Competing for Nonprofit Healthcare Executives and Physicians

An interactive panel discussion on compensation and benefit strategies

For your convenience, this is an edited transcript of the original "live" session held in spring 2019. But we invite and encourage everyone to **email your individual questions and comments** to robert.trobe@alliant.com. You will receive a **prompt email reply** from the appropriate panel member—or, you can **request a call back** and speak with that panelist by phone.

Hello and welcome. My name is Bob Trobe and I work for the nonprofit practice of Alliant Insurance Services. I'll serve as moderator of our panel discussion.

We believe the topic of this session impacts both the current operation and future maintenance and growth of many nonprofit healthcare providers. The strategies discussed will help complement recruitment and retention program for physicians already in place.

Our panel consists of four distinguished subject-matter specialists, each of whom represent a different area of expertise. Let me introduce our panelists:

- **Covering executive compensation:** Jennifer Loftus, National Director for Astron Solutions, LLC (www.astronsolutions.net). Jennifer has 23 years' experience in compensation, garnered at Astron Solutions, Korn Ferry Hay Group, and private industry. Astron Solutions specializes in developing total compensation strategies and programs for nonprofit organizations, as well as other small and mid-sized organizations across the US.

- **Covering Health and Welfare benefits:** David Panza, Assistant Vice President and Underwriting Consultant for the Employee Benefits division of Alliant Insurance Services (www.alliant.com). David has 30 years' experience in the employee benefits industry. At Alliant, he is responsible for supporting the financial management of both commercial and nonprofit cases, including the review of claims experience, benchmarking and utilization analysis, renewal projections, and renewal negotiations.

- **Covering executive benefits and retirement:** Greg Leone, Director, Retirement Services for Georgetown Financial Group (www.gfginc.com), which specializes in assisting retirement plan sponsors. Greg manages the Retirement and Executive Benefits practice at Georgetown. He has over 25 years' experience working with organizations to establish both their qualified and non-qualified retirement programs.

- **And covering employee benefits and compensation compliance (at the federal, state, and local level):** Alan Hahn, ERISA attorney and partner of Davis & Gilbert, a full-service law firm in New York City (www.dglaw.com). Alan is co-chair of the firm's Benefits & Compensation Practice Group, which advises clients on the design and implementation of all types of creative, tax-effective, and compliant programs, including retirement, health and welfare, deferred compensation, and equity plans. His clients range from Fortune 500 companies to mid-size and smaller employers that are tax-exempt.

Now let's get started.

* * * * *

1. KEY FACTORS TO CONSIDER

Bob Trobe (Moderator): In terms of compensation and benefits, what do you see as the key factors that influence executives and physicians to work for a nonprofit primary care center? Jennifer, let's begin with compensation.

Jennifer Loftus (Executive Compensation): Nonprofit primary care centers must remain competitive with the private sector. Relying on the appeal of the mission will probably be insufficient, in most cases, to attract and retain critical talent in today's market.

Bob (Moderator): But how do nonprofit healthcare providers compete head-to-head with for-profits? Isn't that the crux of the problem—especially when it comes to highly compensated talent?

Jennifer (Executive Compensation): Bob, the answer is yes and no**.** On the one hand, relying on salary alone to win a bidding war rarely works for high earners. For example, raising a starting salary offer from $30,000 to $40,000 may be highly appreciated by candidates at that level. But when you're targeting a physician, moving up from $200,000 to $210,000 or $220,000 is unlikely to generate the same level of enthusiasm and buy-in.

On the other hand, there are alternative approaches that have proven to be effective for nonprofits. These organizations should look to develop innovative "total rewards" offerings to stand out from the competition. Areas where I see our clients exploring innovative total rewards programs include variable compensation, work-life balance, severance /change-in-control agreements, and supplemental retirement programs.

Bob (Moderator): Greg, it looks like you have a comment.

Greg Leone (Executive Benefits and Retirement): I do agree with Jennifer about the value of supplemental retirement plans. But when it comes to offering retirement benefits and executive benefits in general, things can get tricky, especially for nonprofits.

Bob (Moderator): How so?

Greg (Executive Benefits and Retirement): Qualified retirement and other executive benefits—like 401(k), profit sharing, and 457(b) plans—comply with ERISA and receive tax advantages yet have contribution limits. Other types of nonqualified deferred compensation plans do not have contribution limits, which gives employers more flexibility in designing the reward and its value to the recipient. However, those plans do not receive the same tax advantages as qualified plans, and may still have to meet certain requirements of ERISA and the Internal Revenue Code.

In addition, another restriction will apply if nonprofit healthcare providers want to use nonqualified deferred compensation plans for executives. It's called "substantial risk of forfeiture." In practical terms, this means that a tax deferral is only allowed if a benefit is subject to a vesting event, like completion of a certain number of years of service. Under this scenario, an executive who leaves the organization early, before being vested, would receive nothing. That's the "substantial risk" part.

Bob (Moderator): Interesting stuff, which we'll circle back to later. But first, let's hear from our specialist on Health and Welfare benefits. David, what's the impact of your area on getting highly compensated professionals to work for a nonprofit primary care center? Can they contribute to the "total rewards" approach Jennifer was talking about earlier?

David Panza (Health and Welfare Benefits): Health & Welfare benefits, like health insurance, are a standard – and expected – part of employee compensation, in addition to a competitive salary. Traditionally, the public sector and many nonprofits have used richer health insurance plans as a means of attracting new hires at all levels—including executives—in lieu of the higher being salaries offered by the private sector for comparable positions.

Bob (Moderator): In today's world, it's hard to think of an employer leveraging health insurance as a "cost effective" option.

David (Health and Welfare Benefits): As the price of health insurance continues to increase, the general response by employers is to have their employees pay more. This pass-along takes the form of higher co-pays and deductibles, or directly charging employees a higher percentage of the premium. However, more competitive employers will often implement a Flexible Spending Accounts and/or a Health Savings Accounts (the latter in conjunction with a lower-cost High Deductible Health Plan). These accounts offer a tax break to executives and other personnel on the money they set aside to offset uncovered expenses.

Bob (Moderator): There is also a Flexible Spending Account for dependent care. This is a valuable benefit for single parents, but also for any family with two parents employed outside the home—executive or otherwise.

David (Health & Welfare Benefits): Another form of optional savings for health insurance is called "defined contribution" or "base buy-up." These plans offer a low employee contribution for basic coverage. However, plan members can choose to pay 100% of the cost of options to increase their level of coverage, if that's what they need or want.

Bob (Moderator): David, while no one would argue about the value of these programs, they are meant to apply to all employees. The programs are not designed specifically for executives or physicians. Do they really provide an incentive for more highly compensated positions?

David (Health & Welfare Benefits): They should—if the programs are effectively presented and explained. Everyone likes to save money, and no one wants to spend money if they don't have to. Also, nonprofit healthcare providers often recruit younger, healthier medical professionals, sometimes straight out of medical school. Many of them don't need to pay for richer benefits that they probably won't use, at least for some time. The key, we've found, is how well an employer communicates, letting all candidates know the choices they have and the potential savings each choice can generate over time.

By the way, this approach can also be extended to life insurance (employees receive basic coverage at no cost, with the option to buy more). Or, employers can offer dental, vision, or a range of voluntary benefits for which the employee would pay 100% of the cost. PCDC organizations take on minimal or no extra expense, while their personnel pay less on a group vs. individual basis for coverages they select. In addition, employees get the convenience of making their payments through payroll deduction.

Bob (Moderator): Thanks, David. Let's check in with Alan Hahn, our compliance specialist. Since we've thrown out a number of possibilities, I imagine there are regulatory requirements we need to keep in mind?

Alan (Compliance): Yes, whenever we talk about compensation and benefit plans there are a few things to keep in mind. It is true that nonprofits stretched for cash may find opportunities in several of the areas my fellow panelists introduced. For example, these organizations might take a second look at ways to defer compensation for senior executives. Importantly, the rules in this area have recently been updated by the IRS, so understanding how the rules have changed could spark some helpful ideas for an organization. Creative designs include deferred bonuses that are subject to a vesting schedule. These bonuses may be tied to a non-compete or include rolling vesting. "Rolling vesting" means that the executive essentially gets to re-defer money over short periods of time in order to avoid a current income tax hit.

As I am sure David and Bob would agree, there are also several ways for nonprofits to finance, as well as design, their health benefits. Take self-insurance. At one time, this funding method was within the purview of mostly larger employers. Now self-insurance is routinely used by smaller employers, because (among other potential advantages) it's a way to minimize certain mandated coverages and fees. Also, there are other types of alternative funding options that offer less exposure to high aggregate claims, insofar as paying out claims poses a concern to most nonprofits.

As far as retirement plans go, employers may want to re-examine their plan designs, to help optimize the amounts that employees are able to save for retirement. This added value can be provided by applying no-cost ideas like automatic enrollment, automatic increases, and the use of Roth deferrals.

> **REMINDER:** We invite you to email your questions and comments to our moderator at robert.trobe@alliant.com. Your email will be forwarded to the appropriate panel member(s) and you will receive a prompt, personalized reply. Send as many emails as you like over the next three months, or you can request a live callback.
>
> We look forward to hearing from you.

* * * * *

2. SUPPORTING DATA

Bob (Moderator): Okay, I think we all agree there are a number of strategies and choices—some more transparent, some less so—to create a "total rewards" program to compete for talent. But it takes more than speculation to turn potential into reality and avoid costly mistakes. Nonprofit healthcare providers should base their decisions on factual, reliable information about the recruitment market, as applied to their specific circumstances and goals.

So panel, what sources of data are available for planning a competitive, total rewards program?

Jennifer (Executive Compensation): The published compensation and benefit data sources that we subscribe to include the Economic Research Institute (ERI), Salary.com, and The NonProfit Times. Industry associations often have their own specialized compensation and benefits surveys. The Medical Group Management Association (MGMA) is one example that comes to mind. But, in general, survey results are available only to association members.

In any case, you want to work with data sources that are relevant to your organization's service type, locations, size, and compensation philosophy.

David (Health and Welfare Benefits): There are noteworthy data sources for Health and Welfare benefits. One source is PPI Benefit Solutions. Every year it conducts a Nonprofit Employee Benefits Survey, which covers all 50 states. The majority of responses submitted by nonprofit organizations – public charities or private foundations – are classified as 501(c)(3).

Another source is BenefitPoint. This is a national database populated by health insurance brokers that covers all 50 states, numerous industries (including nonprofits) and all group sizes. The survey focuses on variables such as deductible, coinsurance, office visit copays, and out-of-pocket maximums for PPO, EPO, and HMO health programs.

Bob (Moderator): For the uninitiated, the initials David gave stand for Preferred Provider Organization (PPO), Exclusive Provider Organization (EPO), and Health Maintenance Organizations (HMO). These are three different types of provider networks that range from the least restrictive to the most restrictive access. In general, medical premiums are less costly for plans with more restrictive networks.

David (Health and Welfare Benefits): There are other reliable national surveys, with ones by Mercer and Kaiser among the best known. These surveys describe health insurance benchmarks by region, size, and industry. They also include useful data on employee contributions—both on a monthly dollar basis and by percentage of premium—for single and family coverage.

Bob (Moderator): David, do the Mercer and Kaiser surveys break out their findings for nonprofits?

David (Health & Welfare Benefits): They do not separate "nonprofit" as an industry, but include nonprofits as part of a general "Services" category.

Jennifer (Executive Compensation): But nonprofit healthcare providers should keep in mind that, when it comes to compensation, published data is <u>not</u> the final word. Employers should also review data taken from the IRS Form 990s submitted by their nonprofit peer organizations. And remember, it may take time to determine the "correct," most relevant peer group. Getting input from the organization's Board can help to facilitate this process.

* * * * *

3. DEVELOPING A STRATEGIC APPROACH

Bob (Moderator): Okay, we agree there is relevant data out there, and we've shared some of the best sources to find it. The next question to our panel: when <u>you</u> look at the available data (and your own experience with clients), what are some of the more helpful insights or observations you see for nonprofit healthcare providers?

Jennifer (Executive Compensation): On the one hand, for some time now, pay-increase budgets have been in the high 2% and low 3% range – a far cry from 1981, when the average budget for base-pay increases was 10.6%. (Granted, 1981 was a high inflation year. When I first started working in compensation, salary increase budgets targeted 5%, and have been coming down since then.)

On the other hand, if investments in base pay are decreasing, this may be attributable, in part, to organizations (including some nonprofits) turning to total rewards programs in lieu of salary increases. A total rewards approach can offer greater flexibility and a higher return on investment.

For example, in 2018 PRM Consulting Group conducted a survey of United States nonprofits. The survey found that the median percent of salary provided as a "variable compensation payment" to Chief Executive Officers (that is, not part of their regular salary) is 25.0%. For other Senior Executives, the median variable payout is 10.6% of salary. These numbers—combined with a 2-3% average pay increase budget—suggest that PCDC organizations have the ability to compete for talent, if they can offer creative forms of compensation instead of relying too heavily on base salary.

Bob (Moderator): David, do you have any comments based on the data sources you use, or the experience of your clients?

David (Health and Welfare Benefits): Flexible savings accounts are offered by 65% of nonprofits. Health Savings Accounts (HSAs) as well as Health Reimbursement Accounts (HRAs) also are growing in popularity as plan offerings.

Life insurance is most often offered at one-times or 1.5 times salary. Prescription drug coverage is most often offered by nonprofits on a 3-tier basis: generic, formulary brand, and non-formulary brand.

Over 60% of surveyed nonprofits offer paid time-off for jury duty, bereavement, and holidays, while a number have implemented Employee Assistance Programs. At the same time, the use of non-core, untraditional benefits (such as flu vaccinations and gym membership discounts) is becoming more widespread. These and other types of wellness initiatives can help reduce the cost of claims—for employer and employees—while they also promote improved employee health, job performance, and personal life satisfaction.

Bob (Moderator): Greg, what does the data tell us when it comes to executive benefits?

Greg (Executive Benefits and Retirement): Executive benefits are primarily financial decisions. They represent highly specialized monetary agreements between an individual and the employer. As such, they are confidential and not typically volunteered as public knowledge. While there is some aggregate benchmarking data, from those entities that wish to make their arrangements public, the data is very limited based on sample size. It should not be taken to represent or suggest any preferred solutions within the industry.

To choose what's "best" from the available options, nonprofit healthcare providers have to crunch the numbers for their specific organizations. How great is the monetary reward for the C-suite executive or physician? Does the amount add enough to the full compensation package to make it more competitive? And, what method of funding is the employer willing to commit to?

Bob (Moderator): Then Greg, in general, what types of executive benefits have the most potential to help attract high earners to a nonprofit healthcare provider?

Greg (Executive Benefits and Retirement): Keep in mind, different options support different management goals. For example: how long does the employer want the arrangement to last? Should the arrangement function as a "golden handcuff," because it obliges the employee to stay longer with the organization to receive all or a large part of the reward? Does the employer want an opportunity to recoup all or part of the arrangement's cost? These and other considerations are part of the decision-making mix.

As far as the types of investment choices I recommend, they fall into one of two major categories: One is nonqualified tax-deferred compensation. The other category is life insurance-based products.

Bob (Moderator): You mentioned nonqualified tax-deferred compensation earlier.

Greg (Executive Benefits and Retirement): It's also called a "Section 457(f) plan." These plans are arrangements where an employer promises to pay the high-earner a future benefit. The benefit may be based on deferrals made at the employee's discretion, or it may promise a benefit amount based on years of service, reaching retirement age, or at death. In both types of arrangements, the high-earner does not pay income taxes until the benefits are vested.

But with this reward there's also the condition called "substantial risk of forfeiture." As previously discussed, this means that the employee can only receive the benefit when he or she is vested, with the benefit being paid out in one lump sum.

Bob (Moderator): The second category was life-insurance products. How do these differ from the standard life-insurance products that David referred to earlier?

Greg (Executive Benefits and Retirement): Because they are whole life policies structured as investments. In general, the employer funds the policy, often with some form of cost recovery built into the agreement. The cash value of the policy accrues tax-free, and the high-earner can withdraw this money as post-employment or supplemental retirement income as needed.

Split-Dollar Loan Arrangements are one type of life insurance-based arrangement. Other types are Executive Bonus Arrangements and Restricted Executive Bonus Arrangements (or "REBAs"). In addition, life insurance-based benefits also can be part of a Section 457(f) plan—to make things more complicated.

Bob (Moderator): That's a lot to take in.

Greg (Executive Benefits and Retirement): My intention was to give our audience an introduction—not a headache. But I do want PCDC organizations to understand that they have many options and management goals to consider. The goal is to strike a balance between advantages for the employee, advantages for the employer, and whatever net cost the employer can accept.

* * * * *

4. COMPLIANCE ISSUES AND GUIDANCE

Bob (Moderator): Now, let's take a closer look at compliance. Alan, what are some of the major restrictions on compensation and benefits for a nonprofit?

Alan (Compliance): First, nonprofits need to understand that, in many ways, they are *not* considered different from for-profit employers when it comes to compliance. Both are subject to many of the same complex requirements that pertain to all employee benefit plans. One set of requirements comes from the Internal Revenue Service, and a second set generally comes from the Department of Labor or applicable state law. For example, an employer will need to have a plan document that describes the applicable benefit and then actually administer the plan in accordance with its terms.

In addition, all employers need to make sure that their fiduciary responsibility relating to the plans is fulfilled. Where this is especially critical is the area of retirement benefits—we see too many employers that are not good about formalizing their oversight. They should work with counsel to establish a committee and then document, document, document, their efforts.

Employers also should review the key terms of their plans, making sure that the plans are being operated the right way. For example, a cautious employer will want to confirm that it's following a definition of "compensation" consistent with how compensation has been defined in the retirement plan document. Does the plan only cover base salary or also overtime and bonuses? What about more minor forms of taxable compensation? A review with the payroll department every so often is a very good idea.

Bob (Moderator): What about Health Care Reform?

Alan (Compliance): When it comes to Health Care Reform, we all know that attempts are being made to change this legislation, if not repeal it entirely. However, any such changes are neither definite nor final at the present time. Keeping a close eye on the status and requirements of the current Affordable Care Act (or ACA) remains a must.

These requirements include the accurate filing of IRS Forms 1094 and 1095, which describe how medical benefits are being offered to employees, including temporary employees and per diems that might be working a full-time schedule. Compliance in this area is especially important now, because the IRS has started to audit compliance for 2015 and 2016. The agency will soon begin to look at more current years.

Bob (Moderator): But aren't there also specific rules that apply only to nonprofits?

Alan (Compliance): Yes, and Greg and I touched on some of this earlier. The IRS has a special set of rules that apply to the deferred compensation programs of nonprofits. Internal Revenue Code Section 457, for example, generally provides that certain non-qualified deferred compensation becomes taxable to the executive upon vesting. Rules in this area recently have been updated by the IRS. They now allow vesting to be contingent on compliance with a non-compete, and under certain conditions will accept a "rolling vesting" schedule as we talked about earlier.

The new tax bill (signed in late 2017) includes provisions that attempt to regulate any “excessive” compensation in the nonprofit space, in regard to both ordinary compensation and severance. Additionally, nonprofits must prove to the IRS that compensation for their executives is reasonable, based on comparable data.

Bob (Moderator): That’s a good overview at the federal level. What about compliance at the state level?

Alan (Compliance): In New York, there can be additional restrictions. For example, “Executive Order 38 (EO 38)” states that, when certain contractors receive revenue from the state, those contractors cannot use more than $199,000 in state funds to pay their leaders. Some nonprofit healthcare providers may be affected by this restriction on applying state funding to executive compensation. There have been successful legal challenges recently to reduce Executive Order 38’s scope, so for many organizations this may be worth a second look.

Bob (Moderator): Alan, one last question. Compliance has so many moving parts, and in general nonprofit healthcare providers are not exorbitantly staffed. Do you have any practical advice on the best ways to keep pace and stay out of compliance trouble?

Alan (Compliance): I encourage employers to organize an internal committee with the dedicated purpose of providing proper oversight for their employee benefit plans. Members of this committee will need to receive some type of formal training, so they learn what the requirements are, the data to be tracked, forms to be filed, penalties for non-compliance, and so on. And, I would be remiss if I didn’t mention that working with ERISA counsel on these issues is just about a must.

* * * * *

5. CLOSING REMARKS / ANSWERING YOUR QUESTIONS

Bob (Moderator): Well, the clock on the wall—and my smartphone—tell me that we’ve reached the end of our panel discussion.

I’d like to thank our panelists for participating in this session and sharing their expertise with us:

- Jennifer Loftus, from Astron Solutions
- David Panza, from Alliant Employee Benefits
- Greg Leone, from Georgetown Financial Group
- Alan Hahn, from Davis & Gilbert

Our session looked at the subject from many perspectives: data sources and market research…strategic approaches…compensation and reward incentives other than salary…and several issues and suggestions related to compliance.

The recruitment and retention of high-earning, senior executives and physicians is often a challenge for nonprofits. But we hope you will leave today with more information and encouragement. As you've seen, there are several competitive and creative ways to supplement salary, helping to motivate quality people to join your organizations.

Thank you for your time.

REMINDER: We invite you to email your questions and comments to our moderator at robert.trobe@alliant.com. Your email will be forwarded to the appropriate panel member(s) and you will receive a prompt, personalized reply. You are free to send as many emails as you like over the next three months, or you can request a live callback.

We look forward to hearing from you.