRUCTURES

| Legal Structure | Impact on Practice Autonomy | Strengths | Disadvantages |
| --- | --- | --- | --- |
| **Physician-Hospital Organization:** A legal entity formed by a hospital and physicians mainly to contract with managed care plans, but may have other joint activities<br><br>**Independent Practice Association:** Independent physicians coming together to form an organization for similar purposes, such as contracting with managed care organizations | PHOs and IPAs have the least impact on an individual physician's practice autonomy.<br><br>Neither of these entities provides medical or hospital services directly, but arrange for the provisions of such services through their members | Physicians' ability to retain autonomy<br><br>Delivery of a unified provider network to managed care plans<br><br>Vehicle for organizing medical staff | Low degree of physician-hospital integration<br><br>Little change in economic relationships or incentives<br><br>Lack of an information infrastructure |
| **Supergroups or Group Practices Without Walls**<br><br>**Fully Integrated Model:** The organization may acquire some of all of the assets of several physician practices and employ all the physicians<br><br>**Partially Integrated Model:** The organization may provide centralized administrative services only | Varies depending on level of integration<br><br>**Fully integrated model:** The groups has a single tax identification number, the physicians share risk and capital investment, and the group determines compensation methodology, fringe benefits, and administration for all locations<br><br>**Partially integrated model:** each physician or physician group retains its individual provider billing number, staff and equipment, and pays an annual fee for a series of defined services | A supergroup is an approach that primary care physicians can network with specialists.<br><br>Can increase marketing appeal to third-party payers, recruit physicians, and managed care plans<br><br>Economies of scale from sharing certain administrative expenses or group purchasing arrangements<br><br>Opportunity to develop ancillary services | The less integrated a group, the higher the risk of allegations of joint price setting or illegal remuneration from referrals within the group |


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|---|---|---|---|
| **Medical Foundation:** A nonprofit, tax-exempt organization that provides medical services through employed physicians, usually found in academic medical centers<br><br>May acquire assets of the physicians' practice, as long as the acquisition is negotiated at arms-length<br><br>Foundation supplies management, billing, purchasing, and other services to physicians<br><br>May also contract with managed care plans | Does not provide the independence and autonomy of a private practice<br><br>Governance and control structure generally mirrors that of the corresponding hospital department | Able to be capitalized through tax-exempt funding sources, which is appealing to payers because of its ability to align compensation incentives | Very capital-intensive in its start-up and operational phases |
| **Integrated Delivery Systems:** A single organization that provides hospital, physician, and other health care services to patients<br><br>A vertical network, involving providers at different levels in the chain of delivery<br><br>May be nonprofit or for-profit; may be an umbrella parent holding company, either nonprofit or for-profit, of which diverse health care organizations, such as foundations, group practices, hospitals, and medical service organizations, are subsidiaries | Hospital is generally the controlling entity | Provides hospital, physician, and other health care services to patients<br><br>May offer its own HMO or other managed care product | Lack of autonomy for physician practice |

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## LEGAL ISSUES

| Legal Issue | Restrictions/Prohibitions | Exemptions |
|---|---|---|
| **Antitrust** | Prohibits collective action by providers and payers attempting to gain monopoly power by driving rivals from the market through mergers, joint ventures, consolidations, or acquisition of stock or assets where the effect may be to substantially lessen competition or tend to create a monopoly.<br><br>Agreements between competitors relating to price and allocation of customers and group boycotts where the group has market power constitute<br><br>Per se violations are activities that pose substantial harm to competition. | If a court, using the “rule-of-reason” standard, determines the pro-competitive effects of an arrangement outweigh the anti-competitive effects, the arrangement will be permitted.<br><br>Safety zones for provider networks: A policy created by the Department of Justice (DOJ) and Federal Trade Commission (FTC) creating a safety zone for exclusive physician network joint ventures comprised of less than or equal to 20% of the physicians in each physician specialty with active hospital staff privileges who practice in the relevant geographic market and share substantial risk.<br><br>4 methods of sharing substantial financial risk:<br>1. Accepting capitated rates<br>Providing designated services on a percentage-of-premium basis<br>Providing financial incentives to achieve cost-containment goals<br>Charging global fees |
| **Fraud and Abuse** | Prevent the potential for over-utilization, unnecessary costs, inappropriate care, interference with patient freedom of choice, and arrangements that may reward or encourage referrals or otherwise present conflicts between clinical judgment and pecuniary interests. | |

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|---|---|---|
| **Stark Law** | Prohibits a physician with a financial relationship with an entity, to make a referral to the entity for the furnishing of any designated health services. The entity may not present or cause to be presented a Medicare or Medicaid claim or bill to either program or any individual, third-party payer, or other entity for such referred services. | Exceptions permit certain physician financial relationships, including:<br>· In-office ancillary services, which applies to referrals within a group practice of services ancillary to the referring physician's service<br>· Prepaid plans and risk-sharing arrangements, applies to risk-sharing payments made to physicians by MCOs<br>· Academic medical center services<br>· Rental of office space and equipment<br>· Personal service arrangements, addressing any remuneration paid by a physician by a DHS entity<br>· Bona fide employment<br>· Fair market value compensation |
| **Anti-kickback Statute** | Prohibits any individual or entity from knowingly and willfully soliciting or receiving, or offering or paying any form of remuneration in order to induce the following:<br>· Referral of an individual for the furnishing, or arranging of the furnishing of, any item or service payable under Medicare or Medicaid; or<br>· Purchasing, leasing, ordering, or arranging of any good, facility, service, or item payable under Medicare or Medicaid.<br><br>Most states have adopted anti-kickback statues that extend the prohibition to all third-party payers. | There are a number of regulatory safe harbors, exceptions, to the anti-kickback statute, including:<br>· Investments in group practices<br>· Space and equipment rentals<br>· Personal service and management contracts<br>· Employment<br>· E-prescribing<br>· EHRs<br><br>Unlike the Stark Law, failure to comply with safe harbors does not necessarily mean that a relationship or transaction violates the anti-kickback statues. |

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## Tax

Networks frequently are organized as tax-exempt organizations, under § 501(c)(3) of the Internal Revenue Code. To qualify as a 501(c)(3) tax-exempt organization, the organization must be organized and operated exclusively for "religious, charitable, scientific, or educational purposes." Benefits of this type of tax exempt status include exemption from federal income taxation and the ability to receive tax-deductible contributions or to obtain tax-exempt financing.

No part of the net earnings of a tax-exempt organization may benefit a private individual that is considered to be an insider or a controlling person with respect to the organization. If the IRS finds any private inurement, an organization will lose its tax-exempt status. A de minimus amount of private benefit is permissible to a person who is not an insider.

## Compensation

Excessive compensation to a disqualified person may be found to be a form of private inurement, and impose 'intermediate sanctions". A disqualified person is someone who is in a position to exercise substantial influence over the affairs of an organization.

Employment arrangements between a physician and the tax-exempt organization must meet the following requirements:

- Compensation must be reasonable and based on a comparison of compensation paid by other hospitals for similar physician services;
- Maximum compensation must be set forth in writing; and
- Net earnings of the hospital cannot be shared with the physician.

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