



## legal matters

**Nibbling the Bait** Consider all the aspects of recruitment incentives before deciding which are the most valuable. Tax considerations and your personal situation will probably make a difference in which ones you want.

BY JOHN ALLEVATO



Recruiting incentives for physicians is a topic which always is near and dear to the

hearts of physicians who are looking for their first job or for a better opportunity. While incentives are the norm in physician recruiting, the extent and amount of such incentives vary widely among the organizations which recruit and employ physicians.

The nature and amount of the incentives offered depends on more than just the generosity and whim of the recruiting entity. Factors affecting the incentives which can be offered to entice physicians to a location include whether the recruiting entity is a non-profit institution or not,

what the recruiting entity has done for similarly situated physicians in the past, and the type of geographic location in which the physician will practice. The particular specialty of the recruited physician also plays a role, and whether that specialty is currently offered in the area to which the physician is being recruited.

The recruiting incentive arena undergoes a fair amount of scrutiny from government regulators, especially when non-profit entities are involved. Any payments made to private persons, such as recruited physicians, by

a non-profit entity must pass through a maze of inquiry from the IRS, the Inspector General and other regulators looking out for fraud and abuse and other abuses in the system. These hurdles were discussed in "Fair or Foul?" in the November/December 1998 issue of *UO*.

Here we will discuss incentives further, and consider them from a slightly different perspective—that of their relative value to the physicians who receive them. To properly assess the value of an incentive that is offered to you, you must take into

consideration tax consequences, regulatory hurdles, and your own negotiating position, among other things. This is the approach that your attorney or health-care adviser must take when you consult with them about such matters.

### **When incentives are offered**

Rather than first discussing what is offered and how much, let's consider under what conditions a recruiting entity may proffer a recruiting incentive to a physician. This will be determined to a large degree by the type of organization that is recruiting and the practice for which the physician is needed.

Knowing the nature and history of the organization that is recruiting you is crucial to determining what incentives they may offer. Before you can assess what

---

**The amount of the moving expenses paid to you is income, but you should have an offsetting deduction for actual amounts of moving expenses paid. Hence, moving expenses are essentially a 'tax free' benefit.**

---

## LEGAL MATTERS

*Continued from previous page*

you may be offered, you will need to know whether the recruiting entity is a non-profit organization or not. If it is a medical practice, learn about the hospitals and clinics where you are expected to get on staff, and find out their taxable status. This is important because while there is more guidance from the federal government on what is acceptable and not acceptable for a non-profit entity to pay out to a recruited physician, there also are important limitations.

Next, find out whether incentives are being offered, or have been offered in the past. You can ask other physicians who have recently moved to the area about this, or you can ask the recruiter directly. Here is where some diplomacy may come in, since if no incentives are being offered, you may gently suggest that your specialty is one which is new to the area, or new to the medical practice or hospital and that it is not unusual for such incentives to be offered in these situations.

Finally, assess your negotiating position. If you are being brought in as the fifth pediatrician in a pediatric group in a large, suburban area, don't expect too many recruiting incentives to be offered to you. However, if you are a cardiologist going to a rural hospital which does not currently offer cardiology services, you can be comfortable that your negotiating position is pretty good and you're more likely to receive some incentives to bring your skills to that area.

If you're getting well into the negotiating process and the wooing party hasn't brought up the subject of incentives, you should. The time to start these discussions is before you receive an offer from the recruiting entity.

### **Which incentives?**

The whole discussion of recruiting incentives, of course, centers around which ones you might hope to receive. Starting with the easiest, most desirable, and most commonly offered, let's discuss cash. Cash comes in

many forms. It may be in the form of medical director pay at a hospital, student loan payoffs, loans forgiven over time, or other arrangements.

When a recruited physician is confronted with various ways of getting cash, she will need to consider the area where such an incentive will do the most good. That decision is a function of the physician's circumstances. For example, is this your first medical job? How much do you have outstanding in student loans? Do you have young children? Does your spouse need to find work? Does he work in a medically-related field? Do you need money for a down payment on a house?

Once your circumstances are considered, you and your advisers can make a better assessment of the approach to take where certain recruiting incentives might become available. It also is at this point that the recruited physician needs to understand how most of these incentives are taxed by the federal government. For example, assume a non-profit hospital makes a \$60,000 loan to a new physician moving to an area to provide medical services. The terms of the loan are that, over a three-year period, one third of the loan is "forgiven" by the medical institution each year if the physician remains practicing in the local community. This loan may be used to pay off student loans, make a down payment on a home, or start up a private practice.

This advance should be evidenced by a note, and may bear interest. As increments of the loan are forgiven by the physician remaining in the community, the physician must recognize the forgiven amount, and any interest it bears, in his income for that year. That means that \$20,000 (plus interest) will be included in the physician's income for each year of the loan's forgiveness. Because of this, it is advisable for the recruited physician to set aside at least one third of the total recruitment package at the outset to help pay these tax amounts as they

become due in subsequent years.

Moving expenses are another story. For example, if your moving expenses are to be paid (and you should ask for this in just about every circumstance), the amount of the moving expenses paid to you is income, but you should have an offsetting deduction for actual amounts of moving expenses paid. Hence, moving expenses are essentially a 'tax free' benefit. Keep good records so you can justify your write offs.

Depending on the type of practice you may be entering and what is common for your locale, consider asking for an income guarantee. This type of incentive guarantees your income for a specified period of time, and can be provided in the form of loans which can be forgiven if you remain in the community for a specified period of time. This incentive pays you only if your income does not reach certain levels agreed to ahead of time. Income guarantees are valuable for newer physicians who may take time to build up a practice or referral base.

Also inquire about medical directorships at the local hospital. While the days of medical directorships paying astronomical sums are gone (especially with regard to non-profit institutions), they are still widely available in the \$5,000 to \$15,000 range. They also usually come with administrative duties, so pay attention to what you must do to earn the incentive.

### **How much should you get?**

There is no nationwide average or routine pattern of incentives which will enable anyone to easily answer this question. Hiring an adviser familiar with the incentives offered by the local hospitals would be a good idea, since that person has presumably seen the incentive packages which the institution has offered to physicians in the past.

As noted above, assessing the strength of your negotiating position is a good starting point. Are you bringing a new specialty to the area? Are you bringing a new specialty

## LEGAL MATTERS

*Continued from previous page*

to the hospital so they can compete with another hospital in the area already offering the service? Are you moving to a rural area which may be medically underserved (which translates to fewer regulatory limitations on the incentives which the organization may offer)? Do you offer the recruiting hospital or group something else in terms of your expertise, training, or visibility in the community? All of those factors work to your benefit when you're negotiating with the recruiting entity.

The more you know about incentives that may be available and how badly the organization wants you, the more realistic you will be at the negotiating table. Make sure that these matters are covered before you commit to join a group or hospital, as you have more leverage at that time. Finally, don't be afraid to ask. You won't end up with any less than you have. ■

*John Allevato is a member in the Charleston, West Virginia, law firm of Spilman Thomas & Battle, PLLC, where he practices business and tax law. He routinely advises and counsels health-care entities and physicians. He is a member of American Health Lawyers Association and can be reached via e-mail at [jallevato@spilmanlaw.com](mailto:jallevato@spilmanlaw.com).*