



# Physician Compensation, Business Valuation, and COVID-19: Now and Now What?

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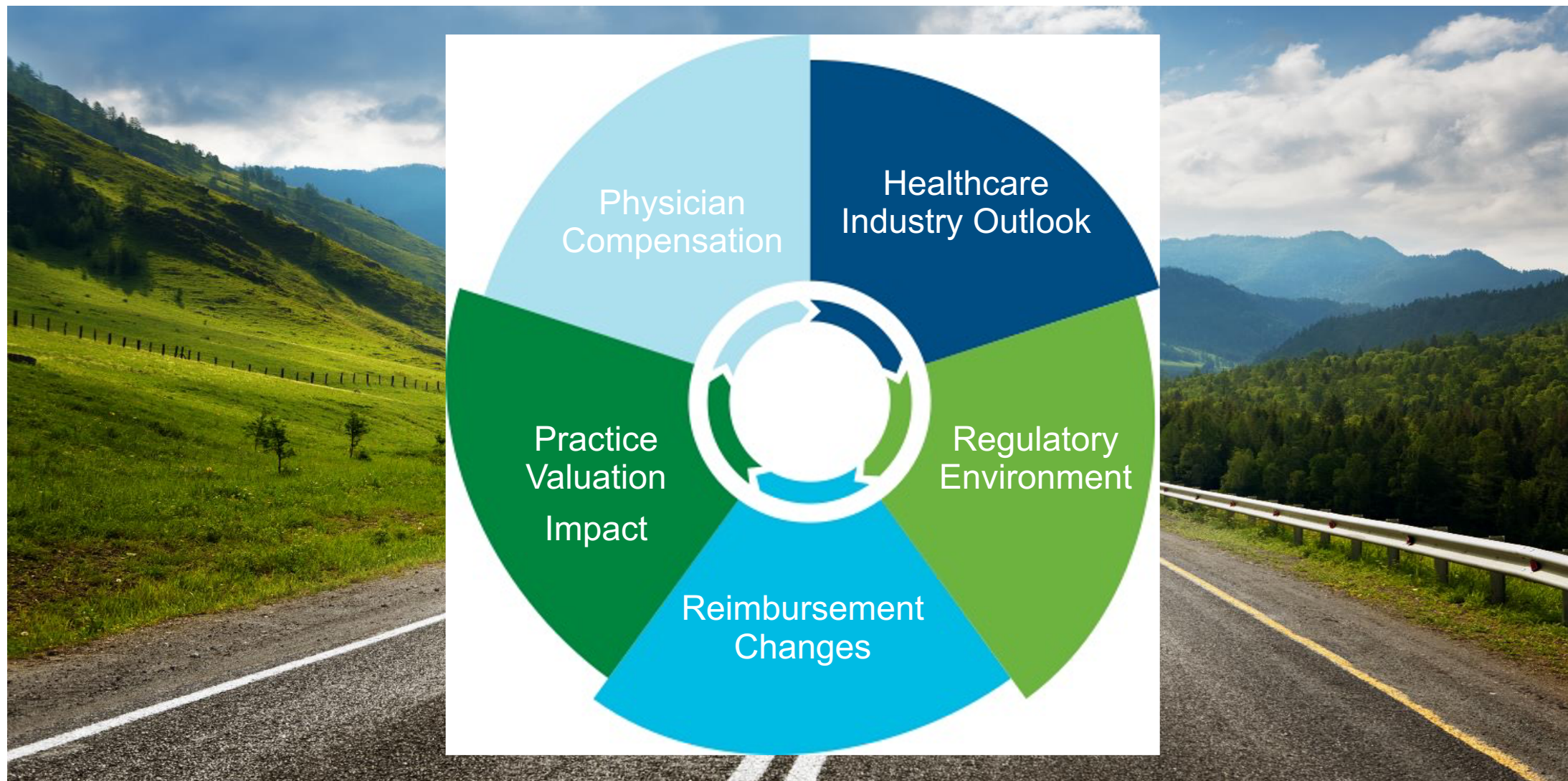
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# Agenda

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- ① Introductions
- ② Evolution of the Healthcare Industry
- ③ Recent Changes in Regulations and Reimbursement
- ④ Compensation Valuation Impact
- ⑤ Impact on Physician Practice Valuation

# Evolution of the Healthcare Industry





# Recent Changes in Regulations and Reimbursement

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# Final Rule



- **November 20, 2020**

- CMS and OIG issued 627-page final rule to clarify Stark Law regulations
  - Effective January 19, 2021
  - Extension granted until January 1, 2022 for compliance related to certain changes required in group practice compensation methodologies
- Changes aimed eliminating regulatory restrictions that could deter some arrangements as industry continues move toward value-based healthcare system
- Formally establishes a definition of commercial reasonableness, while deleting outdated Stark Law references and updating key definitions such as fair market value, designated health services, physician, referral, remuneration, and transaction.



# Definition and Clarification



## **Fair Market Value** defined as:

*“[T]he value in arms-length transaction, consistent with the general market value of the transaction.” General market value means “... with respect to compensation for services, the compensation that would be paid at the time the parties enter into the service arrangement as the result of bona fide bargaining between well-informed parties that are not otherwise in a position to generate business for each other.”*

## **Commercially Reasonable** means:

*“...the particular arrangement furthers a legitimate business purpose of the parties to the arrangement and is sensible, considering the characteristics of the parties, including their size, type, scope, and specialty. An arrangement may be commercially reasonable even if it does not result in profit for one or more of the parties.”*

## 1

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### Benchmark Data and Fair Market Value

#### Surveys are a starting point and not the finish line.

- CMS indicates *“[W]e continue to believe that the fair market value of a transaction...may not always align with published valuation data compilations, such as salary surveys. In other words, the rate of compensation set forth in a salary survey may not always be identical to the worth of a particular physician’s services.” “....Consulting salary schedules...is an appropriate starting point in the determination of fair market value, and in many cases, it may be all that is required.”*



# Three Takeaways



## 2

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### 75<sup>th</sup> Percentile as a Guardrail

- CMS states it *“declines to establish the rebuttable presumption and ‘safe harbors’ [e.g., based on a compensation range of salary survey data] requested by the commenters. We are uncertain why the commenters believe that it is CMS policy that compensation set at or below the 75th percentile in a salary schedule is always appropriate, and that compensation set above the 75th percentile is suspect, if not presumed inappropriate. The commenters are incorrect that this is CMS policy.”*

## 3

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### Profitability and Commercial Reasonableness

- CMS expresses ***“an arrangement may be commercially reasonable even if it does not result in profit for one or more of the parties.”***
- Therefore, while such a situation (e.g., a non-profitable arrangement) may present a problem, CMS is not expressing a definitive opinion on the matter, as each arrangement is facts and circumstances specific.
- Further, CMS expresses that it could see certain arrangements with facts and circumstances whereby a non-profitable arrangement is commercially reasonable.

# 2021 Physician Fee Schedule Update



- On **December 1, 2020**, the CMS released the 2021 MPFS Final Rule.
- On **December 27, 2020**, the Consolidated Appropriations Act, 2021 modified the 2021 MPFS Final Rule.
  - Provided a 3.75% increase in MPFS payments for CY 2021.
  - Suspended the 2% payment adjustment through March 31, 2021
  - Reinstated the 1.0 floor on the work Geographic Practice Cost Index through CY 2023.
  - Delayed implementation of the inherent complexity add-on code for E&M services (G2211) until CY 2024.



# CY 2021 Physician Fee Schedule Update (*cont.*)



- The wRVUs for those same O/O E/M services and certain other relevant services increased January 1, 2021.
  - For example, the wRVU values for E/M codes 99202 through 99205 (new office visits) increased by a range of approximately 7% to 13%. Perhaps more notably, the wRVU values for E/M codes 99212 through 99215 (established office visits) increased by a range of approximately 28% to 46%.
- These MPFS changes cumulatively result in overall positive relative value units for which CMS, by law, created an offsetting adjustment. As finalized, the Medicare conversion factor decreased by 3.3% (from \$36.0896 in 2020 to \$34.8931 in 2021) to assist with budget neutrality associated with the wRVU and other fee schedule changes.
- Similarly, the anesthesia conversion factor was reduced by 2.9% from \$22.20 to \$21.56. However, based on CMS estimates the combined reimbursement change to anesthesia is expected to decline by approximately 1%.

# Final 2022 Medicare Physician Fee Schedule Updates



- On November 2, 2021, the CMS published the 2022 Medicare Physician Fee Schedule Final Rule.
- The 2,414-page document details the Medicare payment policy for a wide range of services for the upcoming year, including:
  - Conversion factor reduction (and resulting payment cuts)
  - Expanded list of telehealth services
  - New coverage for tele-behavioral health services
  - Evaluation & management visits changes
  - Payment for physician assistant services
  - Increased reimbursement for care management services
  - Quality payment program updates



# Considerations for Compensation Valuations





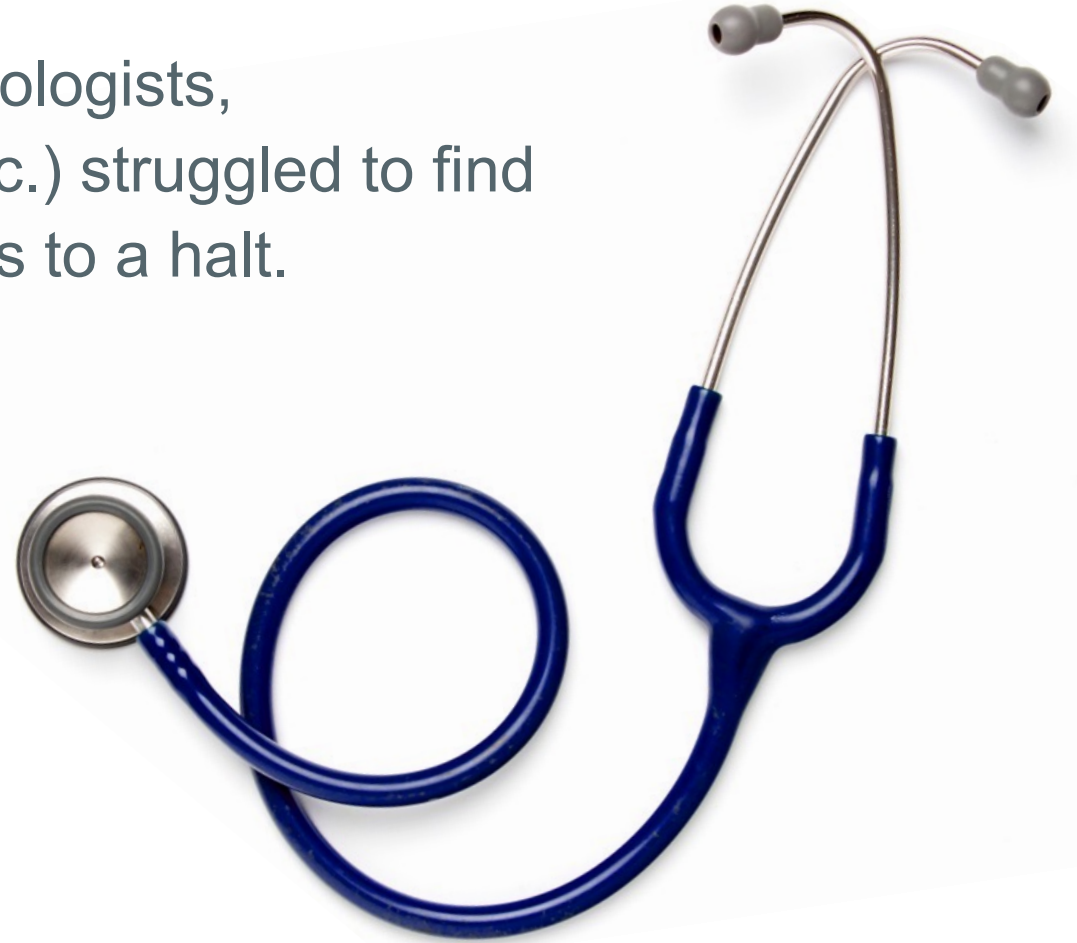
# Life During COVID-19

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# The Impact COVID-19 Had On Healthcare

- Certain physicians (e.g., gastroenterologists, ophthalmologists, dermatologists, etc.) struggled to find jobs as the U.S. health system grinds to a halt.
- Demand for pulmonologists/critical care physicians, and infectious disease physicians grow.
- Approximately 70% of physicians provided fewer visits (in-person + telehealth).<sup>12</sup>





# Physician Contracts During COVID-19



- Employed and independent contractor physicians:
  - Physician specialties that were negatively impacted by COVID-19 (e.g., gastroenterologists, ophthalmologists, dermatologists, etc.) received pay-cuts or were furloughed.
  - Physicians that had productivity-based compensation models naturally received pay cut as wRVUs (production) slowed down during the shutdown.
  - Other physicians who were struggling to meet expectations of hospital management prior to COVID-19 were fired in order to cut costs.

# Physician Group Owners During COVID-19



- Physician group owners:
  - Depending on the physician specialty, some physician practice owners took a pay cut as patient volume decreased in 2020.
  - Physician owners took advantage of government funding (CARES Act and Payroll Protection Program) in order to keep the door open.
  - Some physicians closed their practice all together during the worst months of COVID-19.





# Physician Compensation During COVID-19 from a Valuation Perspective

- Hospitals and healthcare systems are typically limited by certain federal regulations (e.g., Stark Law or Federal Anti-Kickback Statute) which govern and regulate the compensation paid to physicians.
- During COVID-19, due to the public health emergency declared on January 31, 2020, the federal government issued waivers for or expressed that they will not enforce certain laws which govern fair market value physician compensation.
  - Purpose: To provide flexibility to hospitals and healthcare systems so they can employ adequate staff.
  - Note: State-law provisions will not always be waived automatically.

# Life Post-COVID-19

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# Looking Into The Future: Physician Compensation



- COVID-19 has reminded us that no industry is untouchable. We need to consider the future and how to structure physician compensation models to withstand the next downturn.
- Historically, physician contracts make up roughly 5% to 10% of average hospital net patient revenue. In addition, the projected annual growth of physician contracts is 5.4%.<sup>20</sup>
- The use of value/quality-based payment incentives continues to increase, 64% in 2020.<sup>21</sup>

20) <https://www.beckershospitalreview.com/hospital-physician-relationships/the-future-of-physician-compensation-in-a-changing-regulatory-landscape-4-things-to-know.html>

21) Merritt Hawkins 2020 Review of Physician and Advanced Practitioner Recruiting Incentives and the Impact of COVID-19

# Looking Into The Future: Physician Compensation (*cont.*)



- **Physician compensation from the hospital/healthcare system perspective:**
  - Fear of a future pandemic will likely impact the structure of future physician compensation arrangements.
  - Hospital leadership should evaluate physician agreements and consider the liability of guaranteed physician compensation for certain specialties.
  - Negotiate with physicians to include contract clauses that will allow financial flexibility for future pandemics/national disasters.



# Looking Into The Future: Physician Compensation (*cont.*)



## Physician compensation from the physician side:

- Negotiate guaranteed base compensation (if not already included in the current agreement).
- Limit the amount of “at-risk” compensation associated with the level of production (wRVUs) if you are risk adverse.
- If engaged in a fee for service type compensation model, negotiate to add clauses in the agreement which will protect you from a future shutdown (e.g., reasonable guaranteed base compensation).





# Quality/Value Based Compensation Models



- Keeping physicians who are “burned out” and who may have received a pay cut during COVID-19 can be a challenge.
- Changing from a productivity-based compensation model to a value-based compensation model can increase physician satisfaction and reduce burnout.
- Identify results that are desired and work with the physician to develop metrics to measure the results.
- Quality metrics must be tangible, take effort to achieve, and can be tracked.
- PYA has created quality metric dashboard for our clients.

# Looking Into The Future: Financial Assistance

- The way that we think about financial assistance arrangements will forever be changed because of COVID-19.
  - COVID-19 has shown the medical industry that it isn't invincible.
  - Clauses will be added, and terms will be renegotiated in financial assistance agreements in order to protect both the physicians and the hospital.



# Impact on Physician Practice Acquisitions

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## Financial state of progress (compared to one year ago)

	2014	2016	2017	2018	2019	2020
Better than a year ago	22%	21%	21%	22%	23%	11%
About the same	46%	46%	48%	52%	55%	43%
Worse than a year ago	30%	32%	30%	26%	22%	46%
No answer	2%	1%	1%	0%	0%	0%

### Why finances improved or worsened in 2020:



#### Top reasons for improvement

1. Seeing more patients
2. Increased revenue from telehealth
3. Change in practice model
4. Renegotiated payer contracts
5. Addition of ancillary services



#### Top reasons things got worse

1. Lost revenue/increased expenses due to COVID-19
2. More time spent on uncompensated tasks
3. Lower reimbursement
4. Higher overhead
5. Greater technology costs

Source: Medical Economics – June 2021.

## Big Picture Impact

- Will COVID-19 impact a practices ability to generate revenue in the future?
- Will COVID-19 cause an increase or decrease in future expenses?
- Will these risks continue?
- How will this impact value?



# COVID Impact on Physician Practice Valuation



- **Revenue**
  - Many practices will likely be able to serve a similar number of patients in the future.
    - Caution when relying on historical results.
      - CARES Act
      - Medicare Advance Payments
      - Paycheck Protection Program
- **Telehealth Impact – Here to stay**
- **Exceptions**



# COVID Impact on Physician Practice Valuation



## Expenses Impact

- Staffing
- PPE
- Supplies

## Future outlook





# Thank you!



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