


## THE NEW WORLD OF JOINT VENTURES

A changing economy brings about new and creative ways to form partnerships

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**MORE THAN EVER**, we are seeing the need for ambulatory surgery center (ASC) companies wanting to partner with physicians to initiate honest dialogue early on in the process of structuring a private placement offering. Such dialogue includes discussions about the goals and objectives of the offering, as well as the specific challenges. Many physicians have experienced personal financial loss and they are sensitive to the current economic state of affairs. The good news is that ASC partnership opportunities often outperform more “traditional” forms of investing and this reality is not lost on the physician community. Along with the possibility of higher than average returns in ASC deals comes the challenge of increasing thresholds of guarantees for all parties involved, covering a broader landscape of the debt service.

In years past, it was much easier to secure financing for the line of credit, equipment and lease guarantees to develop a surgery center joint venture. The financial institutions are now taking a much harder look at the ASC management companies, the management teams and their management history when negotiating financial terms. In many cases, lenders are requiring recourse loans to protect themselves; whereas, in the past there have been more opportunities for non-recourse loans to finance these projects. The reason this change in lending policy presents a challenge to management companies whose model is based on a joint venture structure, is that now the physicians partners are being asked to personally guarantee their pro rata portion of the front end debt required to get these projects off the ground.

# the executive suite

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In the marketplace, we see this trend preventing some physicians from participating in a joint venture because in some cases they are required to personally guarantee 200 percent to 300 percent more than their initial cash investment. We are finding many physicians are not as comfortable signing on for additional debt beyond their initial cash outlay without an intimate knowledge of the mechanics of the deal and a significant level of trust with the ASC company and/or hospital/ASC joint venture partner.

Some of the terms of the debt service require patience and diligence on the part of the ASC representative negotiating on behalf of the entity. Yet, we are still seeing an active deal market with a successful level of participation from the physician investors. To overcome the recourse debt hurdle, ASC management companies are getting creative. One solution for a credit-worthy ASC manager is to guarantee the start up debt and charge a surety fee to the partnership. The surety fee, which is charged back to the partnership, is established at a fair market value and is similar to an insurance policy for the physician members. This arrangement can eliminate the need for the physician investors to personally guarantee additional debt, which makes these investments more attractive.

Securing the "right mix" of specialists as owners is also a strong selling point to potential buyers of the current center as this bolsters the physician's commitment to perform procedures at the center. Having a restrictive covenant in place also enhances the outlook to potential buyers for future success.

Another trend we are seeing being discussed much more frequently by both hospitals and ASC companies who recognize the benefits of part-

nering with their medical community is the notion of investing in the real estate component of medical facilities and not simply in the operations. With the threat of legislation being passed that might preclude prospective physician ownership in designated medical facilities, conversations are being discussed with prospective physician partners about the unwind provisions of the private offering memorandum. I was recently at a hospital meeting where this exact discussion was being had among 20 current physician partners and an executive vice president of a large hospital system. One of the physicians offered the idea of swapping current shares in the whole hospital for newly created shares in a new medical office building adjacent to the new hospital should an unwind actually occur. The majority of the physicians in the room liked this idea and it was noted for further consideration.

For many of us in the ASC industry, we have thought that ASC partnerships would be immune from this type of legislative threat. An Office of the Inspector General-published Advisory Opinion 08-08 seemed to substantiate this position by indicating an interest in promoting, rather than restricting, the development of physician-hospital ASCs, so long as appropriate measures to protest against fraud and abuse are included. The OIG approved an ASC joint venture owned by a nonprofit hospital and a group of surgeons, even though the joint venture did not satisfy any applicable anti-kickback safe harbor guidelines for the ASC. Yet, the June 2008 MedPAC Report to Congress titled, "Reforming the Delivery System" stated that, "physicians who invest in facilities have a financial incentive to refer patients for additional admission or procedures...." The key here is the inclusion of the term "procedures" and

not just admissions. While many feel this threat is unlikely in the short-term, ASC companies and outpatient hospital partners are encouraged to lobby at both the local and state level. As ASC Association president Kathy Bryant has advocated, members of Congress need to understand the benefits of ASCs: cost-effectiveness, high quality care and community benefits. The association also offers "tool kits" on their Web site at [www.ascassociation.org/openhouse](http://www.ascassociation.org/openhouse) for the industry to utilize as a guide in developing their own events.

Having completed over 200 health-care-related syndications, we at The Securities Group feel that these types of investments remain strong as viable alternatives or supplements to a diversified portfolio for physician investors. Successful deals we see created are approached with a few factors: the ability to be flexible and open to alternative scenarios to the "traditional model" of private offerings; to consider expanding the partners involved to include hospitals and/or real estate developers especially if real estate is included beyond the typical operations investment; initiating and maintaining clear, honest dialogue among prospective investors as a deal is being structured and soliciting their feedback throughout the development process; targeting and securing the right mix of physician partners; being both patient and creative with financial institutions as financing is being discussed and secured; and being active among local and state legislators about the benefits of ASCs for the community and the healthcare system as a whole. ●

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