



DEMONSTRATIVE FOR TESTIMONY OF KENNETH W. KIZER, M.D., M.P.H.

ANALYSIS OF QUALITY-RELATED EFFICIENCIES: ST. LUKE'S ACQUISITION OF SALZTER MEDICAL GROUP

October 21, 2013

Key Qualifications

Education

- M.D., University of California, Los Angeles (1976)
- M.P.H., University of California, Los Angeles (1976)
- B.S., Stanford University (1972)

Current Position

- Distinguished Professor, University of California, Davis, School of Medicine and Betty Irene School of Nursing
- Director, Institute for Population Health Improvement, UC Davis Health System
 - Chief Quality Consultant, Medi-Cal Quality Improvement Program
 - Director, California Health e-Quality Program (HIE Development)
 - Director of multiple other programs

Key Qualifications

Professional Accomplishments and Honors

- Board certification in 6 specialties and/or subspecialties
- Fellow or distinguished fellow of 10 professional societies
- Among fewer than 20 people elected to the Institute of Medicine, National Academy of Sciences, and the National Academy of Public Administration
- Dozens of national and other awards

Selected Former Positions

- **Under Secretary for Health, U.S. Department of Veterans Affairs**
 - Chief Executive Officer, Veterans Health Administration and the VA Healthcare System
 - Widely credited with engineering and leading the largest and most successful healthcare turnaround in U.S. history
- **Director, California Department of Health Services**
 - Nation's largest state health agency (now 3 state agencies)
 - Pioneered managed care in Medi-Cal, California's Medicaid program

Key Qualifications

Selected Current and Former Positions

- **Founding President and CEO, National Quality Forum**
 - NQF is widely regarded as the “gold standard” for evidence-based healthcare quality performance measures
- **Chairman, Medsphere Systems Corporation, Inc.**
 - A leading provider of open source electronic health records
- **Board of Directors, California Patient Safety Organization**
 - One of nation’s largest patient safety organizations
- **Board of Directors, Los Angeles Network for Enhanced Services**
 - A health information exchange organization (public-private partnership) for the greater Los Angeles area
- **Board of Directors, DiagnosisOne, Inc.**
 - A company providing clinical decision support technology for electronic health records

Highlighted Research

400 original studies, book chapters, and reports

- Kizer KW, Dudley RA. Extreme makeover: Transformation of the Veterans Health Care System. *Annual Review of Public Health*. 30:313-339 (2009)
- Kizer KW, What Is a World-Class Medical Facility? *American Journal of Medical Quality*. 25(2):154-156 (2010)
- Kizer KW, Kirsh SR. The Double Edged Sword of Performance Measurement. *Journal of General Internal Medicine*. 27(4):395-7 (2012)

Summary of Defendants' Arguments

Defendants assert that St. Luke's employment of the Saltzer physicians is necessary to achieve:

- The greatest benefits of integrated care
- A requisite core of employed PCPs to offer integrated care
- The highest level of integrated care through the use of health IT tools - *i.e.*, Epic EMR and WhiteCloud data analytics tool
- Aligned provider incentives

Summary of My Conclusions

Defendants' quality claims are speculative and not merger-specific:

- The transaction is not necessary for Saltzer or St. Luke's to provide integrated care
- Defendants' "core" theory is unsupported and St. Luke's has a "core" of employed PCPs without Saltzer
- Independent providers use a variety of widely available EMRs and data analytic tools to facilitate integrated care
- This transaction is neither necessary nor sufficient for transitioning away from fee-for-service – *i.e.*, aligning provider incentives

Achieving the “Triple Aim” Is a Widely-Shared Goal Not Limited to St. Luke’s

Today, the vast majority of American healthcare organizations are working to achieve the “Triple Aim’s” objectives of higher quality, lower cost care and better health outcomes.



**THE TRANSACTION IS NOT
NECESSARY FOR SALTZER
OR ST. LUKE'S TO PROVIDE
INTEGRATED CARE**

St. Luke's Fallacy: Employment Is Superior to Other Affiliations

Defendants' claim:

- St. Luke's employment of the Saltzer physicians yields greater benefits than other affiliation models

My Key Conclusions:

- Employment of physicians has not been shown to be a superior organizational form
- The presence of certain organizational functionalities – not a specific organizational structure or form – are essential to integrate care
- Defendants' view is unsupported by empirical evidence

Integrated Care – Form v. Functionalities

- Full financial integration is not synonymous with effective clinical integration
- There is no standardized definition of what constitutes an integrated delivery system
- Integrated delivery systems do not necessarily produce integrated patient care – *e.g.*, VA early 1990s, DOD-Military Treatment Facilities

There Is a Spectrum of Organizational Structures That Provide Integrated Care



Efforts at clinical integration span a broad spectrum.

Chart 4: Clinical Integration Spectrum

Less Integrated

More Integrated

Bundled payment for single episode of care	Bundled payment for chronic care management	Clinically Integrated PHO	Medical staff includes both employed and independent physicians	Medical Staff includes only (or almost only) fully-employed physicians
<ul style="list-style-type: none"> Fairview Health (Minneapolis) Geisinger Proven Care Program for Coronary Artery Bypass Graft Surgery (Danville, PA) 	<ul style="list-style-type: none"> Fairview Health (Minneapolis) Sutter Health (California) Park Nicollet Health (Minneapolis) 	<ul style="list-style-type: none"> Advocate Health Care (Chicago) Tri-State Health (Maryland) 	<ul style="list-style-type: none"> Presbyterian Health (Albuquerque) Virginia Mason Hospital (Seattle) Geisinger Hospital (Danville, PA) Intermountain Health Care (Utah) 	<ul style="list-style-type: none"> Cleveland Clinic (Ohio) Billings Clinic (Montana) Kaiser Permanente (multi-state)

Source: American Hospital Association

No Empirical Evidence That Employment Is Superior to Other Affiliations

Hwang, et al:

- “[T]here is no clear definition of what constitutes an IDS”
- IDSs come in all sizes and shapes, and span a wide spectrum of types and levels of integration
- IDSs result in higher quality, lower cost care

Tollen:

- “Growing evidence suggests that organized delivery systems do in fact drive quality and efficiency, but because the specific causal mechanism is unknown, it may be too early to tie incentives to individual organizational attributes.”

McWilliams, et al:

- Study comparing independent physician groups to employed physician groups
- Conclusion: Independent physician groups provided higher quality, lower cost care compared to employed physician groups



**DEFENDANTS' "CORE" THEORY
IS UNSUPPORTED AND
ST. LUKE'S HAS A "CORE" OF
EMPLOYED PCPS WITHOUT
SALTZER**

Defendants' "Core" Theory Is Unsupported And St. Luke's Has a "Core" of Employed PCPs Without Saltzer

Defendants' claim:

- The transaction provides St. Luke's with the requisite "core" of employed PCPs to provide integrated care

My Key Conclusions:

- No empirical evidence to support Defendants' "core" theory
- St. Luke's does not appear to know how many employed physicians are necessary to satisfy its own "core" theory
- St. Luke's already has a nucleus of employed PCPs in Nampa without employing the Saltzer physicians

Defendants' "Core" Theory Is "Unsupported" And Thus Speculative

Defendants' efficiencies expert, Professor Alain Enthoven, agrees:

“[W]hat’s the basis for it [the core theory]? And all I can say is it’s a judgment out of unsupported opinion”

St. Luke's Has a Core of Employed PCPs Without Saltzer

- St. Luke's already employs eight PCPs in Canyon County
- There is no reason for St. Luke's to employ an even larger share of the PCPs in Canyon County to establish a "core" of PCPs in that area
- St. Luke's Health System already has sufficient physician leaders to implement quality initiatives, to the extent that is necessary



**INDEPENDENT PROVIDERS USE
A RANGE OF WIDELY AVAILABLE
EMRS AND DATA ANALYTICS
TOOLS TO FACILITATE
INTEGRATED CARE**

St. Luke's Health IT Is Neither Unique Nor Only Available to Saltzer Via the Acquisition

Defendants' claim:

- St. Luke's health IT tools are unique and only available to Saltzer through the transaction

My Key Conclusions:

- Saltzer is already achieving the benefits of using an EMR system without employment by St. Luke's
- The transaction is unnecessary to electronically coordinate patient care between Saltzer and St. Luke's
- The benefits of WhiteCloud are speculative and Saltzer could have access to WhiteCloud or a similar data analytics tool without being employed by St. Luke's

Benefits of Saltzer Using Epic Are Speculative

Saltzer Could Use Epic if it Remained Independent

St. Luke's Affiliate EMR Program allows independent providers full access to its Epic health IT tool:

“Our intent with the affiliate strategy is to actually give [independent physician groups] *full access* to the *full capability* of the EHR”

- John Kee – St. Luke's VP of Physician Services

The Affiliate EMR Program provides independent providers full access to St. Luke's Epic EMR

- Dr. Marc Chasin – St. Luke's CIO

St. Luke's would welcome Saltzer to participate in its Affiliate EMR Program if the acquisition were undone

- John Kee – St. Luke's VP of Physician Services

Saltzer Does Not Need to Use Epic to Coordinate Care with St. Luke's

HIE Assessment: IHDE Value and Opportunity for SLHS

June 26, 2012

St. Luke's has fully endorsed and supported the initial and continued development of IHDE as the statewide Health Information Exchange (HIE). The participants in IHDE include St. Luke's Health System, St. Alphonsus Regional Medical Center, Kootenai Health, St. Joseph's RMC, St. Mary's Hospital, Clearwater Valley Hospital, Sny Leasing Hospital and 650+ individual physicians and support staff. Medical groups that subscribe to IHDE on behalf of their physicians include

Value to St. Luke's Health System

- *Enables cross region interoperability between EPIC and non-EPIC health record systems*
- *Provides seamless access to data for St. Luke's providers and support staff during EPIC transitions*
- *Reduces the amount of "connections" between disparate systems*
- *Integral part (as HIE) of ACO landscape*

Recommendations

Current Direction and Future Plans

IHDE has been continuing to review the needs of its subscribers and to develop their business case to adapt to the changing healthcare landscape. This new direction includes:

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SLHS000193297
CX0205-001
Plaintiffs' Exhibit 1575

Purported Benefits of WhiteCloud Can Be Achieved Without the Transaction

- WhiteCloud can be used by independent physicians
 - WhiteCloud currently is pulling data from Saltzer's eClinicalWorks EMR
 - St. Luke's plans to use WhiteCloud with the independent providers in Select Medical Network and its ACO
- If independent, Saltzer likely will have access to other widely-known and proven data analytics tools

Aligning Provider Incentives Does Not Require Employment

Defendants' Claim:

- Provider incentives to provide quality care are more effectively aligned through employment

My Key Conclusions:

- The St. Luke's/Saltzer PSA does not align physician incentives to provide quality care
- Employment of physicians does not *a priori* align incentives
- Alternative payment structures, including risk-based contracting and pay-for-performance, can be accomplished without employment

St. Luke's/Saltzer PSA Does Not Incentivize Quality Care

(a) **wRVU Compensation.** St. Luke's shall pay an amount to Saltzer per work RVU ("wRVU") generated by Saltzer physicians as indicated in Attachment A to this Exhibit 5.1.

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into effective December 31, 2012 ("Effective Date") by and between St. Luke's Regional Medical Center, Ltd., a tax-exempt Idaho nonprofit corporation ("St. Luke's"), and Saltzer Medical Group, P.A., an Idaho professional association wholly owned and operated by licensed physicians ("Saltzer"). St. Luke's and Saltzer are each referred to herein as a "Party" and are collectively referred to herein as the "Parties" to this Agreement. The term "Saltzer Physicians" as used herein shall refer to those physicians providing medical services as agents of Saltzer for the benefit of St. Luke's.

RECITALS:

A. St. Luke's owns and operates medical centers and other health care facilities in and about

7.1 **Independent Contractors.** St. Luke's hereby engages Saltzer as an independent contractor to render Services through Saltzer Physicians, and Saltzer hereby accepts such engagement. **St. Luke's will not impose duties or constraints of any kind which would require Saltzer Physicians to infringe the ethics of the medical profession or which would compromise the independence of Saltzer Physicians' medical judgment.** It is understood and agreed that in the performance of all Services under this Agreement, **Saltzer and Saltzer Physicians shall at all times act as independent contractors of St. Luke's and the same are not agents or employees of St. Luke's for any purpose.** Further, it is expressly understood and agreed by the Parties that nothing contained

PROFESSIONAL SERVICES AGREEMENT - SALTZER MEDICAL GROUP, PA PAGE - 1

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CX0005-001

Joint Exhibit 24

Independents Can Be Incentivized To Provide Quality Care

- National Programs: Medicare Shared Savings Program
- In Idaho: Saint Al's Health Alliance, BCI
- St. Luke's plans to implement risk-based contracting through the Select Medical Network

Conclusion

Defendants' quality claims are speculative and not merger-specific:

- The transaction is not necessary for Saltzer or St. Luke's to provide quality care
- Defendants' "core" theory is unsupported and St. Luke's has a "core" of employed PCPs without Saltzer
- Independent providers use a range of widely available EMRs and data analytic tools to support quality care
- This transaction is neither necessary nor sufficient for transitioning away from fee-for-service