

Compliance Today – January 2020

Highly compensated physicians and compliance: Considering the complexities

By Joe Aguilar, MBA, MPH, MSN, CVA; and Natalie Bell, MBA, CVA

Joe Aguilar (joe.aguilar@hmsvalue.com) is a Partner and Natalie Bell (natalie.bell@hmsvalue.com) is a Director with HMS Valuation Partners in Atlanta, GA.

The Bureau of Labor Statistics recently reported that job prospects for physicians are outpacing other occupations despite market pressures that would generally appear to have a negative effect on their opportunities.^[1] National physician compensation surveys show a rise in physician compensation in most medical and surgical specialties.^[2] Given this reality, health systems trying to continuously improve services to their patients are fiercely competing for top physician talent in their service area. However, top physician talent often comes at a high price and can reach levels well above the 90th percentile based on national compensation surveys.

So, how much is too much when reviewing a physician's compensation agreement? This is a question that compliance officers and valuation analysts ask themselves almost daily. What analyses should be performed? How does this compensation compare to their peers? What are key factors that need to be considered to mitigate risk? These questions and others become even more challenging when they pertain to a physician who is highly compensated. As the compliance officer goes through the review process, there are key areas that should be considered when determining if the agreement meets fair market value (FMV) requirements. Below are some complexities to consider.

Document exceptionality

Scenario: Dr. Smith is understood to be a renowned neurosurgeon with a focus in the subspecialty of movement disorders. He is said to have impeccable training and has developed various revolutionary surgical techniques to improve mobility in patients with Parkinson's Disease.

Dr. Smith's employment agreement has now come across your desk, and the compensation terms require further due diligence to ensure that it meets FMV requirements. What are your next steps?

As all compliance officers are aware, appropriate documentation is an effective and necessary tool in ensuring compliance. The same can be said for determining FMV. In the case of a highly compensated physician, documentation typically will fall under two distinct categories: (1) workload measures, and/or (2) skill set and qualifications.

The highly compensated physician may be compensated based on workload in excess of norms for their specialty. Workload can include the physician's clinical production in terms of Work Relative Value Units (wRVUs), professional collections, administrative hours, emergency room (ER) call coverage shifts, research activity, etc. A wRVU is an objective means of measuring a physician's professional work. It is one of the three components that sum to a total Relative Value Unit (RVU) used by Medicare to determine reimbursement by procedure (i.e., CPT code). The three components are:

- **Physician work RVU** – The physician’s experience, skill, training, and intensity required to provide a given service;
- **Practice expense RVU** – The cost of maintaining a practice, such as rent, equipment, supplies, and nonphysician staff costs; and
- **Malpractice RVUs** – Payments for professional liability expenses.^[3]

Performing the necessary due diligence on each of these workload measures is necessary to substantiate a high compensation and is even more critical under an acquisition scenario, given the need to rely on the reporting accuracy of the physician’s practice. The proper scrutiny involves a review of the actual production reports for potential issues that include, but are not limited to, coding practice, level of service utilization, wRVUs unadjusted by modifiers, and Advanced Practice Provider (APP) billing procedures. There are cases when this may not be possible, and the FMV analysis should reflect this additional risk.

Other supporting documents may include administrative time sheets, ER call calendars, didactic teaching schedules, and interviews. Gathering this information will enable you to more accurately isolate the value from each of these potentially stackable services and determine if the total compensation package appropriately reflects the work being performed..

In terms of skill set and qualifications, it is important to establish clear measures in order to have the support necessary to justify the level of compensation. Having a process that validates the physician’s credentials based on various criteria requires research, objective measures, and uniform application. Examples of criteria that can be used are: (1) medical school attended, (2) fellowship training and/or certifications, (3) peer-reviewed publications, (4) national speaking engagements, (5) media coverage, and (6) academic appointments. We would recommend that this process be performed for all physicians within your system to further support the distinction from the norm for the uniquely skilled and highly compensated physician.

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