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Creating an FMV policy that works for your organization

by Allison Pullins, Brian S. Colonna, MHL, CHC, CHPC, CHRC, and Terence Ou

Healthcare organizations, large and small, contract with physicians to provide myriad services. Federal and state regulations—such as Stark Law and the Anti-Kickback Statute—govern how and how much organizations can legally compensate physicians. It is a compliance mandate to document commercial reasonableness (CR) and fair market value (FMV) for physician transactions.

Given the volume of arrangements at hospitals and the regulatory scrutiny they are subject to, it is essential to develop policies, procedures, and guidelines for determining and documenting CR and FMV. Defining a clear and easy-to-administer FMV process may be the most important step to improve workflow and physician contract compliance; however, striking a balance between simplicity and mitigating risk is both an art and a science. The following will help compliance and risk professionals think about structuring an FMV policy that works with your organization's market and operational realities—not against them.

Understanding your organization

Before creating or modifying procedures and policies, it is essential to do an analysis of the organization and market. A thorough understanding of dynamics will help craft a policy tailored to the organization's needs. Keep an open mind thinking through the factors that may influence the FMV process; previously unconsidered dynamics could influence how the policy functions (or, conversely, doesn't function).

As you undertake the analysis, consider the following:

1. **Size:** Larger facilities and health systems typically have more arrangements, so considerations for how many arrangements are completed annually will likely need to be made. A key question for health systems to consider is whether to centralize physician contract compliance in a corporate team or decentralize the process, giving affiliated facilities or departments more leeway to set and approve rates. A decentralized process will require education and empowerment of facility-level leaders to achieve consistent application of system payment rates, approvals, and documentation policies. If the function is centralized, fewer

people will be involved, but FMV determination and documentation could be most of their job scope. It also may be challenging to coordinate communication and approvals across many facilities. There is no "right" answer in terms of structure across a large system—only priorities and trade-offs.

2. **Complexity:** Generally, larger, more complex organizations—particularly trauma centers—have more contracts and often pay higher rates. This is vital for considering the FMV process as well as the resources needed to execute the policy.

3. **Medical staff/physician market:** How large and consolidated is the medical staff? If most physicians are employed by an affiliated group, the number and type of contracts will differ from an organization with many independent physicians and groups. Is there an adequate supply of physicians across specialties? Are there multiple groups for each specialty? Other market dynamics may influence physician transactions, such as shortages, high-cost living areas, recruitment challenges, and more.

4. **Hospital market:** Is the hospital market consolidated? Understanding other health systems in the market as well as the competitive landscape is significant context too.

This analysis won't drive the creation of policies more than compliance and legal best practices; rather, it is helpful to gain sufficient understanding of how outside forces may influence transactions.