

# Physician Compensation and Fair Market Value

**UT Law 2017 Health Law Conference**

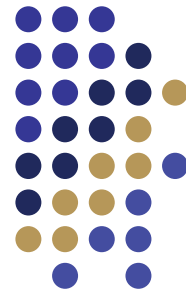
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## Presentation Overview



- 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.”

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