Fremont County Medical Society - April 15, 2014

Medical Staff Issues in Hospital Mergers

Nick Healey
- Dray, Dyekman, Reed & Healey, P.C.

Hospital Mergers in 2010's

- According to AHA 2013 Report, 12% of community hospitals were involved in a merger between 2007-2013.
- "Mergers" can actually be:
  - Acquisition - A buys B.
  - Affiliation - A and B remain independent, but influence each other.
  - Consolidation - A and B combine into C.
  - Merger - A and B combine, B is folded into A.
- Form of the transaction impacts how decisions are made.

Merger Impacts

- Most common areas hospital merger effects felt on medical staff:
  - Credentialing
  - Privileges
  - Changes in medical staff leadership
  - Consolidation of/closing departments
  - Lack of opportunity to be involved in decision-making

Merger Impacts

- Hospital Merger Positives for Medical Staffs (YRMV)
  - Better quality patient care
  - Increased access to new technology, equipment
  - Operational efficiencies
  - Increased caseload and better financial position for physicians
  - Decreased meetings, committees

Merger Impacts

- Downside of Merger for Medical Staff
  - Difficulties adjusting to change.
  - Changing loyalties
  - Internal politics
  - Power struggles
  - Ownership
  - Leverage issues
  - Also - Physical distance between two campuses can cause communication and logistical problems.

Medical Staff Role in a Hospital Merger

- Medical staff involvement is critical to hospital merger success.
  - "The hospital governing body and management must involve the medical staff early in merger plans and in every aspect of the merger, acquisition, conversion or affiliations."
    - Report B, "Hospital Affiliations and Mergers", *American Medical Association's Organized Medical Staff Section, Governing Council*, 1996.
- Where medical staffs were not involved, or only informed after the fact, adversarial relationships and lack of trust can result.

Medical Staff Role in a Hospital Merger

- Active medical staff involvement is required for MS to be accountable for quality of care.
  - Medicare COP's: Governing body must hold the medical staff accountable for the quality of care.
  - Joint Commission Standards
    - MS 03.01.01: The medical staff is responsible for establishing and maintaining patient care standards and oversight of the quality of care, treatment and services rendered by members.
    - MS 05.01.01: The medical staff has a leadership role in organization performance improvement activities to improve quality of care, treatment, and services and patient safety.
    - MS 06.01.01: Prior to granting a privilege, the resources necessary to support the requested privilege are determined to be currently available, or available within a specified time frame.

Entry Points to Merger Process

- Joint Conference Committee
- Medical Staff Representative on governing body
- Strategic planning committee

- If Medical Staffs haven't been involved, best recommendation is to initiate contact.

Merger Areas of Concern

- Harmonizing Medical Staffs
- Call Coverage
- Consolidation of Services

- But first, is a medical staff merger necessary?
  - PVHS and CU-Health merged finance, IT, HR, but left clinical/medical staff merger up to medical staff.

Harmonizing Medical Staffs

- Bylaws, Rules and Regulations
  - Need to be scrutinized to ensure there is harmony in requirements, processes.
  - Will Bylaws, Rules be modified to accommodate, or will one hospital's Bylaws simply be adopted?

Harmonizing Medical Staffs

- Under Wyoming law, medical staff bylaws are likely to be considered a contract between the hospital and its medical staff.
  - "The clear weight of authority finds that hospital bylaws are binding contracts between the hospital and medical staff." *Stears v. Sheridan Memorial Hospital, U.S. Federal District Court for Wyoming, 2005.*
- One party usually cannot change a contract unilaterally.
- Important for hospital to get medical staff buy-in on how changes to the Bylaws will be handled to avoid challenges.

Harmonizing Medical Staffs

- New or old Medical Staff Bylaws?
  - Bylaws may contain a "successor" clause, stating what happens if there's a merger or acquisition (limited applicability in consolidation)
- Ordinarily, medical staffs will create new Bylaws, or modify one set of existing Bylaws, rather than simply adopt one merger party's Bylaws.
  - Each medical staff Bylaws committee can appoint members to a "transition committee" to create the new Bylaws.
  - Independent medical staff counsel (not involved in other aspects of the merger) can help keep the process on track.

Harmonizing Medical Staffs

- Medical Staff Officers - Two sets of existing medical staff officers
  - Options:
    - Both sets resign, and newly combined medical staff holds an election for a new slate of officers.
    - Medical Staff officers negotiate succession plan, in which some existing officers from each assume office in new medical staff.
    - One set of Medical Staff officers assumes offices of newly combined medical staff for remaining terms.

Harmonizing Medical Staffs

- Credentialing
  - Are two hospitals' standards for newly granted privileges consistent?
    - If not, who's control?
  - Board certification and 'grandfathered' members
    - Often a 'grace period' (one privileging cycle) is given for members to achieve Board certification if required by new medical staff.
    - 'Grandfathered' members - new medical staff may not be willing to continue.

Harmonizing Medical Staffs

- Privileging Process
  - Privileges simply carry over to the new institution, or
  - Each physician reapply for privileges at the "new" institution?
- Standards for OPPE/Low-no volume practitioners - consistent between hospitals?

Harmonizing Medical Staffs

- Loss of relationship with Medical Staff Office personnel
  - Cited as one of the significant issues medical staffs face in a merger.
  - Studies have found MS office one of the easiest places to merge, but can cause tremendous disruption to medical staffs in merger process.
  - Medical staff should try to ensure that no significant changes are made in medical staff office personnel while the merger of two medical staff systems is underway.

Harmonizing Medical Staffs

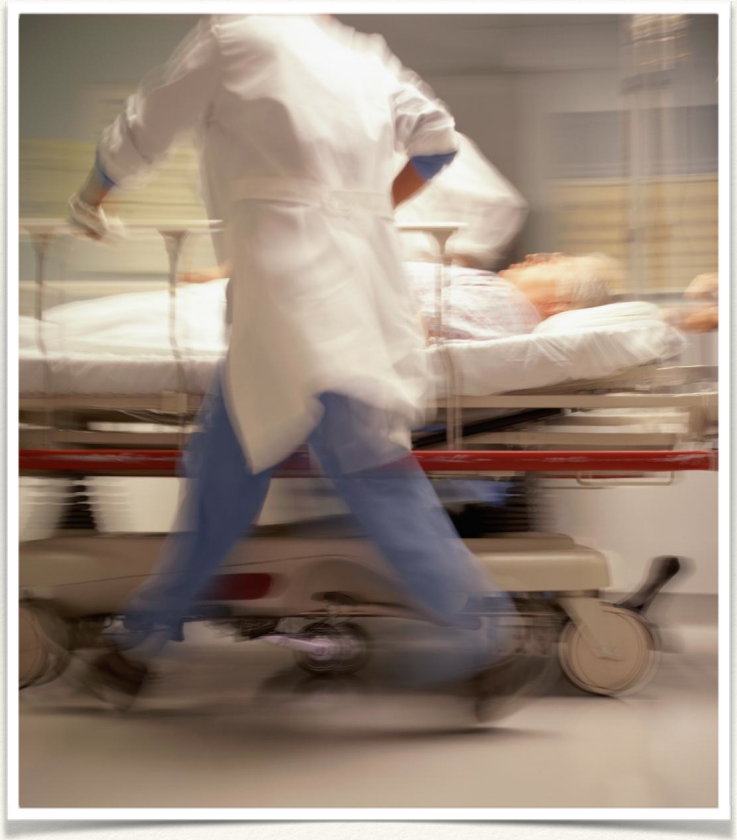
- Peer review
  - Cultural issues - Does one institution have a history of more tolerance for outliers?
    - Are behavioral standards similar, and are they enforced consistently?
  - Peer review "histories" and files - Does a history of disruptive behavior "follow" a practitioner in the new medical staff?
    - Often corrective action is the result of a history of disruptive incidents that don't, by themselves, merit corrective action.
      - Can a newly combined medical staff take that history into account?
  - Indemnification for medical staff leaders of former hospital(s) for past actions?

Call Coverage

- Two campuses, two ED's, two call schedules?
  - Medical Staff Bylaws and Wyoming Trauma Program requirements for responding to calls - feasible?
  - On-call "seniority" exemption - service to each organization count?
- Simultaneous call coverage
  - CMS allows physicians to serve on-call at more than one hospital simultaneously, so long as each hospital is aware of the call schedule and meet its EMTALA obligations.
  - In this situation, 1 hospital - 2 campuses, so technically not "simultaneous" call.
  - EMTALA requires hospital to have policies and procedures in place to respond to calls where the physician on call is occupied and cannot respond.
    - If Specialist A has responded to Lander's ED, Riverton must have policies and procedures in place to deal with emergencies coming to Riverton's ED that need Specialist A's services.

Call Coverage

- "Community call schedule"
  - CMS allows physicians to be on call for several hospitals in a community (Hospitals A, B, C), but to respond to only to Hospital A. Patients that are brought to Hospital B or C are screened there, but then "appropriately transferred" to Hospital A where the on-call physician goes to treat the patient.
  - Allows Hospital A, B and C to satisfy EMTALA requirements, and allows physicians to respond to only one hospital.



Consolidation of Services

- Consolidation of services is a primary motivating factor behind many hospital mergers.
  - Can deliver economic efficiencies and patient safety gains.
- But from medical staff perspective:
  - Which services?
  - Which location?
  - Will the quality of services be the same or better?
  - What are the opportunities for medical staff input into the process?

Consolidation of Services

- Medical staff should have a strong voice in consolidation of services on one campus.
  - MS 05.01.01: Medical staff's leadership role in performance improvement activities.
  - MS 06.01.01: Medical staff must determine if resources necessary to support requested privileges are available.
  - LD 04.04.01: Leaders set priorities for performance improvement activities for hospital-wide activities, staffing effectiveness, and patient health outcomes.

Consolidation of Services

- Fundamentally, where in a hospital services are provided is viewed as an administrative decision.
  - Key issues: maximizing quality, cost-efficiency and synergies.
- Medical staff's most pressing concern is whether services can be safely provided at the campus on which they are being consolidated.
  - Medical staff must be involved in decision-making, or can't be truly "accountable" to the Board for quality of care.
- Opportunities for medical staff input into the process.
  - Which services and where will they be located?

Consolidation of Services

- Potentially significant medical staff burdens
  - Physicians that have chosen to live in one town, but the hospital department for their speciality is in the other town 20 miles away.
  - Geographic requirements in Medical Staff Bylaws - designed to ensure continuity of care - will they apply to both campuses, or just one?
    - Are medical staff members required to respond for call coverage to both campuses?
- Practical issues - Two ED's
  - What if the patient comes to the Riverton ED, but needs stabilizing treatment (to resolve the EMC) that can only be provided at Lander campus?
  - Does the patient have to be "stabilized" under EMTALA in Riverton before being transferred to Lander (or vice versa)?

Conclusion

- The medical staffs of merging hospitals must be involved in the process.
- The nature of the transaction (merger, consolidation, acquisition) matters a lot.
- There are as many answers as questions.

Contact Information

- Nick Healey
- Dray, Dyekman, Reed & Healey, P.C.
- 307.634.8891 (phone)
- nick.healey@draylaw.com