

Health care boutiques gear up for 'Obamacare' crunch

The consolidation of medical providers has put a strain on some smaller law firms

By David Ruiz
Daily Journal Staff Writer

Harry Nelson's longtime clients were disappearing. One by one, the small, independent physician groups he represented over the years were joining larger health care organizations amid the implementation of the Affordable Care Act.

So Nelson's health care-focused Los Angeles boutique, Nelson Hardiman LLP, reevaluated its strategy. In March it announced an alliance with Washington, D.C.-based national health care law firm Epstein Becker & Green PC, which also has an office in Los Angeles. The two plan to staff client matters with each other's lawyers if clients permit and routinely meet to explore new avenues for service.

"Ten years ago, I had literally two dozen small primary-care groups practicing pediatrics or with a family practice or internal medicine," Nelson said. "The health care market place is evolving, and it's eliminating a lot of the small businesses that were our bread and butter."

The passage of the landmark health law has put increased pressure on small physicians groups to join accountable care organizations, or ACOs — groups of doctors and health care providers that band together to provide more coordinated care. The trend toward growing health organizations bodes well for larger law firms with national health care practices, such as Jones Day, Foley & Lardner LLP and Ropes & Gray LLP. But it's created uncertainty for many small firms that specialize in health care.

Epstein Becker & Green in 2011 lost seven health care specialists to Crowell & Moring LLP, leaving its San Francisco office with only six lawyers, the majority of whom are labor and employment specialists.

Fortunately, its D.C. office's proximity to the Centers for Medicare & Medicaid Services, or CMS, which oversees the implementation of the ACA and the approval of ACOs, was a very attractive feature for Nelson Hardiman.

"We need to be able to service clients with a high degree of sophistication across more issues.... It's not enough to just have experience in Medicare issues," Nelson said. Clients expect lawyers to have resources in Washington, D.C. due to the growing importance of CMS, he added.



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Harry Nelson's boutique, Nelson Hardiman LLP, teamed up with another firm to increase competitiveness.

Henry R. Fenton, managing partner of small health care firm Fenton Law Group LLP, a recent spinoff of Nelson Hardiman, said his firm is representing both ACOs in accepting small physician groups and physician groups in joining larger health groups.

"We understand that physicians need to be credentialed by large groups and are entitled to fair procedures and we know what that entails," Fenton said. "That will create legal issues for us to handle, and we're there to give services and provide advice commensurate with the law and with fairness."

Large, national law firms have been keen to build a health care practice to service the sector. But because most health care work is transactional and contractual, providers are too cost-sensitive to pay the high billing rate structures that many national firms are built on, said San Francisco-based Nossaman LLP partner Richard B. Spohn.

"You're not going to find anybody in Latham that does the routine, regulatory, legislative or contractual kind of 'meat and potatoes' work," Spohn said. "They'll do the exotic litigation but not the day-to-day stuff."

Still, increased health care provider consolidation could create a need for a "one-stop shop" solution to companies' legal problems, said Los Angeles-based Paul Hastings LLP partner James F. Owens.

"When you've got bigger companies, there are going to be more sophisticated needs," Owens said. "Bigger transactions and a need for more corporate and tax expertise and antitrust and employee benefits and occasionally some litigation help."

Owens acknowledged that the health care business is still "middle-market" work but added that Paul Hastings also represents many life sciences and pharmaceutical companies in matters that can demand high billing rates.

Los Angeles-based Miller Health Law Group founder Jeremy N. Miller said that, in the long term, he can see fewer and fewer independent practices sticking around. Those that survive will also provide more work for Miller's team.

"For entrepreneurial types, there are new opportunities to get into a create new businesses in telemedicine, mobile health tech and new types of joint venture agreements," Miller said. "They need to coordinate care and control costs, and for that they need sophisticated health care counsel."

Looking forward, Miller said his firm will handle the workload most likely with internal growth, but that a merger isn't completely out of the question.

He said the firm won't need to partner with any others though to stay afloat.

"If we don't affiliate with another firm it's not like we're going to be left in the dust because of health care consolidation. We're not seeing that."