



Fair Market Value and Commercial Reasonableness: How to Document Compliance

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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

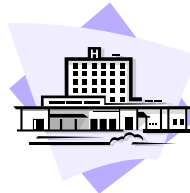


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Tell that to the parties involved in the following cases:

- 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;



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Fair Market Value and Commercial Reasonableness Are Important Factors In:

- Anti-Kickback Statute
- Stark Act
- Intermediate Sanctions



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

- It is illegal to knowingly or willfully:
 - 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.



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Anti-Kickback Statute Employment Safe Harbor

- Payments made by employer to employee under bona fide employment relationship with employer for employment in furnishing of any item or service for which payment may be made under Medicare or Medicaid are excepted from the Anti-Kickback Statutes' prohibitions.
 - Fair Market Value
 - Arm's Length Negotiation
 - Reasonable



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Anti-Kickback Statute

Safe Harbor for Personal Services and Management Contracts

- Written Agreement signed by parties
- Term of at least one year
- Agreement must specify aggregate payment and such payment must be set in advance
- Compensation must be reasonable, fair market value and determined through arms' length negotiations
- Must set exact services required to be performed



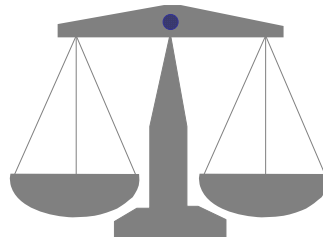
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Anti-Kickback Statute

Safe Harbor For Personal Services and Management Contracts

- Compensation must not be determined in a manner that takes into account volume or value of referrals
- All arrangements must be in one contract
- The arrangement must serve a commercially reasonable business purpose



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Anti-Kickback Statute

Safe Harbor For Personal Services And Management Contract

- If the Agreement does not contemplate full-time services, it must also specify:
 - The exact schedule of intervals;
 - Their precise length; and
 - The exact charge for such intervals.

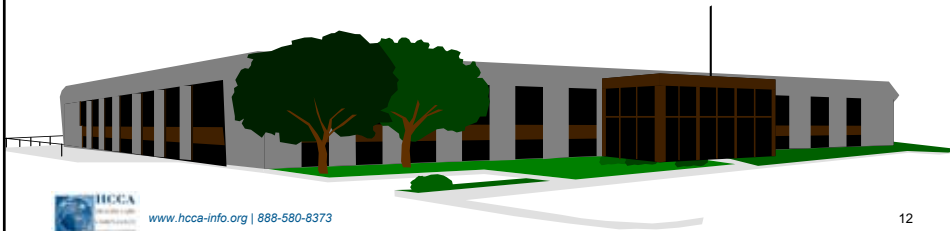


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Anti-Kickback Statute

- Written Agreement
- 1 Year
- Fair Market Value



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Anti-Kickback Statute Safe Harbor For Equipment Rental

- Written Agreement
- Identify Specific Equipment
- Schedule of Usage
- 1 Year Term
- Fair Market Value



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Stark Act 42 U.S.C. § 1395 nn

- 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.



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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



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Stark Act

Personal Service Arrangement Exception (Applies to Compensation Relationships)

- Remuneration paid under personal service arrangement is not prohibited compensation arrangement if:
 - Arrangement is set out in writing, signed by parties and specifies services covered by arrangement;
 - Arrangement covers all services to be provided by physician to entity;
 - This condition is met if
 - Contract references all other arrangements; or
 - Master list of contracts is maintained with historical record of all arrangements.
 - Term for at least one year



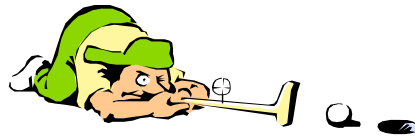
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Stark Act

Personal Service Arrangement Exception (Applies to Compensation Relationships)

- Services are reasonable and necessary
- Compensation to be paid over term of arrangement is set in advance, does not exceed FMV, is reasonable and determined through arm's length negotiations, and is not determined in manner which takes into account volume or value of referrals between parties



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Rental Of Office Space And Equipment Exception (Applies to Compensation Relationships)

- Term of lease is for at least one year;
- Rental charges over term of lease are set in advance, consistent with fair market value, and not determined in a manner that takes into account volume or value of referrals or other business generated between parties; and
- Lease would be commercially reasonable even if no referrals were made between parties.



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Rental Of Equipment Exception

(Applies To Compensation Relationships)

- Can charge per use fee (“per click”) as long as charge does not reflect payment for professional services.
- Per click fee must be FMV and commercially reasonable.
- Cannot use per click compensation for use related to lessor’s referrals



Bona Fide Employment Exception

(Applies to Compensation Relationships)

- Employment is for identifiable services;
- Amount of remuneration under employment is:
 - Consistent with fair market value, reasonable and determined through arm’s length negotiations;
 - Not determined in manner which takes into account volume or value of referrals by referring physician; and
 - Remuneration is provided pursuant to agreement that would be commercially reasonable even if no referrals were made to employer.



Bona Fide Employment Exception

(Applies to Compensation Relationships)

- Productivity bonuses can be paid if based on services performed personally by the physician (i.e., worked RVUs)



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Bona Fide Employment Exception

(Applies to Compensation Relationships)

- Requiring referrals
- An employer can require an employee to refer to a particular provider, practitioner or supplier so long as:
 - Compensation is set in advance
 - Compensation is fair market value
 - Referral requirement
 - Is in writing signed by the parties
 - Is not required if the patient expresses a preference for a different provider
 - Does not require physician to refer if the patient's insurance does not cover services at required providers
 - Does not require physician to refer if physician believes that the required referral is not in the patient's best medical interest



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Bona Fide Employment Exception

(Applies to Compensation Relationships)

Requiring referrals (Continued)

- The required referrals relate solely to the physician's services covered by the scope of the employment and the referral requirement is reasonably necessary for the legitimate business purposes of the compensation arrangement between the employer and the employee.
- Good
 - Employed Primary Care – Inpatient
- Bad
 - Medical Director - Inpatient



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Isolated Transaction Exception

(Applies to Compensation Relationships)

- Definition of compensation does not include isolated financial transactions, such as one-time sale of property or practice, if:
- Amount of remuneration is:
 - Consistent with FMV, is reasonable and determined through arm's length negotiations;
 - is not determined in manner that takes into account volume or value of referrals by referring physician; and
 - Remuneration is provided pursuant to agreement that would be commercially reasonable even if no referrals were made to purchaser.
- No other transactions between parties for 6 months after isolated transaction



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Fair Market Value Exception

(Applies to Compensation Relationships)

- Payments that are fair market value are permitted compensation arrangements if:
 - In writing
 - Covers all arrangements between parties
 - Does not have to have 1 year term as long as terms and conditions do not change during 1 year
 - Compensation set in advance, FMV, and not related to volume or value of referrals
 - Commercially reasonable and furthers legitimate business interests
 - Complies with fraud and abuse provisions



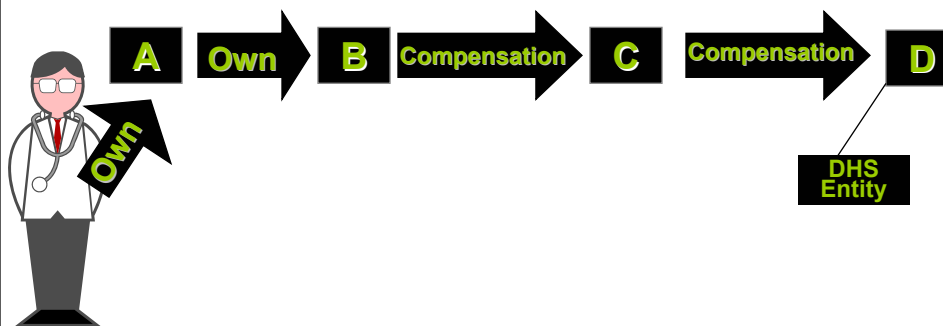
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Indirect Compensation Arrangement Exception

(Applies to Compensation Relationships)

- An indirect compensation arrangement is any series of ownership or compensation arrangements. For example:

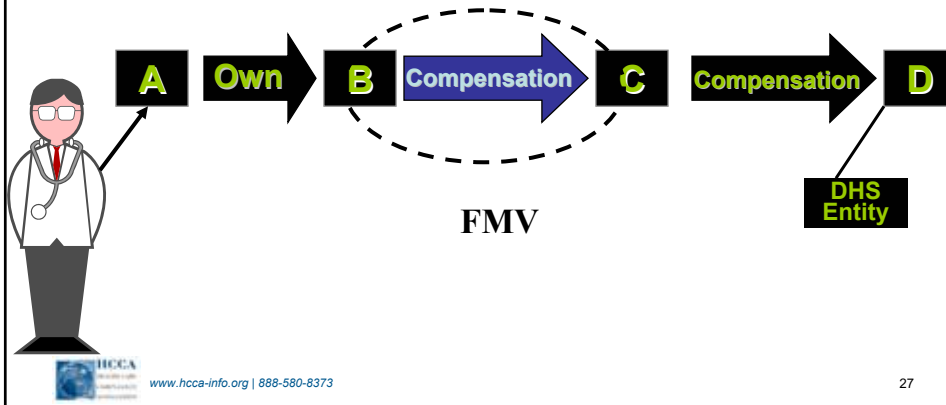


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Indirect Compensation Arrangement Exception
(Applies to Compensation Relationships)

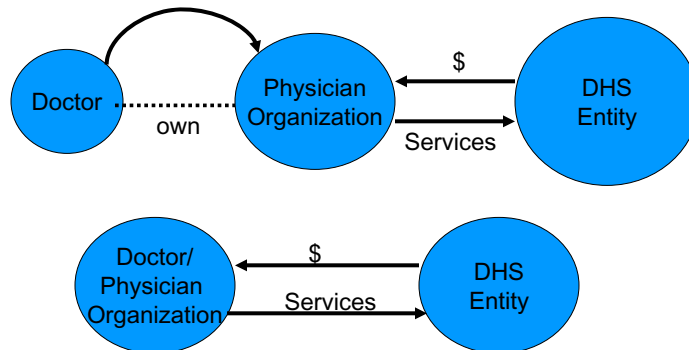
- The aggregate compensation that is closest to the referring physician (in the example below, the compensation between company B and C) must be fair market value.



Indirect Compensation Arrangement Exception
(Applies to Compensation Relationships)

Stand in Shoes

Physician must “stand in shoes” of their Physician Organization if physician has an ownership/investment interest (not compensation).
 Creates Direct Financial Arrangement



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.



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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.



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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.



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Intermediate Sanctions

Ultimately, the Internal Revenue Service has the authority to revoke the tax-exempt status.



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What Is Fair Market Value?



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What Is 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.”



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What Is Fair 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

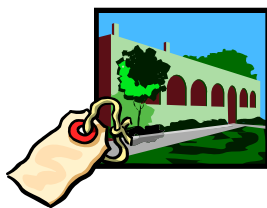


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What Is Fair Market Value?

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.

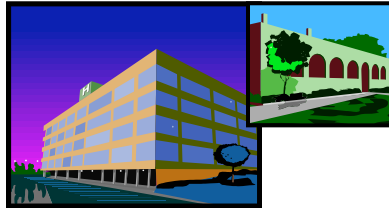


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What Is Fair Market Value?

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.”

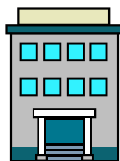


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What Is Fair Market Value?

Although the proximity to the lessor cannot add value to the lease payments, the rental payment can “take into account intended use if it takes into account costs incurred by the lessor in developing or upgrading the property or maintaining the property or its improvements.”



VS.



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What Is 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.



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What Is Fair Market Value?

A Fair Market Value Safe Harbor for **hourly rates** was developed under Phase II of Stark but **deleted** in Phase III.

*CMS noted that it is still a prudent documentation process.



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Fair Market Value Safe Harbor

- 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.



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Fair Market Value Safe Harbor

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



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What Is Fair Market Value?

Intermediate Sanctions

- According to the Internal Revenue Service, fair market value “is the price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to use property, and both having reasonable knowledge of all relevant facts.”
- “The fair market value of economic benefits received for the performance of services is reasonable compensation, which is the value that would ordinarily be paid for like services by a like enterprise under like circumstances.”

See: Internal Revenue Service Web Site at
www.irs.gov/charities/charitable/article/0,,id=123303,00.html

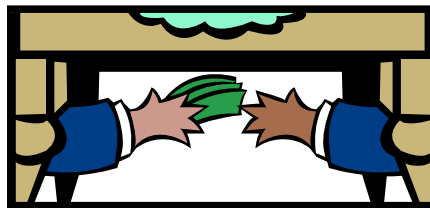


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What Is Commercially Reasonable?

- Many of the exceptions under the Stark Act require the payment to “be commercially reasonable even no referrals were made” between the parties.



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What Is Commercially Reasonable?

- To be commercially reasonable, both the **services** and **payment** must be commercially reasonable



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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.



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What Is Commercially Reasonable?

- Commercially reasonable PAYMENTS are financial arrangements that are equivalent to arrangements between parties who are not dependent upon referrals.
- Examples:
 - Landlord of a medical office building who is not a medical provider and who owns the medical office building to generate a reasonable rate of return/profit.
 - Lessor of equipment who is in the business of renting equipment, and is not a doctor or other medical provider.



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Documentation Of Fair Market Value/Commercial Reasonableness

Let the fun begin!



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Documentation Of Fair Market Value/Commercial Reasonableness



Is it an art or is it a science?

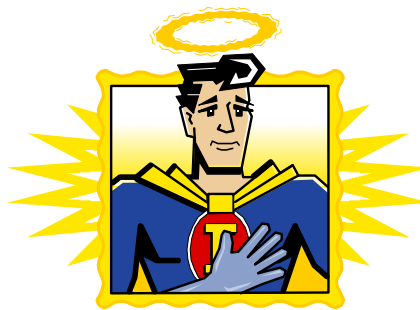


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Documentation Of Fair Market Value/Commercial Reasonableness

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



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Legal Opinions

Most law firms do not provide legal opinions on fair market value or commercial reasonableness



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Legal Opinions

Law firms should work with providers to establish a **process** to develop FMV/commercial reasonableness information, and then opine that providers followed established **process**.



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Fair Market Value

- Guidelines for the following arrangements:
 - Employment Agreements
 - Medical Directorships
 - Real Estate Leasing
 - Time Share Arrangement
 - Equipment Leasing
 - Consulting Services
 - On Call Coverage



Employment

- For employed physicians, the following compensation structures can be developed:
 1. Equal compensation
 2. Productivity-based compensation (Cap Compensation - i.e., 75th percentile by specialty)
 3. Combination of equal pay and productivity-based compensation
 4. Point System (a/k/a relative value unit [RVU] method)
 5. Fixed base periodic salary plus bonus



Employment

- Market Data:
 1. Determine what competitors are paying (anti-trust risks)
 2. Opinion letter from compensation analyst
 3. Third party surveys



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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



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Physician Compensation and Production Survey 2006 Report Based on 2005 Data

Table 1: Physician Compensation

	Phys	Med Pracs	Mean	Std. Dev.	25th Tile	Median	75th Tile	90th Tile
Anesthesiology	2,775	168	\$320,163	\$111,091	\$166,549	\$207,272	\$374,119	\$504,199
Anesthesiology	1,116	97	\$506,179	\$134,867	\$267,309	\$454,241	\$627,060	\$929,470
Anest. Pain Management	116	97	\$502,307	\$134,517	\$267,309	\$448,147	\$619,674	\$929,400
Anest. Pediatric	30	10	\$423,026	\$189,154	\$201,461	\$446,432	\$477,700	\$701,203
Cardiology - Electrophysiology	167	96	\$514,797	\$231,802	\$304,172	\$506,740	\$681,308	\$720,004
Cardiology - Invasive	543	145	\$465,840	\$180,324	\$346,440	\$440,840	\$564,000	\$683,120
Cardiology - Invasive	477	163	\$513,084	\$236,344	\$336,004	\$487,070	\$622,611	\$639,084
Cardiology - Noninvasive	972	160	\$396,938	\$175,811	\$271,750	\$370,807	\$466,460	\$602,250
Critical Care - Intensive	93	16	\$249,306	\$86,609	\$221,489	\$230,707	\$260,731	\$282,450
Endocrinology	20	12	\$139,135	\$45,667	\$100,000	\$114,251	\$171,800	\$206,000
Dermatology	313	120	\$271,330	\$190,074	\$269,110	\$321,180	\$459,194	\$587,953
Dermatology - Mohs Surgery	30	22	\$604,932	\$271,611	\$307,050	\$537,661	\$680,000	\$1,100,491
Emergency Medicine	754	97	\$244,842	\$63,800	\$207,437	\$243,449	\$291,220	\$319,444
Endocrinology/Metabolism	198	103	\$205,274	\$73,523	\$168,860	\$169,055	\$226,181	\$289,147
Family Practice (w/ OB)	1,200	201	\$181,650	\$66,000	\$140,636	\$170,603	\$210,004	\$269,210
Family Practice (w/o OB)	4,877	650	\$175,902	\$70,161	\$130,413	\$160,734	\$203,628	\$261,222
Family Practice - Sports Med	49	10	\$201,176	\$86,166	\$147,136	\$196,093	\$234,463	\$277,445
Gastroenterology	860	203	\$423,907	\$196,915	\$292,448	\$384,015	\$518,243	\$689,130
Gastroenterology - Hepatology	49	11	\$412,186	\$193,301	\$293,060	\$405,746	\$486,000	\$621,728
Genetics	4	3	-	-	-	-	-	-
Geriatrics	40	20	\$165,702	\$30,016	\$140,425	\$162,877	\$188,000	\$211,000
Hematology/Oncology	399	123	\$223,460	\$74,307	\$207,843	\$208,403	\$269,578	\$306,632
Hemat/Onc - Oncology (only)	81	31	\$607,350	\$269,002	\$228,583	\$307,050	\$483,114	\$1,245,779
Infectious Diseases	127	80	\$278,897	\$102,906	\$248,725	\$268,048	\$294,704	\$317,000
Internal Medicine - General	4,343	434	\$187,858	\$73,593	\$141,444	\$174,464	\$210,209	\$271,312
Internal Med - Hospitalist	603	110	\$189,403	\$66,427	\$149,403	\$180,164	\$233,008	\$234,668
Internal Med - Pediatric	100	37	\$170,607	\$55,521	\$137,675	\$168,864	\$208,113	\$251,005
Nephrology	244	72	\$301,090	\$117,261	\$218,000	\$264,061	\$300,000	\$422,804
Neurology	508	185	\$262,860	\$125,140	\$180,287	\$216,100	\$269,002	\$393,607
OB/GYN - General	1,770	308	\$278,358	\$109,235	\$208,732	\$276,455	\$322,608	\$417,000
OB/GYN - Gynecology (only)	102	40	\$215,268	\$111,360	\$133,910	\$188,025	\$238,994	\$289,430
OB/GYN - Gyn Oncology	45	21	\$348,610	\$160,285	\$241,534	\$310,000	\$360,041	\$570,793
OB/GYN - Maternal & Fetal Med	65	18	\$420,008	\$210,200	\$300,307	\$370,211	\$443,420	\$710,000
OB/GYN - Repro Endocrinology	11	14	\$411,594	\$217,419	\$276,612	\$343,097	\$444,432	\$763,849
Oncology - Hematology	6	2	-	-	-	-	-	-
Ophthalmology	102	81	\$209,115	\$91,042	\$164,789	\$191,409	\$250,883	\$273,084
Ophthalmology - Pediatric	137	121	\$239,302	\$174,884	\$202,308	\$300,321	\$412,010	\$506,184
Ophthalmology - Refractive	20	20	\$270,080	\$80,031	\$192,036	\$230,000	\$300,000	\$300,000
Ophthalmology - Retina	60	33	\$574,366	\$291,350	\$301,913	\$464,204	\$661,047	\$900,000
Ophthalmology - Vitreous	42	25	\$170,801	\$75,003	\$140,500	\$140,500	\$276,074	\$276,074
Orthopedic Surgery - General	1,014	240	\$450,814	\$218,694	\$324,767	\$415,347	\$534,537	\$710,250
Ortho Surg - Foot & Ankle	83	39	\$474,792	\$224,365	\$308,187	\$453,645	\$677,124	\$821,704
Ortho Surg - Hand	204	104	\$320,818	\$160,877	\$238,008	\$376,464	\$485,136	\$627,844
Ortho Surg - Hip & Joint	162	80	\$571,646	\$265,045	\$386,050	\$529,431	\$744,397	\$940,200
Ortho Surg - Knee	1	1	-	-	-	-	-	-
Ortho Surg - Pediatric	37	19	\$435,798	\$191,687	\$307,112	\$424,027	\$561,071	\$704,120
Ortho Surg - Spine	204	94	\$420,204	\$200,005	\$292,807	\$390,400	\$509,070	\$689,813
Ortho Surg - Trauma	37	22	\$280,877	\$258,616	\$137,090	\$450,458	\$601,704	\$844,803
Ortho Surg - Sports Med	351	113	\$506,308	\$308,580	\$346,508	\$604,121	\$714,448	\$1,013,004
Otolaryngology	174	102	\$309,225	\$116,194	\$206,792	\$315,370	\$393,466	\$503,482
Otolaryngology - Pediatric	2	2	-	-	-	-	-	-
Pathology - Anatomic & Clinical	213	32	\$380,317	\$109,895	\$265,490	\$323,443	\$470,900	\$643,107
Pathology - Anatomic	45	7	\$240,008	\$143,601	\$250,000	\$314,403	\$363,004	\$641,161
Pathology - Clinical	43	15	\$291,260	\$108,004	\$220,000	\$294,704	\$322,000	\$510,408

Page 10 - Table 1: Physician Compensation and Production Survey 2006 Report Based on 2005 Data

Physician Compensation and Production Survey 2006 Report Based on 2005 Data

Table 5B: Physician Work RVUs (TCINPP Excluded) (CMS REVIS Method)

	Phys	Med Pracs	Mean	Std. Dev.	25th Tile	Median	75th Tile	90th Tile
Anesthesiology	174	17	\$,637	\$,246	\$,799	\$,930	\$1,188	\$1,582
Anest. Pain Management	96	10	\$,893	\$,701	\$,799	\$,920	\$1,118	\$1,582
Anest. Pediatric	1	1	-	-	-	-	-	-
Cardiology - Electrophysiology	96	34	\$,897	\$,888	\$,879	\$,930	\$1,000	\$1,188
Cardiology - Invasive	543	145	\$,488	\$,284	\$,308	\$,478	\$,588	\$,788
Cardiology - Invasive	477	163	\$,527	\$,273	\$,349	\$,498	\$,618	\$,728
Cardiology - Noninvasive	100	37	\$,688	\$,248	\$,417	\$,588	\$,788	\$,988
Critical Care - Intensive	93	11	\$,193	\$,103	\$,141	\$,168	\$,218	\$,288
Endocrinology	198	103	\$,108	\$,062	\$,082	\$,098	\$,118	\$,138
Emergency Medicine	754	97	\$,388	\$,208	\$,308	\$,378	\$,468	\$,558
Endocrinology/Metabolism	198	103	\$,177	\$,107	\$,108	\$,128	\$,148	\$,168
Family Practice (w/ OB)	1,200	201	\$,318	\$,158	\$,208	\$,278	\$,348	\$,418
Family Practice (w/o OB)	4,877	650	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Family Practice - Sports Med	49	10	\$,308	\$,168	\$,208	\$,278	\$,348	\$,418
Gastroenterology	860	203	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Gastroenterology - Hepatology	49	11	\$,308	\$,168	\$,208	\$,278	\$,348	\$,418
Genetics	4	3	-	-	-	-	-	-
Geriatrics	40	20	\$,108	\$,062	\$,082	\$,098	\$,118	\$,138
Hematology/Oncology	399	123	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Hemat/Onc - Oncology (only)	81	31	\$,107	\$,108	\$,108	\$,128	\$,148	\$,168
Infectious Diseases	127	80	\$,378	\$,208	\$,278	\$,348	\$,418	\$,488
Internal Medicine - General	4,343	434	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Internal Med - Hospitalist	603	110	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Internal Med - Pediatric	100	37	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Nephrology	244	72	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Neurology	508	185	\$,418	\$,248	\$,308	\$,378	\$,448	\$,518
OB/GYN - General	1,770	308	\$,318	\$,158	\$,208	\$,278	\$,348	\$,418
OB/GYN - Gynecology (only)	102	40	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
OB/GYN - Gyn Oncology	45	21	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
OB/GYN - Maternal & Fetal Med	65	18	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
OB/GYN - Repro Endocrinology	11	14	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Oncology - Hematology	6	2	-	-	-	-	-	-
Ophthalmology	102	81	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Ophthalmology - Pediatric	137	121	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Ophthalmology - Refractive	20	20	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Ophthalmology - Retina	60	33	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Ophthalmology - Vitreous	42	25	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Orthopedic Surgery - General	1,014	240	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Foot & Ankle	83	39	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Hand	204	104	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Hip & Joint	162	80	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Knee	1	1	-	-	-	-	-	-
Ortho Surg - Pediatric	37	19	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Spine	204	94	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Trauma	37	22	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Ortho Surg - Sports Med	351	113	\$,688	\$,348	\$,418	\$,588	\$,758	\$,928
Otolaryngology	174	102	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Otolaryngology - Pediatric	2	2	-	-	-	-	-	-
Pathology - Anatomic & Clinical	213	32	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Pathology - Anatomic	45	7	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418
Pathology - Clinical	43	15	\$,308	\$,178	\$,208	\$,278	\$,348	\$,418

Page 15 - Table 5B: Physician Work RVUs (TCINPP Excluded) (CMS REVIS Method)

Employment

Key Concepts with Exhibit A:

1. Range established (25 %, 50%, and 75%)
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.



Incentive Compensation Arrangements

Pros vs. Cons

Gross Charges

- Pro:
 - Compensation is not based upon patient's payor
- Con:
 - Charges may not be aligned with collections
 - Compensation can be influenced by employer's increase/decrease of charges



Incentive Compensation Arrangements

Pros vs. Cons

Collections

- Pro:
 - Compensation is aligned with the amount employer collects for professional services.
 - Good documentation, better behavior
- Con:
 - Great incentive for physician to see patients with higher paying payors (disincentive to see Medicare, Medicaid or indigent patients).



Incentive Compensation Arrangements

Pros vs. Cons

- Relative Value Unit
- Pro:
 - Compensation is based upon physician's productivity.
 - Value of RVU is assigned by Medicare.
 - Physician is compensated for work effort regardless of payor/collections.
- Con:
 - Compensation based upon RVUs may not be aligned with collections.
 - Confusion btw work and total



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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.

Percentile	Cash Compensation	RVUs	Compensation per RVUs
25	125,000	3,500	\$35
50	175,000	4,500	\$40
75	225,000	5,500	\$41
90	300,000	6,500	\$46



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Example 2

- Multiple Tiered Model
- 100% RVU Production

RVUs worked	Compensation per RVU
4,500 and below	\$35
4,501 – 5,500	\$40
5,501 – 6,500	\$45
6,501 and above	\$50



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Medical Director

- Structure of compensation (and underlying fair market value documentation) may depend upon legal status:
 - Employee vs. independent contractor



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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)
3. Quality-based compensation



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Medical Director

If Annual Payment method is used, need to track hours to make sure consistent with contract.



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Medical Director Time Sheet

Duties and Responsibilities:

If physician will be a medical director, require physician to complete a time card, (written statement of services rendered and amount of time dedicated to such services).

[ORGANIZATION NAME]

PHYSICIAN: First Name, Last Name, Title MEDICAL DIRECTOR OF: Job Title

PAY PERIOD: _____

For a complete listing of dates please reference the Medical Director Agreement
Please indicate time in half-hour increments.

DUTIES	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
A. Provide program assistance, guidance, and recommendations																															
B. Provide medical guidance and direction																															
C. Provide educational services and/or conferences																															
D. Administrative duties																															
E. Be available to discuss and review treatment																															
F. Be a physician lesson																															
G. Meet regularly with Clinic staff. Attend meetings as requested																															
H. Other																															
GRAND TOTAL:																															

Approved by: _____ Date: _____

* In addition to the above, please generally describe the services performed this month.

Example Included as Exhibit B.

Medical Director Tracking Tool



MEDICAL DIRECTOR Tracking Tool

EXHIBIT C

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

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?



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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?



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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?



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Real Estate

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?



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Real Estate

Commercially
Reasonable: What
a reasonable real
estate investor will
require as a rate of
return.

10 %? 15%? 20%?

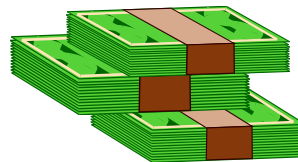


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Real Estate

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



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Real Estate

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



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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



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Things to consider (Continued):

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

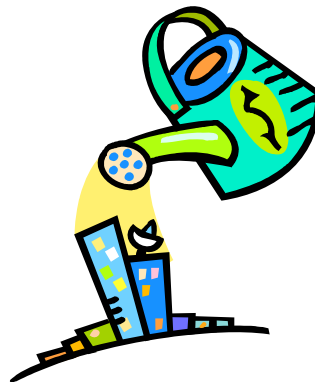


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Real Estate

Quality of Building must be evaluated. Class A, B or C Building?



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Real Estate Shared Space

Must allocate all costs

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



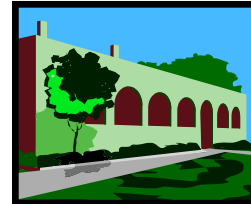
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Real Estate Shared Space - Example

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.)



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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



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Real Estate

Shared Space - Example

What is the fair market value/commercially reasonable rate for one half day?



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Real Estate

Shared Space - Example

$\$18$ (exclusive use rate) + 30% (vacancy) = $\$25.71$ per square foot ($\$18 \div .7 = \25.71)

1,000 square feet (suite) \div 5,000 square feet (building not including common area) = 20% (percentage of suite's usable space in building's usable space)

1,000 square feet (common area) \times 20% (suite to building)
= 200 square feet (common area allocated to suite)



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Real Estate

Shared Space - Example

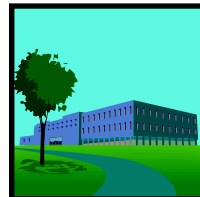
1,200 square feet (suite plus allocated common area) \times
 $\$25.71 = \$30,852$

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

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

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

$\$146 \div 2 = \73 (half day rate)



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Real Estate

Shared Space - Example



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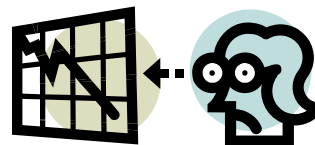
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Real Estate

Shared Space - Example

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

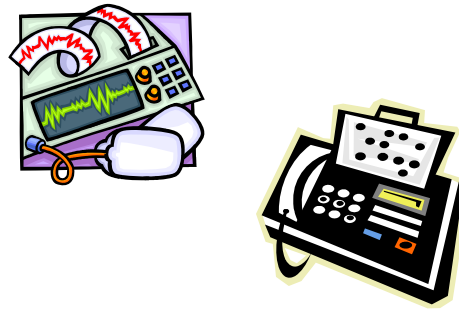


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Equipment Leasing

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



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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



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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**



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Equipment Leasing

- 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.)



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Equipment Leasing

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



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Consulting Services

- Payment for consulting services can be:
 - Hourly
 - Fixed Payment for Project



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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



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



2008 Physician On-Call Pay Survey Report

Sullivan Cotter and Associates, Inc.

July, 2008



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Pay Practices - Examples

	Restricted On-Call				Unrestricted On-Call			
	No. of Respondents	25th %	Median	75th %	No. of Respondents	25th %	Median	75th %
Anesthesiology	11	\$50.00	\$ 78.00	\$161.54	17	\$21.76	\$28.29	\$58.27
General Surgery	0	isd	isd	isd	63	\$25.00	\$31.25	\$41.67
Hospitalist	13	\$56.72	\$66.21	\$123.74	11	\$10.00	\$14.38	\$28.54
Internal Medicine	6	\$41.25	\$60.50	\$64.75	12	\$ 8.54	\$16.80	\$20.83
Neurology	2	isd	isd	isd	34	\$11.98	\$16.72	\$25.00
Neurosurgery	0	isd	isd	isd	72	\$33.27	\$41.67	\$62.50
Obstetrics/Gynecology	16	\$71.05	\$84.41	\$100.00	36	\$11.41	\$20.83	\$49.17
Orthopedic Surgery	0	isd	isd	isd	79	\$27.08	\$39.58	\$54.17

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



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Pay Practices - Examples

	Restricted On-Call							
	No. of Respondents	25th %	Median	75th %	No. of Respondents	25th %	Median	75th %
Otolaryngology	0	isd	isd	isd	37	\$10.94	\$14.58	\$20.83
Pediatrics	2	isd	isd	isd	14	\$ 7.98	\$12.06	\$18.05
Plastic Surgery	0	isd	isd	isd	32	\$12.50	\$19.27	\$41.67
Pulmonology	0	isd	isd	isd	7	\$ 3.29	\$10.42	\$20.83
Radiology	2	Isd	Isd	Isd	9	\$ 9.45	\$22.21	\$33.21
Trauma Surgery – 1 st Call	11	\$60.00	\$104.17	\$145.83	36	\$31.25	\$41.67	\$62.50
Urology	0	isd	isd	isd	38	\$10.31	\$14.58	\$20.83

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



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On-Call Coverage

Need to determine if on-call physician is required to be at the hospital while on call (restricted), or is merely available by pager/phone (unrestricted)



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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).



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Fair Market Value



Fair market value documentation should be developed and documented before offer is made.



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Fair Market Value

Another tool:



PHYSICIAN CONTRACT CHECKLIST: RECRUITMENT, EMPLOYMENT, AND INDEPENDENT CONTRACTORS

Name of Physician

Specialty

Subject Matter of Contract

to _____

Term of Contract

	Yes	No
Under the Contract, will Physician be an:		
Employee		
Independent Contractor, or		
Private Practitioner not rendering services on behalf of the <i>[Organization Name]</i>		
Is Physician being recruited to relocate to the geographic area served by <i>[Organization Name]</i> ?		
If so, will Physician's practice be moved greater than 25 miles?		
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 <i>[Organization Name]</i> ?		
If so, state the name of such group or entity. Include any group or entity that is related to <i>[Organization Name]</i> .		

Exhibit D



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Documentation Guidelines

Health care organization should establish a structured approval and documentation process for all physician contracts.



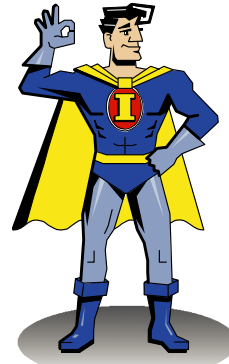
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Documentation Guidelines

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/Commercially 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.)



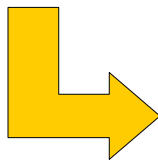
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Contract Approval

Exhibit E

Officer's Certificate



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: _____

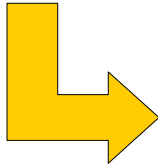
* Can be signed by CEO, VP or President.



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Contract Approval

Contract Review Memo



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PHYSICIAN CONTRACT REVIEW MEMO*

Name of Physician or Group with who 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 i) 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): _____

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Exhibit F

Contract Approval

Contract Review Memo

(Page 2)

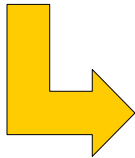


Exhibit F



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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

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DOCUMENTATION GUIDELINES

- 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



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DOCUMENTATION GUIDELINES

- Board/Committee approval of financial transactions with physicians creates rebuttable presumption under Intermediate Sanction Regulation



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DOCUMENTATION GUIDELINES

- 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 contract
 - Documentation of legal review
 - Officer's certificate (see Exhibit E)

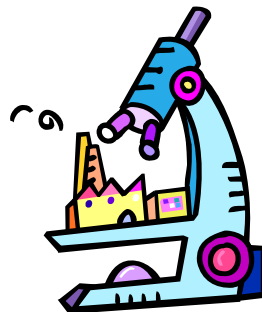


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ANNUAL REVIEW

- FIRST:
 - Each year, healthcare organizations should identify every payment made to a physician or physician group



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ANNUAL REVIEW

- SECOND:
 - After all physician payments are identified, the legal/compliance department should determine that there is a valid contract for every payment



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Annual Review

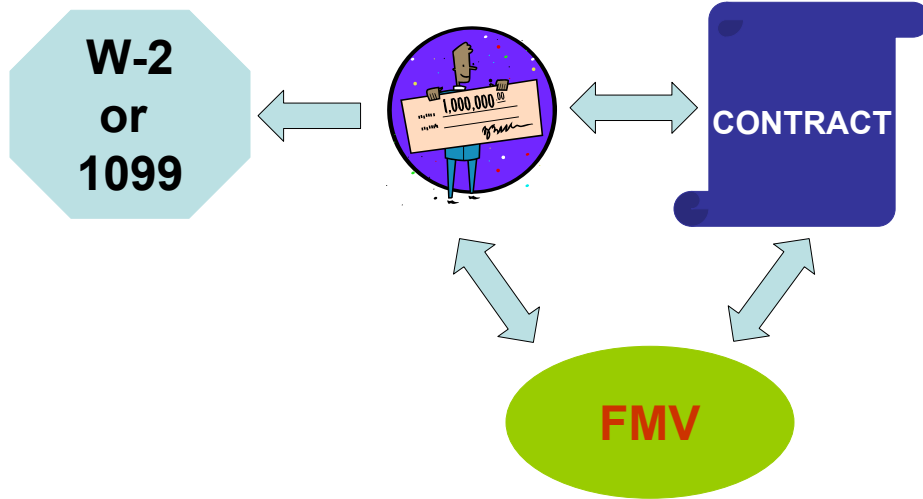
- Third:
 - All payments must be reflected on a W-2 (for employees) or 1099 (for independent contractors)



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Annual Review



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COMPLIANCE AUDIO/WEB CONFERENCES



Fair Market Value and Commercial Reasonableness: How to Document Compliance

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