ONLINE APPENDIXES 6

Outpatient dialysis services

ONLINE APPENDIX 6-A

Joint ventures between dialysis chain organizations and physicians

Some physicians who treat dialysis patients own and have financial interests in individual dialysis facilities. Thus, physicians with financial or ownership interests share similar incentives with the corporations and other organizations that own dialysis facilities—namely, to be efficient in furnishing services covered under the broader bundle and to ensure that the facility is operating at capacity. Joint ventures between chain organizations and physicians are a common business model in the dialysis sector.

The Commission's review of publicly available information suggests that (1) the most common of these arrangements is for a physician (or a group of physicians) and a chain organization to jointly own a dialysis facility; (2) most of the midsized and large dialysis chains have established such joint ventures with physicians; (3) data are not available to assess, by facility, the specific ownership interests by the chain and physician organizations; (4) it is relatively uncommon for a physician (or group of physicians) to own a facility independent of a chain; and (5) data are not available to examine the frequency of these relationships. The effect of physicians' financial interests in dialysis facilities on the delivery and quality of dialysis care is unknown. For example, such financial interests might have resulted in some physicians overprescribing dialysis drugs (to the extent clinically possible) under Medicare's previous payment method that paid for dialysis drugs outside the payment bundle. These financial incentives might now encourage physicians to underfurnish drugs (to the extent clinically possible) under the new payment method that eliminated separate drug payments. Public reporting of physician ownership of health care entities, as recommended by the Commission in 2009, would help CMS and other payers determine whether physician ownership might influence patient referrals, quality of care, volume, and overall spending (Medicare Payment Advisory Commission 2009).

Dialysis facilities depend on strong relationships with physicians, who typically refer patients to the facility and are responsible for prescribing their dialysis treatments and drugs. Relationships between the companies that own dialysis facilities and physicians must comply with the Anti-Kickback Statute, which prohibits the offer, payment, or receipt of anything of value to induce the referral of patients for services paid for by federal health programs. Another statute, the Stark Law, restricts compensation relationships between physicians and entities that provide certain "designated health services." Designated health services do not include freestanding dialysis services and most dialysis drugs. Thus, physicians are permitted to own facilities and have ownership interests, such as joint ventures and compensation relationships, with dialysis facilities.

Joint ventures are attractive to physicians because they share resources and management expertise, including collective buying, with the dialysis chain. In addition, some arrangements permit them to individually control the facility (Innovative Dialysis Systems 2010). Joint dialysis ventures are typically structured with the chain holding majority interest and one or more physicians or physician practice groups holding minority interest (DaVita Inc. 2010, Fresenius Medical Care AG & Co. KGaA 2010). For example, each of the facilities affiliated with American Renal Associates, a midsized chain consisting of 93 facilities in 2011, is maintained as a separate joint venture in which the company owns a controlling interest—typically between 51 percent and 75 percent—and nephrologist partners own the noncontrolling interest (American Renal Holdings 2011). Facilities' profits are typically split according to ownership percentage (Riley and Pristave 2005).

Under most joint venture models, the physician owner typically serves as the facility's medical director and receives separate compensation from the chain for these services (Riley and Pristave 2005). Medicare's safety standards (conditions for coverage) require facilities to have a medical director. Under CMS's regulations, the compensation, including fringe benefits, that the owner of a dialysis facility can pay a medical director may not exceed the so-called "reasonable compensation equivalent limits" currently in effect for the specialty of internal medicine for a metropolitan area of greater than one million people. A physician can be a medical director with or without any other financial or ownership interest in the dialysis facility.

The large and midsized chains offer other investment opportunities to physicians who treat dialysis patients, such as owning the real estate that houses the dialysis center (Renal Advantage 2011).[1] For example, some of the DaVita chain's facilities are leased from entities in which referring physicians hold interests, and some facilities sublease space to referring physicians (DaVita Inc. 2010).

Facility-level information is lacking on which facilities operate under a joint venture model and the magnitude

of chain and physician ownership. One potential source of such financial information is the cost reports that freestanding facilities file with CMS each year. These cost reports include fields for disclosure of the individuals, corporations, and other organizations that have financial interest in a given facility and the percentage of ownership. However, the Commission's analysis of 2009 cost reports finds that such information is not consistently reported.

Finally, it is not the norm for facilities to be physician owned independent of a chain. More than 88 percent of freestanding facilities are affiliated with a chain. Only 12 percent of freestanding facilities are independent, and complete information on which of them are partially or fully owned by a physician is unknown. ■

Endnotes

1 Renal Advantage Inc. states that three types of business opportunities are available for physicians to partner with them: (1) Physicians can invest up to 49 percent of the development costs, which gives them a corresponding percentage of ownership in the dialysis center; (2) physicians can own the real estate that houses the dialysis center (real estate ownership means physicians' financial stake is tied to both the property and the profitability of the center); and (3) physicians can be medical directors with or without any investment risk.

References

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