Documenting Compliant and Fair Market Value Physician Financial Arrangements

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Learning Objectives

This session will provide you with the knowledge to:

• Assemble documentation to support physician financial arrangements
• Document a financial arrangement with a referring physician
• Determine legal requirements for fair market value and commercial reasonableness
Why Is Documenting Fair Market Value and Commercial Reasonableness Important?

- Fines and Penalties, including 3 times the amount paid by Medicare/Medicaid for service, $10,000 fine per payment, etc.
- Exclusion from Medicare/Medicaid Programs.
- Intermediate Sanctions.
- Imprisonment.
This really will not happen to me, will it?

The government has better things to worry about than one contract between a hospital and physician, right?
Tell That To The Parties Involved In The Following Cases

- Metropolitan Health, Grand Rapids, Michigan
- Rapid City Regional Hospital, Rapid City, South Dakota
- McLaren Regional Medical Center, Flint, Michigan
- Baptist Medical Center, Kansas City, Missouri
- Saint Joseph Regional Medical Center, South Bend, Indiana
Excerpt from the Petition to Enter a Plea involving Saint Joseph Regional Medical Center:

From in or around 1991 through 1993, it knowingly and willfully offered and provided financial benefits, including a $350,000 loan guarantee, a lease of medical facility space for radiology services at an inflated rate, monthly “practice enhancement payments,” and medical chart coding to Drs. Peter D. Farr and Howard M. Addis and offered other things of value to Drs. Peter D. Farr and Howard M. Addis for purposes including Saint Joseph’s Medical Center, an affiliate of Horizon, receiving patient referrals, including referrals of Medicaid and Medicare patients, from these two doctors. Horizon intentionally offered and provided these items to Drs. Farr and Addis while Horizon knew, on a collective basis, that it was contrary to law and a violation of a legal duty to enter into and to maintain the financial arrangements that it did with Drs. Farr and Addis;
Fair Market Value and Commercial Reasonableness are important factors in:

- Anti-Kickback Statute
- Stark Act
- Intermediate Sanctions
Anti-Kickback Statute  
(42 U.S.C. § 1320a-7b)

- Under the AKS it is illegal to:
  - Offer, pay, solicit, or receive remuneration;
  - Directly or indirectly;
  - In cash or in kind;
  - In exchange for:
    - Referring an individual; or
    - Furnishing or arranging for a good or service; and
  - Payment may be made by Medicare or Medicaid.
What Is Remuneration?

Extremely Broad Scope, whether in cash or in kind, and whether made directly or indirectly, including:

- Kickbacks;
- Bribes;
- Rebates;
- Gifts;
- Above or below market rent or lease payments;
- Discounts;
- Furnishing of supplies, services or equipment either free, above or below market;
- Above or below market credit arrangements; and
- Waivers of payments due.
Three Necessary Elements

- Intentional Act
- Direct or Indirect Payment of Remuneration
- To *Induce* the Referral of Patients or Business
PENALTY

Fined not more than $25,000 or imprisoned for not more than five (5) years or both
Fair Market Value Required in Following Safe Harbors

- Employment
- Personal Services and Management Contracts
- Office Space Leasing
- Equipment Leasing
• Under the Stark Act, a physician is prohibited from making a referral:
  • to an entity;
  • for the furnishing of a designated health service;
  • for which payment may be made under Medicare or Medicaid;
  • if the physician (or an immediate family member);
  • has a financial relationship with the entity.
Stark Act

Designated Health Service Entity includes:

1) Entity that *bills* Medicare
2) Entity that *performs* DHS
“Stand in the Shoes”

Pre-Phase III View

Physician

$\rightarrow$

Group

Indirect

$\rightarrow$

Hospital

Phase III View

Physician Organization

$\rightarrow$

Hospital

Direct
Stark Act
42 U.S.C. § 1395 nn

Stark Exceptions Requiring Fair Market Value/Commercial Reasonableness:

- Personal Service Arrangements
- Rental of Office Space
- Rental of Equipment
- Employment
- Isolated Transactions
- Fair Market Value
- Indirect Compensation Arrangement
<table>
<thead>
<tr>
<th>Terms of exception</th>
<th>Group practice physicians [1877(h)(4); 411.352]</th>
<th>Bona Fide employment [1877(e)(2); 411.357(c)]</th>
<th>Personal service arrangements [1877(e)(3); 411.357(d)]</th>
<th>Fair market value [411.357(1)]</th>
<th>Academic medical centers [411.355(e)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must compensation be “fair market value”?</td>
<td>No ........................................</td>
<td>Yes—1877(e)(2)(B)(i) ...</td>
<td>Yes—1877(e)(3)(A)(v) ...</td>
<td>Yes—411.357(1)(3) ...</td>
<td>Yes ..................................</td>
</tr>
<tr>
<td>Must compensation be “set in advance”?</td>
<td>No ........................................</td>
<td>No ........................................</td>
<td>Yes—1877(e)(3)(A)(v) ...</td>
<td>Yes—411.357(1)(3) ...</td>
<td>Yes—411.355(e)(1)(ii) ...</td>
</tr>
<tr>
<td>Are overall profit shares allowed?</td>
<td>Yes—1877(h)(4)(B)(i)</td>
<td>No ........................................</td>
<td>No ........................................</td>
<td>Yes ..................................</td>
<td>No.</td>
</tr>
<tr>
<td>Written agreement required?</td>
<td>No ........................................</td>
<td>No ........................................</td>
<td>Yes, minimum 1 year term.</td>
<td>Yes, written agreement(s) or other document(s).</td>
<td>Yes, written agreement(s) or other document(s).</td>
</tr>
<tr>
<td>Terms of exception</td>
<td>Group practice physicians [1877(h)(4); 411.352]</td>
<td>Bona Fide employment [1877(e)(2); 411.357(c)]</td>
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<td>Fair market value [411.357(1)]</td>
<td>Academic medical centers [411.355(e)]</td>
</tr>
<tr>
<td>Physician incentive plan (PIP) exception for services to plan enrollees?</td>
<td>No, but risk-sharing arrangement exception at 411.357(n) may apply.</td>
<td>No, but risk-sharing arrangement exception at 411.357(n) may apply.</td>
<td>Yes, and risk-sharing arrangement exception at 411.357 may also apply.</td>
<td>No, but risk-sharing arrangement exception at 411.357(n) may apply.</td>
<td>No, but risk sharing arrangement exception at 411.357(n) may apply.</td>
</tr>
</tbody>
</table>
Intermediate Sanctions

If a tax-exempt organization engages in an *excess benefits transaction* with a *disqualified person*, the tax-exempt organization’s directors and managers, and the disinterested person, could be subject to a tax of 25% on the excess benefit. If the excess benefit is not paid back or reversed, the organization's officers and managers, and the disqualified person could be subject to a 200% tax on the excess benefit.
Intermediate Sanctions

Disqualified Person

- A disqualified person is an officer, director, trustee, highly-compensated or high-level employee, department or project manager, major donor or anyone who has been in a position to exert substantial influence over the organization within the prior five years.
Intermediate Sanctions

Excess Benefit

- An excess benefit is one that exceeds *fair market value* for the benefit received by the tax exempt organization, or is not comparable (*commercially reasonable*) to similar benefits paid by similar tax-exempt organizations.
WHAT IS FAIR MARKET VALUE?

I want MORE!

Fair market value is fine!
“What do you mean by FMV?”

• In the healthcare context, there are essentially 3 basic views on the meaning of FMV:
  • “Person on the street” perspective
  • Professional appraisal perspective
  • Legal/regulatory perspective
• Unfortunately, these 3 basic views frequently conflict.
• Parties can get “dazed and confused” when these 3 competing views meet to complete a transaction.
“The Street” View of FMV

- “What everyone is getting paid in the market”
- “What the hospital down the street is paying”
- “Incremental cost plus a profit margin”
- “What’s in a survey book”
- “What it’s worth to one party to the transaction”
“The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm’s length in an open and unrestricted market, when neither is under a compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

(International Glossary of Business Valuation Terms)
Professional Appraisal View of FMV

- Based on the “hypothetical-typical” buyer concept
- FMV contrasts with investment value or strategic value
- Determination of FMV is based on 3 approaches to value:
  - Cost
  - Income
  - Market
- Formal body of knowledge and professional standards governing the appraisal practice for real estate and business valuation (“BV”)
- No current body of knowledge or standards for compensation valuation (“CV”)
Legal/Regulatory View of Fair Market Value

According to the Stark Act, *fair market value* is “the value in arm’s-length transactions, consistent with the general market value.”
“General Market Value” means the price that an asset would bring as a result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as a result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement.

42 C.F.R. 411.351
The Stark Act also defines *Fair Market Value* as the market price at which bona fide sales have been consummated for like type assets in a particular market.
For real estate, the Stark Act states that fair market value is “the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee.”
Legal/Regulatory View of Fair Market Value

Key points under the Stark Act:

- Referrals between the parties cannot be considered.
- Fair market value is determined upon the sale or when the service agreement is executed.
- Local market conditions are factors (i.e., lack of a specialty in the market, depressed real estate market).
- Proximity of real estate to the lessor (hospital) cannot be considered, but costs of developing or improving real estate should be considered.
Legal/Regulatory View of Fair Market Value

A Fair Market Value Safe Harbor for *hourly rates* was developed under Stark in the Phase II regulations.

Safe harbor deleted in Phase III regulation. However, OIG stated that safe harbor methodology is still a prudent documentation process.
An *hourly rate* is deemed to be fair market value if it meets one of the following two tests:

1) Hourly rate is less than or equal to the average hourly rate for emergency room physician services in the market provided there are at least three hospitals providing emergency room services in the market.
An **hourly rate** is fair market value if it meets one of the following two tests:

- 2) Hourly rate is determined by averaging the 50 percentile national compensation level with the same physician specialty in at least four of the following survey, and dividing by 2000.
  - Hay Group - Physician’s Compensation Survey
  - Hospital and Health Care Compensation Services - Physician Salary Survey Report
  - Medical Group Management Association (MGMA) - Physician Compensation and Productivity Survey
  - ECS Watson Wyatt - Hospital and Health Care Compensation Report
  - William M. Mercer - Integrated Health Networks Compensation Survey
Legal/Regulatory View of FMV

- Stark regulations state that the definition of FMV “is qualified in ways that do not necessarily comport with the usage of the term in standard valuation techniques and methodologies.”
- Stark example: Exclusion of market comparables between parties in position to refer
- Stark example: FMV can be established by “any method that is commercially reasonable.”
What Is Commercially Reasonable?

Many of the exceptions under the Stark Act require the payment to “be commercially reasonable even no referrals were made” between the parties.
What Is Commercially Reasonable?

To be commercially reasonable, both the \textit{SERVICES} and \textit{PAYMENT} must be commercially reasonable.
What Is Commercially Reasonable?

The following services may not be commercially reasonable:

• Two medical directors over a department when only one is needed.
• Paying the physician for questionable consulting services.
• Renting a piece of equipment full-time when only used once a month (assuming rental for one day is less than full-time rental).
• Purchase of physician’s medical office building with no intention to use building.
Let the fun begin!
Documentation of Fair Market Value/Commercial Reasonableness

Is it an art or is it a science?
Documentation of Fair Market Value/Commercial Reasonableness

For every physician contract, fair market value/commercial reasonableness is the biggest issue.
Legal Opinions

Most law firms do not provide legal opinions on fair market value or commercial reasonableness.
Law firms should work with providers to establish a process to develop FMV/commercial reasonableness information, and then opine that providers followed established process.
Fair Market Value

Guidelines for the following arrangements:

- Employment Agreements
- Medical Directorships
- Real Estate Leasing
- Time Share Arrangement
- Equipment Leasing
- On Call Coverage
For employed physicians, the following compensation structures can be developed:

- Equal compensation
- Productivity-based compensation (Cap Compensation - i.e., 75th percentile by specialty)
- Combination of equal pay and productivity-based compensation
- Point System (a/k/a relative value unit [RVU] method)
- Fixed base periodic salary plus bonus
Employment

Market Data:

- Determine what competitors are paying (anti-trust risks)
- Opinion letter from compensation analyst
- Third party surveys
Employment

Typical third party surveys include:

• Sullivan, Cotter & Associates, Inc. - Physician Compensation and Productivity Survey;

• HayGroup - Physicians Compensation Survey;

• Hospital and Healthcare Compensation Service - Physician Salary Survey Report;

• Medical Group Management Association - Physician Compensation and Productivity Survey;

• ECS Watson Wyatt - Hospital and Health Care Management Compensation Report

• William M. Mercer - Integrated Health Networks Compensation Survey
Summarized below is the market survey data establishing the fair market value of pay for Orthopedic Surgery. This market data has been obtained from independent third party compensation surveys.

**SURVEY DATA**  
**ORTHOPEDIC SURGERY**

<table>
<thead>
<tr>
<th>Survey</th>
<th>Survey Match</th>
<th>Region</th>
<th>25th %ile</th>
<th>50th %ile</th>
<th>75th %ile</th>
<th>90th %ile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sullivan</td>
<td>All Organizations</td>
<td>National</td>
<td>310,040</td>
<td>414,000</td>
<td>516,375</td>
<td>701,101</td>
</tr>
<tr>
<td>MGMA</td>
<td>All Group Practices</td>
<td>National</td>
<td>358,868</td>
<td>492,721</td>
<td>679,995</td>
<td>911,484</td>
</tr>
<tr>
<td>AMGA</td>
<td>All Group Practices</td>
<td>National</td>
<td>430,152</td>
<td>518,196</td>
<td>633,791</td>
<td>879,031</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
<td><strong>$366.353</strong></td>
<td><strong>$474.972</strong></td>
<td><strong>$610.053</strong></td>
<td><strong>$830.538</strong></td>
</tr>
</tbody>
</table>

**Additional Information**

A 20 to 30% premium can be applied to total cash in lieu of benefits. A 25% premium applied to the 50th percentile would equal approximately:

- $ S 593,715 per year
- $ S 285.44 per hour

**Surveys:**

- Sullivan, Cotter & Associates, Inc.
- Medical Group Management Association
- American Group Medical Association (AMGA)

Note: Numbers are hypothetical
Employment

Key Concepts with Exhibit A:

1. Range established (25%, 50%, 75%, and 90%)
2. Specialty is matched
3. Hourly rate is determined by percentile
4. Surveys are averaged to negate disparity
5. Premium added to base in lieu of benefits (assuming physician is independent contractor)
Incentive Compensation Arrangements

There are three (3) basic types of productivity compensation arrangements:

- Percentage of collections.
- Compensation per RVU.
- Percentage of gross charges.
### Gross Charges

<table>
<thead>
<tr>
<th>Pro:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Compensation is not based upon patient’s payor.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Con:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Charges may not be aligned with collections.</td>
</tr>
<tr>
<td>- Compensation can be influenced by employer’s increase/decrease of charges.</td>
</tr>
</tbody>
</table>
### Incentive Compensation Arrangements
#### Pros vs. Cons

<table>
<thead>
<tr>
<th>Collections</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pro:</strong></td>
<td><strong>Con:</strong></td>
</tr>
<tr>
<td>- Compensation is aligned with the amount employer collects for professional services.</td>
<td>- Great incentive for physician to see patients with higher paying payors (disincentive to see Medicare, Medicaid or indigent patients).</td>
</tr>
<tr>
<td>- Good documentation, better behavior</td>
<td></td>
</tr>
</tbody>
</table>

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52
Incentive Compensation Arrangements
Pros vs. Cons

<table>
<thead>
<tr>
<th>Relative Value Unit</th>
<th>Pro:</th>
<th>Con:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Compensation is based upon physician’s productivity.</td>
<td>• Compensation based upon RVUs may not be aligned with collections.</td>
</tr>
<tr>
<td></td>
<td>• Value of RVU is assigned by Medicare.</td>
<td>• Confusion btw work and total</td>
</tr>
<tr>
<td></td>
<td>• Physician is compensated for work effort regardless of payor/collections.</td>
<td></td>
</tr>
</tbody>
</table>
**Example 1:**

- Single Tier Model with a Guaranteed Cash Compensation of $175,000 with additional incentive compensation of $40 per RVU above 4,500 RVUs work.
- Base Compensation, RVU production and compensation per RVU all benchmarked at 50th percentile.

<table>
<thead>
<tr>
<th>Percentile</th>
<th>Cash Compensation</th>
<th>RVUs</th>
<th>Compensation per RVUs</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>125,000</td>
<td>3,500</td>
<td>$35</td>
</tr>
<tr>
<td>50</td>
<td><strong>175,000</strong></td>
<td>4,500</td>
<td>$40</td>
</tr>
<tr>
<td>75</td>
<td>225,000</td>
<td>5,500</td>
<td>$41</td>
</tr>
<tr>
<td>90</td>
<td>300,000</td>
<td>6,500</td>
<td>$46</td>
</tr>
</tbody>
</table>

Note: Numbers are hypothetical.
Example 2:

- Multiple Tiered Model
- 100% RVU Production

<table>
<thead>
<tr>
<th>RVUs worked</th>
<th>Compensation per RVU</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,500 and below</td>
<td>$30</td>
</tr>
<tr>
<td>4,501 – 5,500</td>
<td>$35</td>
</tr>
<tr>
<td>5,501 – 6,500</td>
<td>$40</td>
</tr>
<tr>
<td>6,501 and above</td>
<td>$42</td>
</tr>
</tbody>
</table>
Structure of compensation (and underlying fair market value documentation) may depend upon legal status: Employee vs. independent contractor
Medical Director

Independent Contractor:

1. Hourly payment (with maximum number of hours in contract)

2. Annual payment (determined by projected number of hours multiplied by Fair Market Value hourly rate)
If Annual Payment method is used, need to track hours to make sure consistent with contract.
Example Included as Exhibit B.
### MEDICAL DIRECTOR Tracking Tool

<table>
<thead>
<tr>
<th>Last Name</th>
<th>Current Hrly Pay</th>
<th>Contract Hrly Pay</th>
<th>Contract Weeks</th>
<th>Actual Total Hrs. Wrk</th>
<th>Prorated Hrs.</th>
<th>Contracted Annual Hrs.</th>
<th>Contract Start Date</th>
<th>Contract Expire Date</th>
<th>Total Annual Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Kilroy</td>
<td>$102.42</td>
<td>$114.00</td>
<td>17</td>
<td>65.5</td>
<td>59</td>
<td>180</td>
<td>09/01/05</td>
<td>08/31/06</td>
<td>$20,520.00</td>
</tr>
<tr>
<td>Dr. Bombay</td>
<td>$117.65</td>
<td>$102.56</td>
<td>26</td>
<td>68</td>
<td>78</td>
<td>156</td>
<td>07/01/05</td>
<td>06/30/06</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>Dr. Doctor</td>
<td>$142.12</td>
<td>$111.00</td>
<td>43</td>
<td>201.5</td>
<td>258</td>
<td>312</td>
<td>08/01/05</td>
<td>07/31/06</td>
<td>$34,632.00</td>
</tr>
<tr>
<td>Dr. I.M. III</td>
<td>$139.54</td>
<td>$137.80</td>
<td>4</td>
<td>79</td>
<td>80</td>
<td>1040</td>
<td>08/01/05</td>
<td>07/31/06</td>
<td>$143,310.40</td>
</tr>
<tr>
<td>Dr. Feelgood</td>
<td>$134.77</td>
<td>$97.87</td>
<td>26</td>
<td>321</td>
<td>442</td>
<td>884</td>
<td>07/01/05</td>
<td>06/30/06</td>
<td>$86,520.00</td>
</tr>
</tbody>
</table>

**Current Hourly Pay**: Current hourly rate based upon total hours documents

(Total Annual Compensation/52 X Contract Weeks)/(Actual Total Hours Worked)

**Contracted Hourly Pay**: (Total Annual Compensation)/(Contracted Annually Hours)

**Contract Weeks**: Number of weeks into current annual contract cycle

**Total Hours Worked**: Number of hours of services documented by physician during current term based upon time sheets approved

**Prorated Hours**: Average hours physician would have worked if hours evenly distributed throughout contract term:

**Contracted Annual Hours**: Number of hours required by contract on annual basis

**Contract Start**: Effective Date of current annual term

**Contract Expiration**: Expiration date of current annual term

**Total Annual Compensation**: Total amount of annual compensation per contract
Real Estate

Fair market value v.
Commercially
Reasonable: Is there
a difference?
Real Estate

Fair market value: A Box is a Box is a Box. So, I can charge what the Hospital down the street charges. Right?
Real Estate

**Fair market value:** Is the physician paying occupancy costs that are consistent with arm’s length relationships in comparable properties in local market?
Commercially Reasonable: Is hospital establishing rental rates in amounts sufficient to generate positive cash flows and a rate of return consistent with i) risk and ii) other local real estate investors?

Is this space of an amount that is needed by the physician?
Commercially Reasonable: What a reasonable real estate investor will require as a rate of return.

10 %?  15%?  20%?
Real Estate

To be *commercially reasonable*, unless extenuating circumstances exist, real estate should generate a reasonable rate of return.
Real Estate

Commercially Reasonable: (Amortized Cost of Building + interest + expenses) - rent receipts = 10% + [Market reasonable rate of return]
Real Estate

Things to consider:

- Tenant Improvements ("TI")
- New Space (higher TIs)
- Rehab (Presumption - lower TIs)
- Standard TIs
- Enhanced TIs
  - Pay up front
  - Prorate with lease payments with interest
Things to consider (Continued):

- Leasing Costs
- Amenities (Parking, Security, Internet, etc.)
- Total Cost (Design, Construction, Land, Financing, HVAC, Taxes, Janitorial, Legal, etc.)
Real Estate

Quality of Building must be evaluated. Class A, B or C Building?
Must allocate all costs.

- Rental of space (Half or Full Day Slots)
- Vacancy Rate (Project 20% vacancy?)
- Supplies
- Utilities
- Staff (Registration, Nursing, etc.)
- Equipment
Real Estate
Shared Space (Example)

Assume the following:

• $18 gross per square foot rental (exclusive use)
• 30% projected vacancy
• 1,000 square feet in suite
• Building has 6,000 square feet, with 1,000 square feet for common area (5,000 square feet usable space)
• Suite capable of being leased in half day increments (8:00 A.M. – Noon; 1:00 P.M. – 5:00 P.M.)
Real Estate
Shared Space (Example)

- Furniture and equipment in suite determined to be leaseable at $2,000 per year using independent third party leasing company.
- Miscellaneous medical/office supplies projected to be used in suite is approximately $5,000 annually if suite leased 70% of the time.
$18 (exclusive use rate) + 30\% \text{ (vacancy)} = $25.71 \text{ per square foot}

($18 \times 0.7 = $25.71$)

1,000 square feet (suite) \quad 5,000 \text{ square feet (building not including common area)} = 20\% \text{ (percentage of suite’s usable space in building’s usable space)}

1,000 \text{ square feet (common area)} \times 20\% \text{ (suite to building)}

= 200 \text{ square feet (common area allocated to suite)}
1,200 square feet (suite plus allocated common area) x $25.71 = $30,852

$30,852 + $2,000 (furniture and equipment) + $5,000 (medical/office supplies) = $37,852

$37,852 / 52 (weeks) = $728 (weekly rate)

$728 / 5 (business days in week) = $146 (daily rate)

$146 / 2 = $73 (half day rate)
Example becomes more complicated if:

- Part of suite is leased (as opposed to full suite)
- Staff is provided by landlord/hospital
- Specialized equipment is used
- Non-standardized supplies are used by a tenant
EQUIPMENT LEASING

First, it must be determined whether the equipment will be used exclusively by lessee or shared between multiple providers.
EQUIPMENT LEASING

If leased exclusively, comparables from third party leasing companies should be obtained.

• Call and receive quote

• If unable to obtain a quote from a third party leasing company, lessor could determine the useful life of the equipment and reasonable rate of return for lessors of equipment.
EQUIPMENT LEASING

Example:

Equipment valued at $100,000, with a useful life of 7 years, and a commercially reasonable rate of return of 30%, produces an annual lease rate of $18,571.

Reasonable Rate of Return: Determined by lessors who are not dependant upon referrals from lessees.
If the equipment is not going to be used exclusively by the lessee, either a daily, hourly or per click lease rate should be developed.

- Quote from third party leasing company
- If unable to receive third party quote, using the same methodology as used in the exclusive use example may be appropriate.

$18,571 (annual rate including 30% rate of return) divided by 260 days = $71 daily rental rate.

Caution: This does not include any additional services lessor needs to provide to transport equipment or to make equipment available to lessee (i.e., films, technician, etc.).
EQUIPMENT LEASING

It is very important to use comparables from sources who are not referral sources.
CONSULTING SERVICES

Payment for consulting services can be:

- Hourly
- Fixed Payment for Project
CONSULTING SERVICES

Fixed payments should be developed by estimated number of hours to be dedicated by physician multiplied by fair market value hourly rate using national surveys or third party compensation consultant.

Hourly Rates Rules!
CONSULTING SERVICES

Actual consulting services should be performed.

**Good:**
Review and develop written reports/analysis.

**Questionable:**
Paid “consulting fee” to sit in an audience to listen about a new product/service.
On-call rates are reported based upon whether the physician provided *restricted* or *unrestricted* call coverage

- **Restricted** call indicates that the physician is *required* to stay on the premises

- **Unrestricted** call indicates that the physician is *not required* to stay on the premises
## Pay Practices

<table>
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<tr>
<th></th>
<th>Restricted On-Call</th>
<th></th>
<th></th>
<th>Unrestricted On-Call</th>
<th></th>
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<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>25th %</td>
<td>Median</td>
<td>75th %</td>
<td>No. of Respondents</td>
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</table>

isd = insufficient data (reported only for 5 or more respondents)

Source: Sullivan Cotter & Associates
ON-CALL COVERAGE

If on call physician needs to be available by pager/phone, and no third party survey is available, either of the following two approaches may be used:

• Find a specialty that does have a third party survey. Determine on call hourly rate and determine percentage of normal hourly rate.

  • Example: Third Party Survey $150 FMV hourly rate and $20 on-call rate = 13.3%
    Your on-call issue: $200 FMV hourly rate x 13.3% = 27/hour

• Determine what market typically pay nurses as a percentage of normal hourly rate to be on call.

  • If nurses in market are typically paid $2 to be available by pager and normal hourly rate is $16, nurses are paid 12.5% of their normal hourly rate to be on call.

  • If a physician’s normal hourly rate is $150, then it may be commercially reasonable to pay the physician $18.75 to be on call (12.5% of $150).
Fair market value documentation should be developed and documented before offer is made.
PHYSICIAN CONTRACT CHECKLIST: RECRUITMENT, EMPLOYMENT, AND INDEPENDENT CONTRACTORS

Name of Physician

Specialty

Subject Matter of Contract

TO

Term of Contract

<table>
<thead>
<tr>
<th>Under the Contract, will Physician be an:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Contractor, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Practitioner not rendering services on behalf of [Organization Name]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is Physician being recruited to relocate to the geographic area served by [Organization Name]?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is Physician's practice be moved greater than 25 miles?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is Physician currently, or will the physician be an employee, shareholder, member or owner of a medical group, professional corporation, company, or entity other than [Organization Name]?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, state the name of such group, or entity. Include any group or entity that is related to [Organization Name]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Health care organization should establish a structured approval and documentation process for all physician contracts.
DOCUMENTATION GUIDELINES

One example is using the Board of Trustees, or a committee of the Board of Trustees (i.e., Executive Committee). Documentation submitted for approval can include:

1. Fair Market Value/Commerically Reasonableness
   Documentation (Survey, Checklist, Competing Offers)

2. Proof of Legal Review

3. Officer’s Certificate (see Exhibit E)

4. Copy of contract (or contract review memo disclosing the material components of the contract.)
OFFICER'S CERTIFICATION

I, _______________________________________, [President] __________________ of [Name of Organization] hereby certify that to the best of my knowledge, the following matters are true for the ________________________ by and between [Name of Organization] and ________ dated ____________, 2005 (the "Arrangement"):

1. There are no other arrangements, written or oral, with ________ except as written in the Arrangement;

2. The payments pursuant to the Arrangement represent the fair market value of the services to be rendered thereunder;

3. No payment has been or will be made, to the professional referenced herein outside of the terms and conditions of the Arrangement unless such outside payment is also consistent with [Name of Organization] 's policies; and

4. I, as the ____________________, shall ensure that the services required under the Arrangement are rendered prior to making each payment thereunder.

Date: ___________________                  Signature: ____________________________

* Can be signed by CEO, VP or President.
PHYSICIAN CONTRACT REVIEW MEMO*

Name of Physician or Group with whom contract is being sought:

Type of contract (i.e., Medical Director, Employment Agreement, Practice Location Agreement): ________________________________ (“Contract”)

Specialty: ________________________________

[Organization Name] Contracting Entity (check all that apply):

☐ List all Entities

Name and Title of Administrator completing Physician Contract Review Memo:

*Signature of above Administrator: ________________________________ Date: __________________

Pursuant to the terms of the proposed contract, the physician/group will do the following:

Term: The Contract will commence and end on the date of service provided

Renewal terms, if any, are as follows: ________________________________

Describe 1) why the Contract is Fair Market Value and ii) method of compensation. (Be very detailed, including a calculation as to how the annual compensation was determined. For example, if the documented Fair Market Value per hour rate is $100.00, and 100 hours are expected from the physician/group, then a $10,000 annual payment is warranted.) Attach all supporting Fair Market Value documentation, including Physician Recruitment Checklist if applicable. In addition to the Fair Market Value documentation, if Physician is to be compensated above the 50th percentile, attach a memo explaining why Physician should be compensated above the 50th percentile (relevant factors may include specialty, board certifications or eligibility, years in practice, etc.) NOTE: NO CONTRACT SHALL BE APPROVED IF DESIRED COMPENSATION IS ABOVE 90TH PERCENTILE.

Administrator responsible for monitoring performance of all aspects of Contract by physician/group (listed administrators are limited only to the following: CEO, COO, SVP, VP):
State why the Contract is needed (including those needs that further [Organization Name] charitable purpose):

Billing: Does the contract cover professional patient care services to be performed by the physician? _____ Yes _____ No If YES, will [Organization Name] bill, either directly or by a contracted billing company, for the professional patient care services and retain revenue? _____ Yes _____ No

In addition to the above, this contract is needed and furthers the [Organization Name] charitable service because (initial all that apply): _____ the contract benefits the community by improving patient access to quality medical services; _____ the contract will further the [Organization Name]'s mission; _____ the contract will improve an existing area of service.

[Legal staff to complete the following portions of this memo]
Has the Contract been reviewed and approved by legal counsel?
Yes_____ No_____

Stark exception upon which contract is based (legal staff must initial one):
_____ Bona fide employment relationship
_____ Personal services arrangement
_____ Rental of office space
_____ Rental of equipment
_____ Other: ____________________________

If the contract was reviewed by in-house counsel, the signature that follows is a representation that [Organization Name]'s in-house counsel believes that the contract satisfies, in all material respects, [Organization Name]'s policy on hospital physician financial relationships and applicable laws governing such relationships.

________________________________________ (signature of [Organization Name] lawyer)

Has an Officer’s Certificate been executed and delivered to the legal office? (legal staff must initial one)
Yes_____ No_____

If not, please explain why:

________________________________________

[Chief Financial Officer, or designee, to complete the remaining portion of this memo]
Has the Contract been reviewed and approved by Finance?
Yes_____ No_____
Because of the inherent risk with physician contracts, the Board of Trustees should either i) be involved in the approval process, or ii) establish a process to be followed by the administration for approval of physician contracts.
Board/Committee approval of financial transactions with physicians creates rebuttable presumption under Intermediate Sanction Regulation.
For every contract, the following documents should be maintained in a central file:

- *Executed* and *current* copy of contract
- Fair market value/commercial reasonableness documentation that formed the basis for the contract
- Documentation of legal review
- Officer’s certificate (see Exhibit E)
Questions?

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