Contracting for Physician Services and Fair-Market-Value (FMV) Overview

Contracting for physician services related to ID, such as Infection Control & Prevention and Antimicrobial Stewardship, has most commonly been done within medical directorships arrangements. Other specialties such as Cardiology and Orthopedics have contracted to provide services related to a specific service line of the hospital under co-management agreements. Both types of agreements require consideration of several statues, namely Stark Laws, False Claims Act, and Anti-kickback, because these agreements likely involve payments under federal programs such as Medicare and Medicaid.

In order to ensure compliance under federal statutes, payment for services between providers must be established at Fair Market Value (FMV). The often-referred IRS definition for FMV is as follows:

> "the amount at which property would change hands between a willing seller and a willing buyer when the former is not under any compulsion to buy and the latter is not under any compulsion to sell and when both have reasonable knowledge of the relevant facts."

However, there are no published standards for physician compensation valuations, no standard FMV methodology. Typically, valuation experts derive guidance from OIG opinions and outcomes from legal proceedings. There are three common approaches, often combined, to estimate FMV:

Cost Approach – takes into account assets as well as intangible assets specific to the provider services being assessed
Market Approach – Estimates value by comparing the value of similar assets, securities or services traded in a free and open market to the subject asset, security or service.
Income Approach – Examines historical financial and production information to estimate the future level of cash flows. This may involve reference to multiple, objective, independently published salary surveys.

It is common for hospitals to engage valuation consultants to perform the due diligence around a contract for physician services. In 2014, IDSA's Clinical Affairs Committee engaged VMG Health, a FMV valuation consulting firm, to explore co-management agreements for ID services. Resources that describe FMV methodology and the structure of co-management agreements are available on the members-only side of the IDSA website.

Glossary

- **Stark Law** – also known as the Physician Self-Referral Law, Stark regulates financial relationships between physicians and healthcare providers by prohibiting physician referrals for Medicare and Medicaid Patients if the physician (or immediate family member) has a financial relationship with that entity.
- **False Claims Act** – this law simply prohibits making any false claim to the U.S. to obtain monies. Therefore, Medicare payments received by a provider who violates any law would trigger enforcement because each reimbursement claim is accompanied by a representation that all federal laws and regulations have been followed by the provider seeking reimbursement.
- **Federal Anti-kick law** – This law prohibits inducement of patient referrals by giving something of value for less than or more than Fair Market Value (FMV)
- **Medical directorship contracts** – contracts for physician services that typically apply an hourly rate to specified administrative activities
- **Co-management contracts** – contracts typically focused on a hospital service line that apply an hourly rate for administrative activities and have incentive payments tied to quality metrics