Speaker 1 (00:03):

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Speaker 2 (00:17):

Podcast discussing updated legal news, evolving methods of providing legal service and law practice issues. My name is Mary Vandenack founder and managing partner at Vandenack Weaver, LLC. I'll be your host. As we talk to experts from around the country about closely held business tax trusts and estates, legal technology, law firm, leadership and wellbeing. Before we start today's episode, I want to thank our sponsor. Here's the message from interactive legal.

Speaker 3 (00:51):

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Speaker 2 (01:40):

Today's episode is on current trends in health care law. My guest is Stephanie Sharp, who has recently joined us at Vandenack Weaver. Stephanie has an extensive background in the healthcare arena, as well as working with businesses. We are going to talk today about what to expect as far as changes in the healthcare law sector. Thanks for joining us today, Stephanie, thanks for having me. So, what do you think a few of the top trends in healthcare this year we'll be?

Speaker 4 (02:09):

You know, I think with COVID 19 and the pandemic, we really saw, an adoption and a move towards enhancing telemedicine and the use of technology in the delivery of care to patients.

Speaker 2 (02:20):

So do you think there's going to be any changes to fee models?

Speaker 4 (02:23):

I think so. You know, I mean, we've, there's been this push from the federal government to try to provide higher quality care at lower costs. And so we're seeing sort of a move towards capitated rates. Value-based reimbursement pay for performance, right? Having the quality initiatives in place and then paying for quality metrics, et cetera. I can see that continuing to be a trend and into the future.

Speaker 2 (02:47):

And I understand there's some reform going on in this stark and, and, uh, kicked bite kick back areas. What is that looking like? Yes, there was

Speaker 4 (02:55):

Extensive, legislation pushed, pushed out that, revamps, stark and anti-kickback, and in a lot of ways it brings it into 2021 where, you know, the age of technology and the interoperability of electronic health records and the sharing of information. And so, it provides, you know, some new definitions for different key terms. Clarification's on old rules and really allows for, you know, the movement towards a more technologically advanced delivery of healthcare.

Speaker 2 (03:24):

So do you have a specific example you might be able to give on the technology first, let's say telemedicine has grown. Right. And I think one of the areas was that mental health providers there were issues with them. Is that possibly a change or is that

Speaker 4 (03:40):

Well, and I think even with COVID, I mean, we've even pre COVID. There was a trend towards, you know, physician and healthcare provider burnout. And I think with COVID, we, we enhance that even more. And so, I think that it's, you know, and I think everyone's, really kind of seeing that it's important to address and identify the healthcare or of the providers themselves and their mental health and wellbeing. And so absolutely, and I know there are some initiatives in place to try to enhance that for our providers.

Speaker 2 (04:07):

What is the current trend in relation to affiliations?

Speaker 4 (04:11):

Interesting because there's a lot of articles out there on, you know, we're seeing, increased movement of physicians, across health systems, but that at the same time, you're seeing articles that state, that there's been an increase in the number of physicians who are now employed by health systems versus independent following the pandemic. But at the same time, you're also seeing increased rates of physician dissatisfaction with employers, maybe spawned by the additional workload of COVID for some practitioners. And so there's just movement in the industry. I mean, I can see it going both ways. Some practices are leaving, and others are going out to, to become independent et cetera.

Speaker 2 (04:46):

Well, we've certainly seen informed, I think in both of our practices, more independent healthcare providers this year than we had for a while.

Speaker 4 (04:55):

Absolutely. And I think, you know, Omaha in the Midwest is kind of a market that's always been kind of ripe for that. We've always had a really good, strong, um, independent physician practice presence in our state. Um, and I think that the physicians are happy doing that. And I think that, um, you know, I could see, you know, especially with, you know, you saw some of the bonuses that maybe the large health systems wanted to push out this year, being held back. I could see physicians getting dissatisfied with that. I think the other added component of it is when you get large corporate health care systems in play that, you know, have offices that aren't local, that can kind of break down that relationship

between the facility and the provider, which really can, you know, spawn or spur a physician or physician group to go out on their own.

Speaker 2 (05:34):

Because I know one of the questions that I've gotten asked a lot in the last year when asked to review an employment agreement going into one of the major institutions is, well, just the thing I care most about is how I get out of this agreement. If I decide not to stay, I want to understand the termination provisions

Speaker 4 (05:53):

Absolutely the termination. And then what restrictive covenants you might have. I mean, I think, you know, we're a little bit lucky in Nebraska because we've got some, you know, laws on the books or, you know, some case law that really kind of frowns upon that non-compete, but in other states those non-competes and the non-solicitations in the region that they can, um, basically carve you out of working in can be very large. And so it's very important for physicians, I think, to, to review those upfront and negotiate those.

Speaker 2 (06:18):

And we see those, we see agreements from all across the country for a variety of reasons and they dramatically vary. But sometimes what we see is the same, like one company that's in multiple states sticks the same provision in all of these agreements without considering the state specific in Nebraska, that's kind of advantageous. Sometimes I'm like, yeah, leave it in there because in Nebraska, they're just going to act it out. Right. And Iowa, they're going to, they might, what do they call that? They will take you to the red pencil rule and rewrite it for you, but each state is different. So it's always worthwhile to make sure before you sign an employment agreement, particularly to the extent there's a non-compete wherever you are in the country to have that looked at, to see how it's going to apply to you.

Speaker 4 (07:00):

Absolutely. I mean, I think that, you know, maybe 40 years ago, 50 years ago, and this is true for maybe all industries, there was a longer term longevity of, um, employees and employers working together. And I think, um, you know, in the current state, you see, you know, physicians depart more frequently moved other health systems, um, et cetera. So I think it's very important as you said, to have that upfront review. And even if you're not going to negotiate your agreement, or you're not going to make any changes to understand at least what the ramifications are, what you're actually signing very important.

Speaker 2 (07:27):

So what pat do you think COVID-19 is going to have on the health care sector in a go-forward basis over the next few years? You

Speaker 4 (07:35):

Know, I think that with COVID-19 we saw sort of a change to maybe the standard of care as it relates to sanitation and, um, you know, uh, the spread of germs and airborne pathogens, et cetera. So I think that's impacted. So we've, um, I think we're still going to see kind of the fallout of COVID and lawsuits. And I mean, we live in a litigious society anyway, but I think now we're going to see an increase, um,

potentially in claims. I think the telemedicine piece is going to continue to, to stay at the forefront, um, as well.

Speaker 2 (08:03):

So we are planning on a separate series to cover asset protection planning in general, but that's a really important topic. So I like to at least touch on that whenever I can. How are the new delivery models impacting reimbursement? Well,

Speaker 4 (08:20):

So, with reimbursement, I think one really big area that we've moved into is sort of the telemedicine as we discussed and, you know, some states and you're kind of seeing legislation get pushed out post pandemic around. This is, you know, parody for the coverage of telehealth. Not all, not every state has true parody. Nebraska is one such state. They don't mandate that you pay the same amount for an in-person versus a telehealth visit, but other states do. And I think that we're going to see a push potentially for, um, greater parody with respect to telemedicine visits and payment. There's also a really big push to include additional codes in that coverage so that we can start to enhance, you know, and provide care in other ways in other service lines, as well as how it has been traditionally, you know, given.

Speaker 2 (09:03):

So are we seeing changes in the employment model models and rules in the healthcare industry? So

Speaker 4 (09:09):

I think one of the big pieces with the employment is just, um, you know the concept of the remote worker. I mean, I think in the healthcare sector, some of that isn't always applicable because we have the direct patient care, but especially in the healthcare sector where, you know, HIPAA is implicated and you've got maybe your, your backend staff working from home. I mean, I think that absolutely the employment arena has been impacted with COVID certainly.

Speaker 2 (09:31):

And I have heard you talk about predictive analytics in providing care. Can you explain that? Yeah.

Speaker 4 (09:37):

So Mount Sinai had an article come out and they created sort of a machine driven predictive model to identify patients who are at highest risk for significant negative health impacts following a COVID diagnosis. And I think that what we're going to see is sort of a push. I mean, that was well adopted, well received to kind of triage maybe our, acute disease or chronic conditions and figure out, you know, predict, use predictive analytics to try to care for patients and be more, um, pragmatic about our approach perhaps.

Speaker 2 (10:06):

And what do you anticipate happening with vaccination mandates? That's been a really interesting area,

Speaker 4 (10:12):

You know, I think that's a huge hot topic right now. And while it's permissible, I think you've got a lot of public opinion on, on what, whether it's, you know, should be allowed or not. Recently I had a visit with a nurse friend and, you know, she had indicated that her local health system, if they pushed out a COVID mandate at her organization, she'd be retiring early, which we already have a nursing shortage. And so, it'll be interesting to see how, employee response to it drives some of the organization's organizations mandates.

Speaker 2 (10:46):

And I think we've seen some employers who are saying, we are going to strongly recommend it. We're going to inform we're going to, you know, help find ways to get people vaccinated, but we're just not going to mandate it. It's kind of been the trend so far so far, but if you continue to see you take that are super infectious, that might change particularly, particularly for the healthcare industry.

Speaker 4 (11:08):

Right. Well, I mean, right now, I know for, you know, some of the large health systems here, your annual flu vaccine and your tuberculosis test is a requirement annually, unless you fit within some of the, you know religious type of outliers it'll be interesting to watch,

Speaker 2 (11:25):

Well, we've had a change in the presidency and other than that, we see a lot less tweets every morning on the news, what might happen in the healthcare industry related to that change? Absolutely.

Speaker 4 (11:37):

I think every president understands that healthcare is such a critical and large piece of the federal spend. Biden's looking at carrying forward initiatives to create price transparency. And just recently CMS just released a call for comments on a rule relating to price, transparency, and surprise billing. there are several other initiatives as well that the president could also put into play that could impact our system. we're seeing a lot of new legislation or proposed legislation that impacts tax rates, capital gains rates, inheritance type taxes and all of that. although not related to healthcare, it's an important, I think, initiative coming out of the white house. he's also trying to expand the reach of care and the ability for individuals across the board to get health insurance that's low cost. And so, it'll be interesting to see kind of how that gets rolled out. additionally, the Supreme court just upheld the ACA recently the affordable care act, which was intended to increase the eligibility of individuals for insurance. So all of that is sort of at the forefront of the president's initiatives.

Speaker 2 (12:42):

And that was okay. A little bit of a surprise to some people in that they thought the conservative court appointed by Trump was going to not uphold the ACA. Absolutely. So, what trends do you think will impact healthcare providers individually?

Speaker 4 (12:56):

I Think that we kind of touched on it, but just the movement of physicians and then just the added stress on healthcare providers and the strain on the system with additional caseload and canceling elective procedures. And I think there's kind of a, backload even for some providers who maybe took six or eight months and didn't see any elective patients. And so, I think that there's going to be additional, stress potentially in higher and higher patient volumes.

Speaker 2 (13:21):

Well, and you touched on the Biden tax proposals and the effect that, that is having, is there specific things, I mean, it, healthcare providers even should maybe be looking at their personal estate planning,

Speaker 4 (13:33):

Absolutely with the reduction in the threshold that they're proposing for transfers and then with the elimination of the step-up in basis. I think that if those go into play and the capital gains rates, I think that it's just an important time to reevaluate your, financial position and the assets you hold. your estate plan to ensure that you're, you've got some tax saving mechanisms in place. I can tell you that for simple estate plans potentially, during this whole period where the inheritance and gift or inheritance taxes were, so the exclusions were so high or deductions were so high you maybe approached it a little differently. Well, now I think we need to reevaluate that because it's pulling tax into individuals that maybe didn't have to face it previously.

Speaker 2 (14:15):

And it's a balance of all the various different types of taxes. I was kind of laugh as somebody who does primarily tax work about the number of taxes I dealt with when I started practicing versus today. And I think if people really knew the number and types of taxes that affected them, they would be just in shock. So we've seen it in the healthcare industry lately, a shift to mid-level providers apps, what is going on with that? And how does that affect healthcare?

Speaker 4 (14:41):

A lot of emergency orders were put in place in various states to allow maybe people that individuals APRN mid-levels, that weren't licensed in the state to practice in that state. There's also been a really strong push how collaborative, um, sharing so that nurses can practice across state lines. I also think that you're seeing sort of the, the amount of care that a mid-level can provide, um, sort of being potentially expanded in some respects because to, to defray some of the, um, you know, the workload on the physicians themselves. And so, um, yeah, I see that continuing as a trend

Speaker 2 (15:12):

And there can be both positives and negatives to that. We just don't know what that's going to look like yet. Absolutely. And one of the things that I understand is that from the perspective of, let's say malpractice, you know, my understanding is that people are less likely to Sue a nurse practitioner for malpractice.

Speaker 4 (15:28):

Yeah. And a lot of that is because, you know, under the statutes, I mean, they give you their supervising physician is, is basically usually by state statute responsible for the care of the patient at the end of the day. And so, their liability is being pushed to the physician. I know that has been kind of common in our state. it'll be interesting to see, you know, whether with enhanced independence there becomes sort of more liability on the mid-levels.

Speaker 2 (15:56):

So you talked earlier about price transparency as a trend, and I'm kind of interested in your thoughts in that generally. And I'm gonna expand my question a little bit, just because I was at a meeting just

recently where a guy handles is involved in the self-insured plans. And the business owner at that meeting was very aware of the costs of all of the care, how much, you know, it costs to do each of the procedures, things like that. But I know when I had surgery a year or two ago, I tried to get a copy of the bill and they were like, why do you care? The insurance paid it. I'm like, I want to know how much it costs because I pay this insurance premium every month. So when you say price transparency, who is the transparency to cause I'm questioning whether there's any true transparency to consumers,

Speaker 4 (16:45):

That's the hard part here. And I think that independent visit like independent groups that are doing mostly CPT, coding and billing, have a much better handle on what their inputs and outputs are and on their expense side. And they can break things down and tell you how much it actually costs for a procedure. It gets more difficult when you get on the facility side with the DRG payments, because they're just a bundled payment for everything on the facility side. And at the, you know, when you look at the accounting at the healthcare facility level, I mean the way they do their, um, you know, coding for everything, it doesn't necessarily allocate some of the backend expense into the procedure. And so I think the healthcare systems themselves, like the hospitals are struggling with what it actually costs because I don't know that they necessarily have the data to provide.

Speaker 4 (17:24):

And I think that was kind of the rub when Trump started, started to push this out, was like, I'm sure the facilities were all kind of thinking, like, we don't even know what this is. I mean, and when you think about negotiating your payer contracts, you know, you have your Medicare rates, your Medicaid rates, and then each of your individual payer contracts with your, you know, your, your private insurance blue cross blue shield will provide you with a different type of rate individually negotiated, not shareable between the companies. And so, you know, even, you know what you're getting for your hip replacement from blue cross versus Medicare versus, um, Cigna or Aetna, it it's different across the board too. So your, your payments coming in are different. And so, it's a difficult number to get to be what I am. What I, my interpretation is

Speaker 2 (18:04):

I understand is like, you know, as somebody who went to say physical therapy during the last year and has gotten to know the physical therapist, and she'll talk about the difference in reimbursements and what codes they can submit, if they're submitting for company a versus company B versus company C and I'm sitting going like, really. And so I, again, at this meeting that I was at recently, and it was a suggestion by a guy who's been in the healthcare industry a really long time, which I found interesting. And he said, what we ought to do is have the reimbursement rate for all companies. So each of these different companies, as I understand it can go and negotiate different rates. So insurance company can negotiate different rates and insurance company B, and his thought was, well, what if everybody had to use the Medicare rebate? Wow.

Speaker 4 (18:47):

I think that would put a lot of hospitals out of business. Actually, if you look at your payer mix and you hate to discuss it, but Medicare pays low and so many hospital systems, although they won't, you know, it's not usually publicly disclosed are, you know, able to care for the Medicare patients because it's costing them, you know, a dollar and 20 cents for every dollar of Medicare money that they make, for

example. And so the commercial payers are basically supplementing and allowing for them to stay afloat.

Speaker 2 (19:10):

So the insurance companies would have to they'd make a lot more money because they would be reimbursing less and they probably wouldn't reduce their premiums. Right. And the hospitals would go out of business, but somewhere in between there, if we get the Medicare rates up that I just thought it was a reasonable where it was instead of a one payer system, the comment was a level of payment that, you know, a Ford with these features is going to cost this much, no matter where you buy it, which isn't even true of buying a Ford. Exactly. But it was just an interesting concept. So we've chatted a little bit about the wellness challenges for professionals in general healthcare in particularly, and we're planning on doing a series of podcasts on that, but we'll, you know, you talked a little bit about that earlier, but will, will wellness and mental health be a focus?

Speaker 4 (19:57):

I think so for sure. I mean, I think physician burnout, I mean, we, you know, locally have seen, you know, re a rising rate of, um, you know, um, suicide and you hate to talk about it, but it's something that I think needs to be brought to the, to the forefront of the conversation. And I think that it's important for us to support our health care providers and for them also to feel like they can reach out for professional qualified help, um, in the instance that they are suffering. I mean, and making sure that that qualified to help is, um, you know, maintaining the, the privacy. I mean, I think there's, there's always that, that rub for physicians with how much can I really disclose and will this get out about me, but I think it's just important for healthcare providers in general, to feel like they have a qualified outlet and to seek that help when they need it. Or

Speaker 2 (20:34):

If, and I think a really important thing that you just said there was qualified help and qualified outlet, because what I think happens far too often with professionals, I think it happens in the legal profession, as well as the physician profession. Both of us have relationships with a variety of professionals in both industries, is that there's a concern about identifying the fact that you're struggling with, Hey alcohol, or just a high level of stress, right. Or post-traumatic stress. Cause people think of post-traumatic stress syndrome as being, I went to war and, but that's not necessarily the case. You know, I'm a survivor of the Millard south shooting and have put, you know, stress related to that. So what I hear from friends is that because they, um, are worried about that stigma or it affecting their job or their position that they don't go to get qualified help. So, Hey, maybe they talk with a friend and that friend really is, make care about them, all that type of thing, but has no background in what they're really dealing with. And so that's like, you know, how do we improve that access to the term use that's qualified care without the stigma? And I mean, maybe we don't know the answer to that question, but it's certainly something that ought to be addressed as we go forward.

Speaker 4 (21:46):

Absolutely. And I know there are some, you know, private ways and I actually wrote an article on it a couple of years ago for physicians to reach out and get, you know, professional help for issues that they're struggling with. That potentially won't trigger sort of like a, um, a licensure issue for them. And I think that, you know, if you're going to it, the, the analogy that I give is, you know, if you're gonna have

a knee replace, you go to an orthopedic surgeon. If you're going to have a baby, you go to an OB. I mean, you know, let's go to the person who's best qualified to provide the care,

Speaker 2 (22:12):

Right? So you don't call your maybe radiologist friend. He may be a great radiologist, but maybe not the best advisor on your mental health. Absolutely. Maybe he is, but let's go to a qualified pro. So last question for you. How do you predict that technology will impact the healthcare system going forward? Because I think that's going to be a really interesting area.

Speaker 4 (22:32):

Absolutely. You know, I looked at an article and they were talking, they basically segmented the patient population based on their age and where they fit within like the adoption of technology. And it's interesting because, you know, we talk about, um, patient satisfaction and how that's a key driver and that's, you know, a metric and most of the health systems, um, compensation plans, and they talk about ma making sure the patient feels that like, you know, they're satisfied with their care, and how, when you stratify it out and you look at the different generations, you know, individuals are looking for different things with, with what their, you know, when they seek that care. And in many of the younger generations, they're looking for ease of use, um, you know, they want to make it simple. They don't necessarily want to drive 45 minutes down to a campus for their care.

Speaker 4 (23:14):

I mean, so I think that that is going to change how we deliver care. I mean, look at what we've done with like grocery shopping, right. there are generations that had never thought that you would have your groceries delivered would never even consider it. And here we are in a situation now where a lot of younger generations are like, I hope I never have to step foot in a grocery store again. So you kind of look at some of these other industries. And I think healthcare can be a little bit of a behemoth monster that is slow to change. But I think other industries can provide us with some, you know, just glimmers into what could potentially occur in the healthcare industry.

Speaker 2 (23:45):

Well, thanks, Stephanie, do you have any last comments? No. Nothing right now. Well, I really appreciate you joining me today. Thank you. So that's all for now. Thanks for listening to today's episode and stay tuned for our weekly releases,

Speaker 5 (24:04):

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