



Fair Market Value Support Required: Physicians In Administrative Roles

By Jen Johnson, CFA, VMG Health, LLC

Placing physicians in paid positions for administrative roles requires great care because failure to set compensation at Fair Market Value (FMV) could result in criminal and/or civil penalties based on healthcare fraud and abuse laws. If an agreement between a physician and healthcare organization is audited by federal or state healthcare authorities, the analytical process and documentation to justify the payment is FMV will be essential in defending the compensation level. The following discusses the growth of these positions and what organizations should consider when determining how to ensure the arrangement meets the FMV requirements.

Growth in roles triggered by physician interest, organization need

The American College of Physician Executives reports membership is up 12% for the first quarter of 2008, over 2007 figures. In addition, they have seen management/leadership training courses grow 5-7% over the past two years. The growth of administrative roles for physicians has been spurred by both a demand from physicians and healthcare facilities. The newest generation of physicians is not as tolerable of the hours physicians kept in the past and many are looking to administrative roles to achieve a better work-life balance.

In addition, new publicity surrounding safety and quality issues has made healthcare organizations more accountable for quality care. As transparency becomes increasingly important, administrative functions required to implement and monitor quality metrics will increase. The Joint Commission also has demonstrated its recognition of this need by recently publishing 2009 requirements related to medical staff leadership.[1] Since quality initiatives are typically managed by physician leaders, the transparency trend should continue to feed the growth of physicians in administrative roles.

Payment needs to be at FMV

The challenge of determining FMV for these positions is that there is little market data and guidance for physicians in administrative roles. This topic was specifically addressed in the most recent Stark II, Phase III update.[2] When Phase III was released, it eliminated a Safe Harbor that determined a FMV hourly rate for physicians in either clinical or administrative roles. Compliance officers, attorneys, and analysts were forced to rethink their FMV approach. Phase III did provide some vague guidance to determining administrative compensation. The language included in the new regulations stated:

A Fair Market Value hourly rate may be used to compensate physicians for both administrative and clinical work, provided that the rate paid for clinical work is Fair Market Value for the clinical work performed and the rate paid for administrative work is Fair Market Value for the administrative work performed. We note that the Fair Market Value of administrative services may differ from the Fair Market Value of clinical services.[3]

Based on these latest guidelines, healthcare organizations must carefully examine the list of services the physician will provide, preferably by reviewing the subject agreement, to best determine FMV

compensation for administrative roles. Using this information allows healthcare organizations to make a supportable decision regarding what market data to base compensation on by asking two questions:

1. Is a physician required for this service?
2. Is the physician's specialty required for this service?

If the answer to both is yes . . . it makes sense to turn to market data for clinical compensation, such as nationally recognized surveys for physician compensation, since the physician would be using his or her expertise in performing these administrative services. Regulatory guidance also suggests healthcare organizations should maintain time records due to the part-time nature of these agreements. Allowable payments are often not enough to keep healthcare organizations in the clear of possible legal scrutiny; these organizations also must prove that they are supportable through documentation.

If the answer is no . . . look to other market salary data that better reflects the services the physician will provide, such as Chief Medical Officer or Quality Assurance Directors. In some of the more unique arrangements, such as co-management agreements whereby physicians and non-physicians team up to manage a facility or department, healthcare organizations can base the FMV on the cost approach, which requires the valuator to build-up the cost of the service and include an appropriate mark-up.

Documentation, documentation, documentation

A key factor in being compliant with healthcare regulations is to document the methodologies utilized in determining FMV. A review of past Office of Inspector General (OIG) audit reports demonstrates the importance of documenting anything and everything reported to a federal program. For example, in many instances the OIG has found that certain costs reported on Medicare cost reports are allowable, but not supportable. This indicates that even if the intentions and reasons for payments reported are sound, if there is improper documentation, the costs may not be supportable, which may disqualify certain cost items. Similar conclusions have been found by reviewing medical director arrangements, whereby the medical director performed allowable duties, but without time records, these services and associated hours were considered unsupported by the OIG.

Be careful before proceeding . . .

If healthcare organizations are not diligent in determining FMV compensation, they could draw the scrutiny of federal and state regulatory authorities, which may start to pay more attention to these arrangements due to their growth and FMV challenges. Recent OIG enforcement activity has included hefty financial verdicts and imprisonment for both hospital CEOs and physicians. The critical components to compliance include understanding the services provided, documenting the hours spent on the services, and following the regulations surrounding healthcare valuations.

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[1] The Joint Commission published these guidelines in a document entitled "2009 Leadership

Chapter—Hospital Program”

[2] 72 Fed. Reg. 51012 (Sept. 5, 2007).

[3] 72 Fed. Reg. 51016.

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