

# **Distinct and Separate Legal Structures for Clinical Programs of Schools and Colleges of Optometry - The New England Experience**

## **Observations and Analysis**

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### **Background**

In a decisive effort to move into the mainstream of health care and to address concerns about the legal exposure of an educational institution providing services to Medicare and Medicaid beneficiaries, The New England College of Optometry (NECO) in 2002 spun off its clinical system and its assets into a separate subsidiary corporation, the New England Eye Institute (NEEI). This was the first time a private college of optometry was to form an optometric analog to the medical school/teaching hospital structure. The new clinical corporation has its own Articles of Incorporation, By-laws, Board of Directors and administration similar to those of a teaching hospital. NEEI's governance documents reflect considerable oversight by NECO. A detailed position description for the CEO was written which incorporated the elements of the incorporation documents. NEEI has made significant progress in realizing the potential of this new structure and has demonstrated that the oversight mechanisms in place have been effective. This summary outlines the advantages of a separate clinical corporation, supports the advantages with available data, restates the College's oversight processes to assure added value and mission alignment, and notes concerns and misunderstandings that need further discussion.

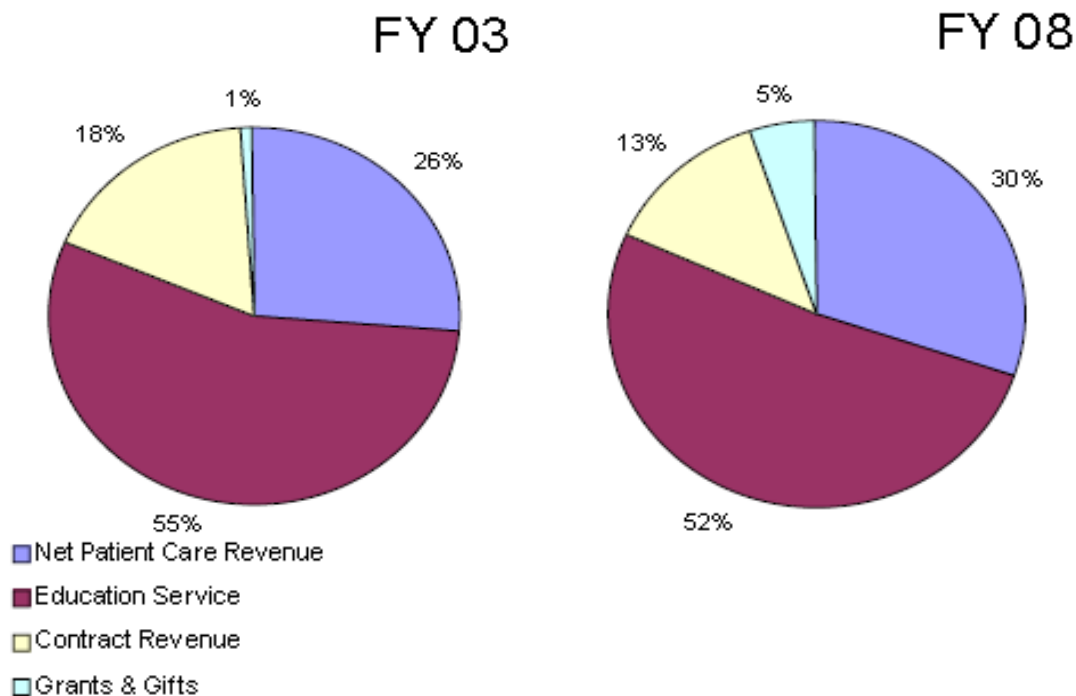
### **Advantages of a Distinct Legal Structure for The New England College of Optometry**

- 1) Creating a distinct and separate legal structure for a clinical program provides for separation of risks, giving a degree of protection for College assets from the risks such as professional liability suits and compliance-related claims associated with the provision of health care, specifically in providing care to Medicare and Medicaid beneficiaries.
  - With NEEI providing care, the College no longer holds a Medicare provider number and thus is not directly exposed in the event of compliance audits from the Office of the Inspector General.
  - With NEEI as the direct provider of clinical care, it is the entity responsible as well as liable for billing and collection for services. This both serves to insulate the College from legal claims from parties beyond Medicare as well as supporting a focused attention to maximizing collections in compliance with regulatory and other requirements.
  - With NEEI providing care, the likelihood of the College's assets being encumbered in a professional liability case are greatly diminished.
  
- 2) Creating distinct boards facilitates the appointment of individuals with different skill sets appropriate to the governance, oversight, management, mission, values and priorities of the respective organizations. Each organization (NECO and NEEI) is strengthened through the appointment of board members who bring appropriately different expertise and experience relevant to the mission of the respective entity.
  - NECO Board is now able to concentrate on its core mission of teaching, endowment growth,

research, special programs, strategic planning, outcomes assessment, and development of new revenue sources.

- NEEI Board selections can more focused on the health care delivery, fund raising, compliance, health care collaborations, government relations and applied research.

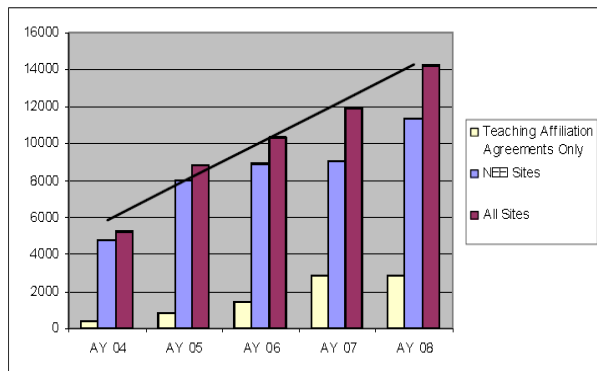
- 3) More focused attention to the respective missions of NECO and NEEI is now possible with a better recognition of the priorities and issues of the academic and clinical programs. This structure encourages the use of performance benchmarks which are unique and distinct for each organization. Examples of NEEI performance benchmarks which measure synergism between the two entities are income rate and annual visit rates. The more patient fees collected and more patients seen directly correlates to improved cost efficiency and teaching volume for clinical education. An important operating concept of NEEI is that patient care is of co-equal importance to clinical education for only in the context of a vital and high quality health care system can students and residents receive high quality clinical education.
- 4) Financial accounting has become more precise as NEEI's accounting models carefully differentiate patient care capital and operating costs from the costs associated with clinical education. Patient registration and billing procedures have been improved, increasing revenues and accounts receivable are more carefully managed. Separate financial statements, although overseen by NECO, can provide both organizations with better understanding and recognition of the costs associated with didactic education versus clinical expenditure. This has led to improved budgeting and financial performance. As a wholly-owned subsidiary of the College, the annual financial statements of the two entities are consolidated.



NEEI has reduced the percentage of its operating revenue derived from education payments during a period of substantial increase in number of NEEI clinical sites, student placement sessions and teaching patient encounters

- 5) The separate structure facilitates new collaborations with other health care and community organizations. These collaborations continue to support and enhance clinical educational objectives of the College. Student clinical teaching encounters have increased in the 1<sup>st</sup> year screening program, second year clerkship, third year primary care sites and fourth year special population rotation

## Third Year Patient Number Trend AY04 – Forecast AY08



- 6) Planning has become more rational because negotiated payments for educational services (clinical training of students and residents) made to NEEI can be more carefully considered in the context of overall institutional priorities such as in the allocation of resources for didactic, clinical, research and special programs.

There is now an ability to define the real cost of clinical education to meet the requirements of the curriculum. With similar analyses for all areas of the College, resources allocations can be made for the consolidated organization based on institutional priorities and not merely based on historical funding levels for the didactic, research and special programs with the remainder allocated for clinical training

## Clinical Educational Cost in Decline as Percent of Tuition 2004-2007

	2004	2005	2006	2007
Ed Service Payment	\$2,505,000	\$2,574,898	\$2,571,400	\$2,964,200
Subsidy of losses	\$299,893	\$22,087		
Total College Costs	\$2,806,897	\$2,598,990	\$2,573,406	\$2,964,200
Tuition	\$10,646,000	\$11,055,000	\$11,651,300	\$13,038,872
Cl Ed Cost % Tuition	26%	24%	22%	23%
Enrollment	414	418	419	436

- 7) NEEI has developed the ability to solicit funds and create new revenue sources. Foundations and others who might not otherwise support educational institutions find NEEI a worthy cause to support. Federal support, (NHSC) and (GME), currently not available to optometric clinical facilities, would also be possible with NEEI's corporation structure.

Additionally, participation in Federal Programs such as the Graduate Medical Education (GME) will likely require this separate legal structure as payments are made only to the clinical enterprise and not the college. Similarly, student loan repayments under the National Health Service Corps( NHSC) program are made only to optometrists employed in federally qualified and under served patient care facilities

- 8) The parent corporation (NECO) has numerous oversight mechanisms in place to oversee the activities of their corporate subsidiary (NEEI) to assure alignment of missions and evaluation of performance.

College President/Board of Trustees shall:

- Review and approve clinical corporation's capital and operating budgets
- Review and approve clinical corporation's strategic plans
- Review and approve any mortgages or major borrowing activities
- Manage the investments of the clinical corporation
- Oversee the audit of the clinical corporation
- Participate in the selection and approval of the clinical corporation's CEO.
- Participate in the evaluation of the clinical corporation CEO.
- Have seats on the Board of Directors of the clinical corporation including a seat held by the College's President and Vice President for Clinical Care and Services
- Approve recommended members to the clinical corporation's Board of Directors
- Appoint the clinical corporation CEO to the college management team

- 9) Regarding the recruitment and retention of highly qualified clinical staff, the structure and culture established by the separation of NEEI makes it possible for the future implementation of incentive-based compensation for clinical staff, and one that integrates, recognizes and rewards clinical teaching of optometric students and residents as well as patient care quality and productivity. Increased compensation is necessary to recruit and retain the best clinical staff that is, clinicians who are role models in the successful practice of optometry.

- Incentive compensation or bonuses will be based on a combination of patient care quality and productivity, clinical teaching effectiveness, scholarship and community service

#### **After Five Years of Experience Concerns Expressed About the NECO/NEEI Structure**

- Given that NEEI has precise and transparent accounting of its revenues and expenses including annual audits, NEEI has been exposed to criticism by individuals with a limited understanding of the costs of college operated optometric patient care/ clinical education programs.
- There is a perception by some that the separation of the Clinical Corporation (NEEI) from the College has caused a schism between clinical and classroom/research faculty. This perception is not unique to NECO/NEEI as it exists at nearly all schools and colleges of optometry even without a separate legal structure. This perception comes from misunderstandings about each groups' contributions to educational and scholarship processes and in some cases over

- competition for institutional resources.
- Some members of the College tenure track faculty resent that NEEI Professional Staff are appointed, evaluated and compensated by different criteria than by the traditional faculty model.
  - There is still not a full appreciation by some of the differences between a patient care/clinical teaching environment and the classroom, laboratory and research environments.
  - There is a perception that NEEI is largely a patient care activity when in fact clinical education of students and residents occurs at all NEEI Network facilities.
  - There is also a perception that the separate legal structure negatively impacts on the quality of clinical education since it changes responsibility for clinical education. In fact, the responsibility and accountability for the clinical education program remain with the Dean for Academic Affairs. The needs of the curriculum and the quality of education are directed and monitored by the Dean and his representatives embedded within the NEEI structure.
  - The Boards of the two organizations need to find better ways to coordinate and integrate their respective roles and responsibilities. For example better coordination and integration are important in the allocation of institutional resources. Representation of the NEEI Board on the College Board Finance Committee is essential to long term growth of NEEI since NECO, as the parent corporation, controls the allocation of resources. This is particularly important in setting the educational services payment to ensure that it is adequate to address the needs of the curriculum. The issue of improved governance by both Boards is being explored, however it has been agreed that the separate legal and administrative structures of NEEI have demonstrated benefits and should be preserved.

## **Conclusion**

NECO reached a level of maturity that found it was necessary to move the College's patient care program into the 'real world of health care', one that clearly separated education from the provision of health care services while still integrating clinical training and providing opportunities for clinical research.

Numerous mechanisms are in place to provide the College with ample oversight of NEEI. The separate legal structure offers advantages in many areas including fund raising, financial accounting, risk management, governance, administration, bench marking, incentive-based compensation and community collaborations. Although there may be work still to be done in governance and in convincing those who prefer the "old way", the advantages of the separate clinical corporate structure have already been realized in many areas with the potential for even more compelling opportunities in government support, new revenue streams, professional staff recruitment and retention.