

Assignment: can you take over another entity's existing contracts and any better reimbursements?

The Issue: Now while plans for acquisition or merger might not be seen in your crystal ball today, who knows what the future may bring. And it would be a mistake to take for granted that upon purchase of, or merger with, another practice or facility yours can automatically assume the acquired entity's Managed Care contracts **including reimbursement rates if they are better than those you presently receive**. As discussed just above third-party payors normally reserve the right to allow or reject assignment of their Provider Agreements. Such approval typically is not unreasonably withheld, especially if both the acquiring and acquired entities are par-providers. But that does not mean it's a process without potential traps no matter if yours is the acquiring or the acquired entity.



Here's language from an actual Provider Agreement. See what one payor expected in the event of an acquisition or merger.

ACQUISITIONS: *This Section applies to any Physician acquisition through any means including, but not limited to, asset or stock purchase, merger, or consolidation (collectively, 'Acquisition') of an ownership interest in a facility or other provider of whatever type or construction including, but not limited to, a (i) hospital, (ii) free standing ambulatory surgery center, (iii) radiology center, (iv) sleep center; or (v) physician, physician group, Independent Practice Association or Physician Hospital Organization (collectively, 'Entity'). In the event of Physician's Acquisition of an Entity and such Entity has an agreement in effect with <name of payor> for the provision of health care services, then such Entity shall not become a participating provider with <name of payor> under this Agreement but, rather, the existing separate agreement between <name of payor> and such Entity will control for its duration. Furthermore, Physician shall not exercise any termination or non renewal right which may exist in the agreement between <name of payor> and such Entity for a period of twelve (12) months subsequent to the effective date Physician acquires its ownership interest in such Entity.*

In the event Physician's ownership, separate existence or entity construction (e.g., corporation, limited liability company, etc.) is altered or affected in any way as a result of acquisition, merger, consolidation or through any other means whatsoever (including, but not limited to, being merged into an affiliated entity), then this Agreement shall continue to control with respect to Physician's provision of health care services to Payor's Members notwithstanding any contrary outcome which may otherwise be allowed or required by law. Furthermore, Physician agrees that it shall not exercise any termination or nonrenewal right which may otherwise exist in this Agreement for a period of twelve (12) months subsequent to the effective date of such transaction event.

Possible Solutions: In the examples just provided the two paragraphs set out rules for what happens to existing agreements, and when an agreement that's "going away" will do so.

You'll want to preclude surprises derailing future plans. And so I recommend checking the wording of any Provider Agreements to determine if there are or might be administrative impediments to, or complications associated with, taking over those agreements. If so any must be addressed prior to finalization of the acquisition or merger. Those usually can be addressed and resolved simply with Letters of Understanding or other appropriate documents (perhaps an amendment?).

But in anticipation of any acquisition or merger it's also essential to check both your own Provider Agreements and those of the other entity to see if there is anything stated therein regarding ongoing reimbursements. If reimbursements for the acquiring and acquired/merged entities differ is there a statement about which agreement's reimbursements shall control?

Assume, for example, yours is the acquiring practice and that for a certain payor you're receiving "X%" of current year CMS. Assume also that the to-be-acquired practice's contract with that same payor reimburses for identical services at six percent more than you receive. When the practices become one which reimbursement schedule will unite – yours paying less, or the other's paying more?

Obviously under such a scenario you'd like to take over those higher rates and have them apply to the merged entity. Conversely if the acquired practice's rates are lower than you're now receiving you don't want the new, merged entity to be stuck with those lower rates. (Yes, it can happen.)

I recommend trying to secure a stipulation in your agreements that in the event of purchase or merger the highest-paying rates of the Provider Agreements shall prevail for the resulting entity. **Your attorney can provide appropriate wording.**

Note in the first example paragraph on the previous page a provision that an acquired entity's agreement will continue until the acquired agreement runs out its duration. During this "roll out" time you'd certainly want to prepare for negotiations to have the better rates prevail or, preferably, negotiate an entirely new set of reimbursements better than both agreements.