

Executive Briefing

Increased Scrutiny on Hospital/Physician Agreements: Avoid Being a Headline

"Iowa hospital pays \$4.5 million in fraud case," *Chicago Tribune*, August 25, 2009.

"St. Joseph Medical Center reaches settlement with feds," *Baltimore Business Journal*, July 23, 2009.

"Condell Medical Center to pay U.S. for claims," *Chicago Tribune*, December 2, 2008.

Executives read about Stark law compliance daily, while compliance officers preach about it daily. Yet more than ever, hospital/physician relationships are being scrutinized by regulators, and Stark law violations are typically the basis for investigations. Investigations are increasingly common for numerous reasons, the most prevalent of which is a federal effort to recover funds and ensure that healthcare dollars are being spent appropriately. Monetary settlements with the Office of Inspector General (OIG) are not the only damages that organizations may face; investigations have resulted in senior executives losing their jobs and hospitals losing strategic ground in their market as their economic relationships with physicians are scrutinized.

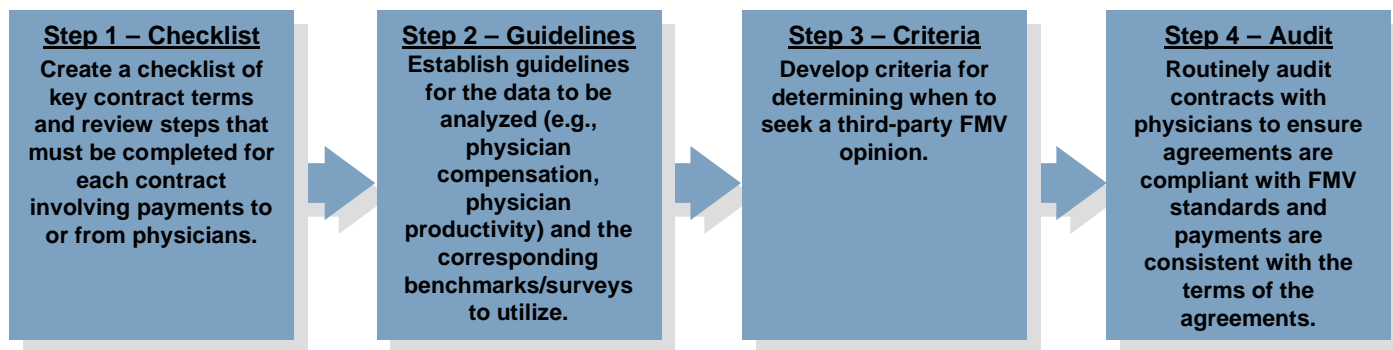
How certain are you that your physician arrangements meet regulatory guidelines? Are you sure the compensation of your employed physicians is fair market value (FMV)? Are you certain that the annual rent escalator in all of your lease agreements has been properly applied every year? How confident are you that all of your physicians who provide ED call coverage have signed an agreement with the hospital? All of these economic relationships with physicians are subject to multiple regulatory requirements that should be part of your ongoing compliance efforts. An avoidable mistake in this regard can be costly.

Why Is Determining FMV Critical?

The OIG estimates that it earns \$17 for every \$1 spent on healthcare investigations, so it is understandable that the Obama administration has increased the focus on healthcare fraud as a key component of healthcare reform efforts. The chances of being targeted for investigation are increasing, and one way to mitigate compliance risk is to document FMV. As hospitals and health systems continue to pursue physician alignment initiatives, organizations need to closely evaluate arrangements with physicians. While all arrangements involving the exchange of money for services should be evaluated, compensation arrangements related to physician employment, medical directorships, and similar contracted services should be at the top of an organization's list. Documenting FMV analyses provides protection to organizations in the event an investigation is launched by the OIG, the IRS, or other authorities. Having an objective third-party expert complete the analysis may bolster an organization's case in the eyes of investigators. An external FMV opinion letter provides evidence that the organization went through a diligence process to evaluate compensation and ensure payments comply with Stark and IRS regulations. While an FMV opinion rendered by a third-party reviewer does not provide full protection from an investigation, it demonstrates that the organization considered relevant facts and sought an expert opinion.

What Should You Do to Determine and Monitor FMV?

Organizations should establish a formal process to ensure physician compensation is FMV. A designated person or committee should maintain responsibility for the evaluation, documentation, and monitoring of hospital/physician arrangements. While there are multiple processes that can be adopted, we recommend that your process include, at a minimum, the following key steps:



Sample Process for Assessing FMV Compensation in Physician Arrangements

A consistent diligence process for managing and monitoring physician contracts and associated payments should be followed. The process below provides a common work flow for evaluating physician compensation arrangements.

Benchmarking Analysis	Compare physician compensation and productivity to industry surveys.
Coding Audit	If the physician's compensation is above the 75th percentile, perform a coding audit to ensure coding accuracy and compliance.
External FMV Review	If the coding audit demonstrates compliance, have an external FMV analysis and opinion prepared.
Compensation Committee Review	Obtain approval for the compensation arrangement from the compensation committee (preferably a formal committee of the Board of Directors).

When conducting the benchmarking analysis, organizations should ensure that the benchmarks used are comparable to the arrangement under consideration. If an investigation is initiated, organizations must be able to demonstrate that they appropriately applied compensation survey data to the arrangement and considered the unique circumstances and facts associated with the arrangement in determining fair compensation.

Conclusion

Only through a comprehensive audit of your financial arrangements with physicians can you be confident you are compliant with relevant laws. A proactive approach to monitoring and evaluating contracts and physician compensation is necessary as scrutiny of hospital/physician arrangements increases. Being reactive may be too late to avoid an investigation and negative headlines. Being proactive is a small investment with significant upside.

This *Executive Briefing* was written by Mr. John N. Fink and Mr. Kevin P. Forster. For questions about this publication or for assistance in addressing FMV, compliance, or hospital/physician financial arrangements, please contact Mr. Fink at 858-436-3220 or jfink@ecgmc.com or Mr. Forster at 206-689-2200 or kforster@ecgmc.com.

About ECG Management Consultants, Inc.

ECG offers a broad range of strategic, financial, operational, and technology-related consulting services to healthcare providers. As an industry leader, ECG is particularly known for providing specialized expertise regarding the complexities of the academic healthcare enterprise, strategic and business planning, specialty program development, and hospital/physician relationships. ECG has offices in Seattle, Boston, Washington, D.C., San Diego, and St. Louis. For more information, visit www.ecgmc.com.