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## A CASE FOR CREATING A LARGE, SINGLE SPECIALTY MEDICAL GROUP PRACTICE

In urban locations throughout Florida, managed care companies continue to prosper, recording record profits. This trend is expected to accelerate in 2006, when the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) becomes fully effective. Under MMA, the Federal government financially encourages managed care companies (MCOs) to enroll more Medicare-eligible beneficiaries, offering significant financial subsidies for the inclusion of a prescription drug benefit that Medicare itself will generally not offer. As a result, it is universally believed that there will be a sea change of beneficiaries opting out of Medicare in favor of a Medicare MCO plan.

MCOs want to maximize profits. One way they have been able to accomplish this is by controlling payments to physicians who are on their panels. After all, physicians are only third on the MCO food chain. MCO payments to physicians fall sharply below payments made to hospitals and pharmacies. In most cases physicians are unable to negotiate effectively with MCOs. It's not a fair "fight." Most physicians still operate their businesses as solo practitioners or in small groups. MCOs typically offer these physicians "take it or leave it" contracts. The rates for physician services rarely go up; to the contrary, in most cases they continue to plummet. Where less than a decade ago Medicare rates for physicians were barely acceptable, now for smaller physician groups and single practi-

tioners in urban settings Medicare is usually their best payer, with MCO reimbursement rates falling far below the Medicare rate and the manner and speed of payment not nearly the equal of Medicare.

Some physicians have tried to organize through networks called independent practice associations (IPAs). Physicians in IPAs are not organized as a single entity, but as a group of separate entities working together for limited purposes, such as contract negotiations. IPAs have proven to be totally ineffective for contract negotiations (except capitated contracts), because the networked physicians cannot legally share financial information. To do so would violate antitrust laws.

So, is there a solution to the problem? The answer is YES! What I have found is that physicians can negotiate very successfully with MCOs by forming a single or limited specialty group practice consisting of a significant percentage of the physicians in that specialty or specialties within a specific geographic area. The physicians in the group practice MAY share financial information and they may act collectively, putting them in a much stronger position at the negotiating table. The result is better, more economically palatable contracts with MCOs. This can be done without making long-term enemies of the MCOs. In fact, if negotiations are handled properly, the new group will also gain the hard-earned respect of those companies.

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I have been professionally involved with several group formations of this type, and in every case within a year, physicians' incomes within the group has increased by more than 30 percent!

There are also other advantages with a large group. For example, the group can create profitable ancillary medical businesses, which may not be legally or practically possible for its physicians if the mega-group was not formed.

The creation of a mega-practice is not easy and requires a significant, continuing time commitment by the physicians. Typically, it takes up to a year from the time the physicians first meet until the time the group is ready to go "live." During that time the physicians must raise seed money to hire an attorney and a consultant to lead them through the long process; create governance documents and form a legal entity; elect a Board of Directors and possibly an Executive Committee (which meet several times a month); gather financial and other information about the physicians and their practices; hire a professional to run the day-to-day operations of the new practice; locate, lease and build out a central business office; and either purchase or lease a new software system for the group. The new software system will be far more powerful than any system currently used by the group's members – another advantage to being in the group.

It is imperative that the new group meet all of the legal requirements of a "group practice" under both Federal and Florida law, and that it not run afoul of anti-trust laws. The Federal Stark II Regulations create many "bright lines" in the definition of a "group practice," thus providing a relatively clear roadmap for qualification. However, the new group will almost always operate at its inception through separate "care centers" that represent the historical practices before the creation of the group. Those care centers will each generally determine profits from physician medical services in the same manner as they did previously. As a result the group must constantly examine the way its business functions. Both inwardly and to the public, it must look and act like a group practice, meeting the literal definition of "group practice" as it is defined under

Florida law and in the Stark II Regulations.

Of course, there are some potential disadvantages to the group. Among them is a potential change in the physician's professional way of life. While I believe that, for the most part, this fear is exaggerated, it is a real concern for some physicians in every potential group with which I have been involved. While the group's governance rules will usually be written to try to preserve as much of the prior expected, but my experience is that in the end small price to pay for the powers and opportunities through the mega-group.

If the new group is properly created, physicians accept their new positions in a bigger, powerful entity, then, as I have seen happen again, the positive results will be staggering! to seriously consider this opportunity. independence of the physicians as possible, to meet the legal definition of group practice the mega-group must have centralized governance and common billing. Further, the group will be a multi-million dollar business with a high grade, non-physician professional coordinating matters from a central office. Thus, some loss of independence can be expected, but my experience is that in the end such small price to pay for the powers and opportunities through the mega-group. If the new group is properly created, and physicians accept their new positions in a bigger, powerful entity, then, as I have seen happen time again, the positive results will be staggering! You to seriously consider this opportunity.

*Broad and Cassel, founded in January 1, 1946, has more than 170 lawyers and 200 support personnel located in seven offices throughout the state of Florida. Broad and Cassel has a national and international client base with offices located in Boca Raton, Destin, Fort Lauderdale, Miami, Orlando, Tallahassee, Tampa, and West Palm Beach. For a complete listing of our services, please visit us online at [www.broadandcassel.com](http://www.broadandcassel.com).*

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