

Navigating Commercial Reasonableness



THE CHANGING HEALTH CARE ENVIRONMENT

To stay compliant with evolving regulatory requirements, health care organizations must have the appropriate structures in place to help mitigate financial, resource and reputational risk for potential physician compensation violations related to the Stark Law, the Anti-Kickback Statute and other IRS not-for-profit regulations.

Understanding **Commercial Reasonableness (CR)** in the context of a rapidly changing health care environment is critical, but navigating what this requirement entails can often be challenging.

Providing Context

Stark Law requires arrangements to be commercially reasonable – which applies to broader business issues related to the arrangement



Health systems should demonstrate community need to retain or add service/specialty, the ability to increase indigent care, and patient care benefits such as quality and continuum of care



Documentation should attest to the existence of relevant CR factors, especially for arrangements providing compensation for administrative and other non-clinical services



Ensuring that physician compensation arrangements are structured properly is critical

Watch for issues such as...

- **Concurrent pay** for on-call, clinical services and medical director responsibilities
- **Administrative compensation** with no real duties associated or outcomes specified
- **Compensation levels far exceeding collections** for professional services provides



Commercial Reasonableness Opinions

Typical Areas of Focus



Governance Process



- Has the organization developed and implemented a **sound governance** and centralized physician compensation **decision-making process**?
- Is the process **consistently followed** and used to arrive at the **contract terms** objectively and without consideration of the **volume or value of physician referrals**?
- Does the process include **disinterested individuals** at the **Board level** who have ultimate **approval authority** for physician compensation?

Contracts



- Are the employment **agreement terms** consistent with the organization's **standard approach**?
- Are the **compensation arrangements** and **work effort requirements** clearly defined?
- Are the **contract terms** consistent with **industry practice**?

Compensation and Benefits



- Is the **projected total compensation increase** within an acceptable level?
- Is the ratio of **compensation to personally-performed collections** reasonable?
- Is the **loss per physician** reasonable relative to **market standards** and **payer mix**?
- Are the **benefits** consistent with the organization's **standard approach**?
- Are the **benefits** consistent with **standard industry practice**?
- Is the **structure** of the arrangement consistent with **market practices**?

Leadership Positions



- Is there a **job description** defining **work expectations** and required time commitment?
- Is the **work effort** within market practice for the administrative role?
- Are there **other physicians** providing the **same or very similar services**?
- Is there a **process to document** the services provided?
- Can you attest that the services are not provided **concurrent with other duties**?
- Is there a **bona fide need** for a physician to serve in the role?

On-Call and Telemedicine Pay Practices



- Is there a **trauma call program** requiring physicians in specific specialty to provide coverage?
- Is there a **risk to trauma center designation** if physicians will not provide services for a lower call pay rate?
- Are there a **limited number** of physicians **qualified to serve** on the call panel?
- If the arrangement covers **independent physicians**, what is the **compensation for services** when called in?
- Are all **qualified physicians** within the specialty **eligible to participate** on the call panel?