Competition Between Single-Specialty Hospitals and Full-Service Hospitals: Level Playing Field or Unfair Competition?

Dan Mulholland
Horty, Springer & Mattern
Pittsburgh, PA
412-687-7677
Dmulholland@hortyspringer.com

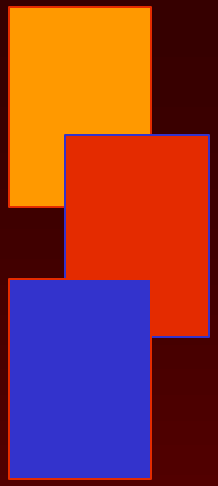
What factors have driven unbundling of inpatient hospital services?

Revenue opportunities for physician-owners

- Technical component revenue
- Increased volume due to single-specialty focus
- Lack of charitable obligations
- Minimal or nonexistent emergency department obligations
- Diagnostic revenue

Regulatory loopholes drive physicians to single-specialty hospitals

- Stark “whole hospital” exception
- Stark “in-office ancillary” exception
- OIG safe harbors for ASCs



What have been the effects of this unbundling?

- Physician ownership interests influence referrals
- Utilization also increases

Full-service hospitals hurt in several ways:

- May be victims of “patient dumping”
- Revenue loss threatens community services
- Staffing shortages become more acute
- ER call coverage threatened
- Peer review ignored or abused
- Board-medical staff relationship deteriorates

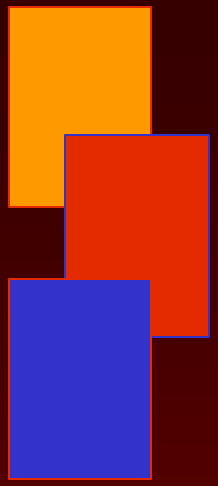
Has quality of care been enhanced as “focused factories” have emerged?

Some literature suggests that outcomes may be better in nonprofit vs. for-profit institutions:

- Crawford, A.G., et al., "Hospital organizational change and financial status: costs and outcomes of care in Philadelphia." Amer. J. Med. Quality, Nov./Dec. 2002; 17(6):236-41.
- Devereaux, P.J., et al., "Comparison of mortality between private for-profit and private not-for-profit hemodialysis centers: a systematic review and meta-analysis." J. Amer. Med. Assoc. 2002; 288(19): 2449-2457.

Some literature suggests that outcomes may be better in nonprofit vs. for-profit institutions: (cont.)

- Devereaux, P.J., et al., "A systematic review and meta-analysis of studies comparing mortality rates of private for-profit and private not-for-profit hospitals." Canadian Med. Ass'n. J. May 28, 2002; 166 (11) 1399-1406.
- Thomas, et al., "Hospital ownership and preventable adverse events." Int. J. Health Serv. 2000; 30(4): 745-761, also published in J. Gen. Intern. Med. April 2000; 15(4):211-219.
- Himmelstein, et al., "Quality of care in investor-owned versus not-for-profit HMO's." J. Amer. Med. Assoc. July 14, 1999; 282(2): 159-163.



Have costs and access increased or decreased?

Cost increases likely as a result of:

- Increased utilization
- Competition for support staff
- Duplication of facilities

Access can decrease as a result of:

- Limited charitable commitment of single-specialty hospitals
- Reduced incentives for physician-investors to provide ER call and related services at full-service competitors.

How has competition been affected for services provided by both the general inpatient hospital and the single-specialty hospital, and for services provided only by the general inpatient hospital?

Is this development any different than the emergence of specialized hospitals for children, rehabilitation, and psychiatry?

Two key differences:

- Traditional specialized hospitals usually serve populations with limited reimbursement
- Physician ownership of more recent single-specialty hospitals skews competition

What actions have general inpatient hospitals taken in response to the emergence of competition from single-specialty hospitals?

Full-service hospital response to single-specialty hospital competition:

- Preferred/exclusive managed care contracts
- Refusal to cooperate with single-specialty hospital
- Community awareness campaigns
- Require disclosure of ownership interest to patients

Denying physician-investors opportunities for various relationships with hospital:

- Board membership
- Medical Staff leadership positions
- Medical Staff participatory rights
- Medical Staff appointment and clinical privileges
- Financial relationships

Do any of these actions involve anticompetitive conduct?

Antitrust analysis of single-specialty vs. full-service hospital competition

Sherman 1: "rule of reason" analysis

Sherman 2: attempted monopolization analysis:

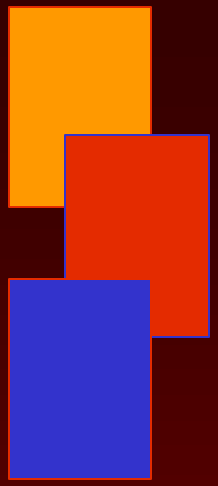
1. Predatory or exclusionary conduct,
2. specific intent to monopolize, and
3. dangerous probability of attaining monopoly power

Cases that have dealt with or discussed hospital responses to competition from physician-owned entities and related issues:

- Cobb County v. Prince, 249 S.E.2d 581 (Ga. 1978)
- Tarabishi v. McAlester Regional Hospital, 951 F.2d 1558 (10th Cir. 1991)
- Rosenblum v. Tallahassee Memorial Regional Medical Center, Inc., No. 91-589 (Fla. 2d Cir. 1992)
- Williamson v. Sacred Heart Hospital of Pensacola, 1993 WL 543002 (N.D.Fla. 1993)
- Kerth v. Hamot Health Foundation, 989 F. Supp. 691 (W.D. Pa. 1997), aff'd 1998-2 Trade Cas. (CCH) ¶ 72,241 (July 15, 1998)

Cases that have dealt with or discussed hospital responses to competition from physician-owned entities and related issues:

- Mahan v. Avera St. Luke's, 621 N.W.2d 150 (S.D. 2001)
- Surgical Care Center of Hammond, L.C. v. Hospital Service District No. 1 of Tangipahoa Parish, 2001 WL 8586 (W.D. La. 2000), aff'd, 309 F.3d 836 (5th Cir. 2002)
- Woman's Clinic, Inc. v. St. John's Health System, Inc., No. 01-3245-CV-S-GAF (W.D. Mo. Nov. 12, 2002)
- U.S. v. United Community Hospital, No. 1-01-CR-238 (W.D. Mich. Jan. 8, 2003)



For more information, see:

www.hortyspringer.com