

Physician Compensation and Fair Market Value

UT Law 2017 Health Law Conference

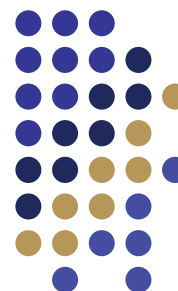
April 7, 2017

Presented by:

Jennifer B. Claymon, Reed, Claymon, Meeker & Hargett, PLLC

Stephen G. Wohleb, Ascension Texas

Albert "Chip" Hutzler, HealthCare Appraisers, Inc.



Presentation Overview



- Overview of Current Physician Compensation Environment
- Current Regulatory Climate
- Current Enforcement Activity
- Current Valuation Considerations
- Framework and Practical Advice for Physician Compensation
- Questions

Overview of Current Physician Compensation Environment



- Physician Compensation Trends:
 - Shortages persist in many key specialties
 - Compensation continues to increase over the long-term
 - Shift toward value-based reimbursement and integration
 - Continued shift toward employment vs. independent practices
- Key challenges facing physician compensation:
 - Regulatory Uncertainty
 - Enforcement Climate is Risky
 - Valuation Uncertainty and Risks

Regulatory Uncertainty - Overview



- Substantial uncertainty still exists as to the exact meaning of FMV, commercial reasonableness and the “volume or value” standard under Stark and Anti-Kickback;
- Senate Finance Committee White Paper in 2016 acknowledges the problem, and recommends various changes to Stark definitions;
- Uncertain whether or when the new Congress will consider the Senate White Paper recommendations, and uncertain what any changes Congress makes will actually look like;
- Will any changes Congress makes really eliminate the climate of uncertainty? Will courts have any easier time understanding revised laws?
- Will MACRA and other reimbursement changes survive or change?

FMV Regulatory Guidance



- Stark Statute: Value in arm's length transactions, consistent with general market value... (1877 (h)(3) of the Social Security Act)
- Narrower regulatory definition (42 CFR §411.351)
 - Value in arm's-length transactions, consistent with general market value
 - General market value means compensation as result of bona fide bargaining between well informed parties not otherwise in position to generate business for other party
 - Compensation does not take into account volume or value of anticipated or actual DHS referrals

FMV Regulatory Guidance



- Special Fraud Alert – Clinical Laboratory Services (October 1994)
 - Presumption: Compensation outside of FMV is in exchange for referrals
- OIG Compliance Guidance for Individual and Small Group Practices (October 2000)
 - “The OIG’s definition of ‘fair market value’ excludes any value attributable to referrals of Federal program business or the ability to influence the flow of business.”

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Physician Compensation and Fair Market Value

Also available as part of the eCourse

[2017 Health Law eConference](#)

First appeared as part of the conference materials for the
29th Annual Health Law Conference session

"Physician Compensation and Fair Market Value"