



Timely, Tough, or Tricky – Physician Compensation and Fair Market Value Topics in 2022

2021 (AND BEYOND) CHANGES TO COMMERCIAL
REASONABLENESS AND USING BENCHMARK DATA,
INCLUDING COVID-19 IMPLICATIONS, IN 2022

May 26, 2022

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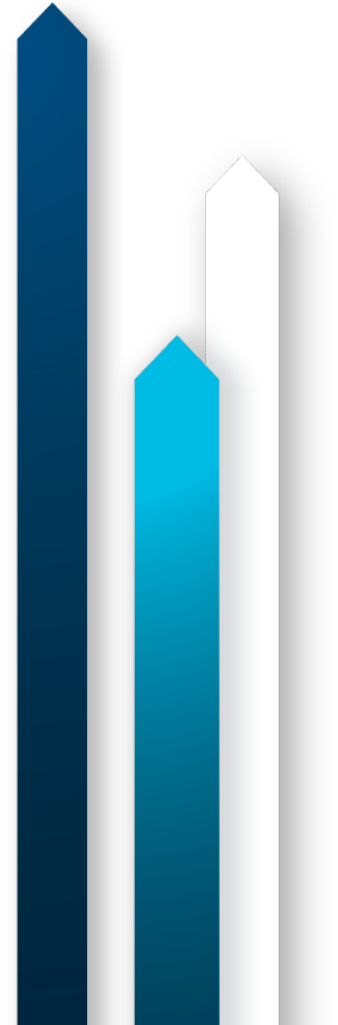
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Introduction



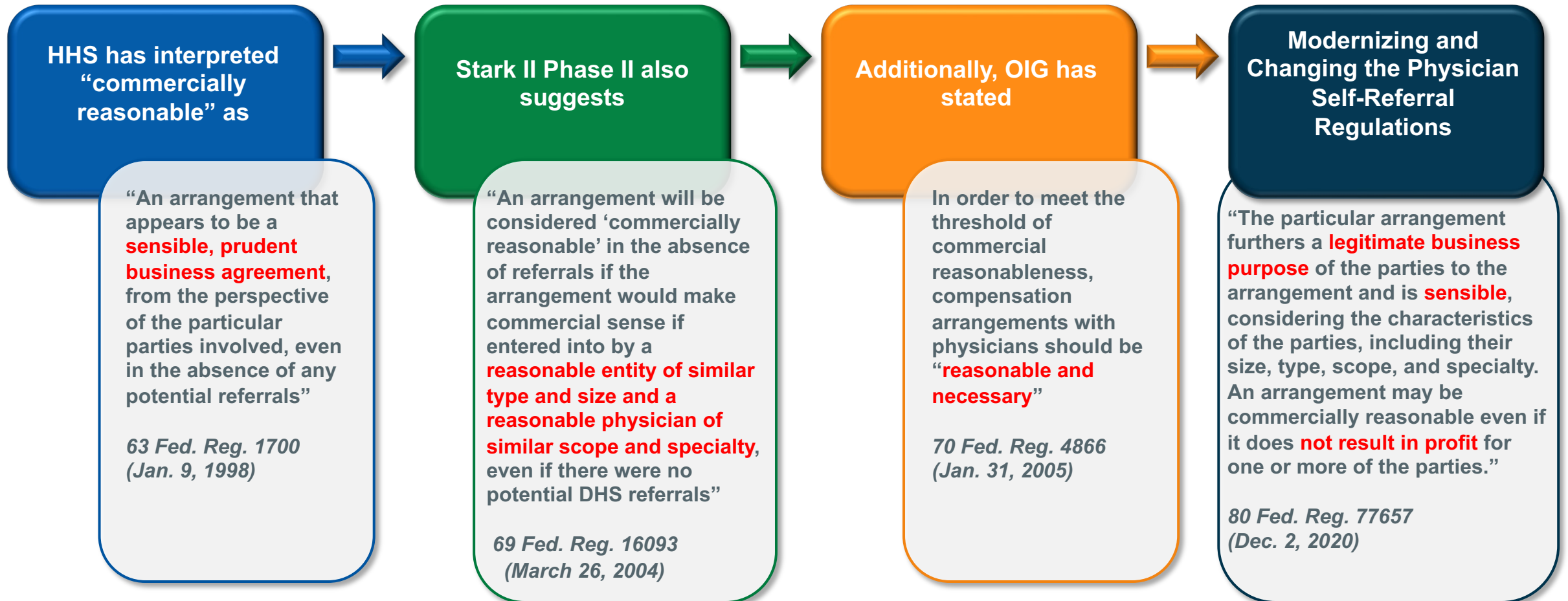
- To begin a dialogue on timely, and occasionally, tough or tricky topics in physician compensation and fair market value, PYA surveyed more than 30 physician compensation experts to understand the collective thoughts on issues impacting these topics in 2022. These issues include:
 - The 2021/2022 Medicare Physician Fee Schedule
 - Telemedicine
 - Group Practice Exception Regulatory Changes
 - Advanced Practice Practitioners
 - Value-Based Compensation
 - Nuances Surrounding Compensation per wRVU
 - 2021 (and Beyond) Changes to Commercial Reasonableness
 - Using Benchmark Data, Including COVID-19 Implications, in 2022
 - Rural Physicians
 - Integration of Independent Physicians in Employment Models
 - COVID-19 Impact on Call Coverage Compensation
 - Other Hot Topics (to be determined by webinar series participants, changes in market conditions over 2022, etc.)



Commercial Reasonableness



Defining Commercial Reasonableness



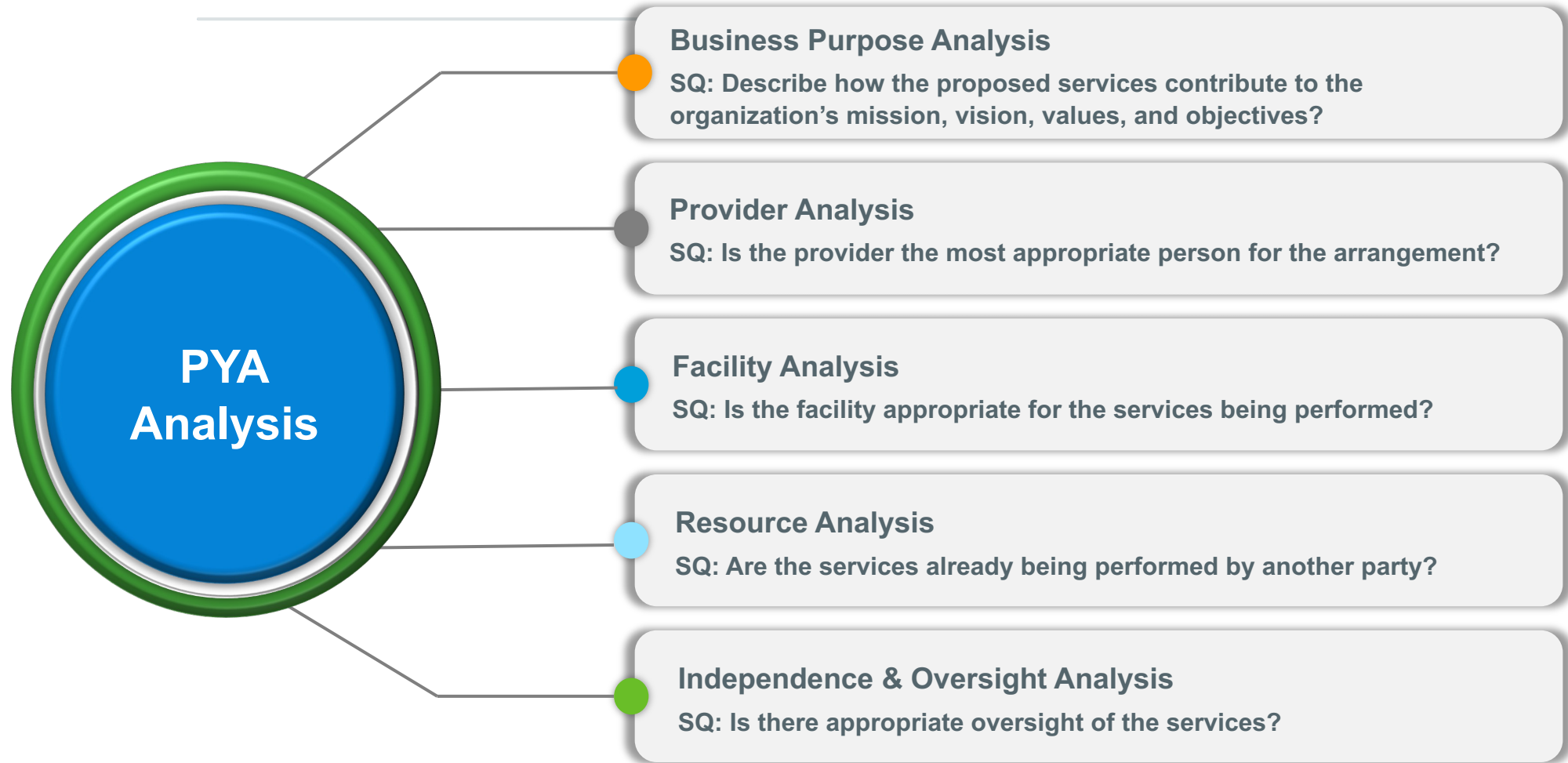
Clarifications Regarding Commercial Reasonableness & Profitability



- Regarding commercial reasonableness, CMS clarified that, “The determination that an arrangement is commercially reasonable does not turn on whether the arrangement is profitable...”
- Compensation arrangements that do not result in profit for one or more of the parties may nonetheless be commercially reasonable...
- Examples of reasons why parties would enter into such transactions include community need, timely access to health care services, fulfillment of licensure or regulatory obligations,...charity care, and the improvement of quality and health outcomes.”
- However, CMS does say, “We are not convinced that the profitability of an arrangement is completely irrelevant or always unrelated to a determination of commercial reasonableness.”



Commercial Reasonableness Analysis



Additional Commercial Reasonableness Resources



Commercial Reasonableness: Defining Practical Concepts and Determining Compliance in Healthcare Transactions for Physician Services



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This white paper is an adaptation of a chapter from a book forthcoming summer 2017, *DR/ANGLA Guide to Valuing Physician Compensation and Healthcare Service Arrangements*. The information provided herein is of a general nature and cannot be substituted for the advice of an actual commercial reasonableness opinion in which specialized knowledge is applied to a particular circumstance. Therefore, nothing in this paper should be construed to offer or render an opinion of commercial reasonableness, and neither the authors nor PYA can take any responsibility for an attempt to use or adopt the information or clarification presented in this paper.

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Practice Aid: Commercial Reasonableness Assessment Tool

The following aid represents some key exercises for evaluating the commercial reasonableness of physician-hospital arrangements, including what professionals may consider in assessing the totality of any specific arrangement. Completion of this assessment alone does not convey that any transaction is or is not commercially reasonable. A more thorough professional analysis including additional questions on the specific facts and circumstances is required for determining commercial reasonableness.

Business Purpose Analysis

1. Describe the environment in which the proposed arrangement will operate. Include:
 - a. An overview of the entity's mission, vision, values, and objectives.
 - b. A description of the size of the entity's primary and secondary service areas.
 - c. An overview of the applicable service line offerings.
 - d. A summary of the relevant organizational history leading up to the need for the arrangement.
 - e. An overview of the arrangement's importance to the service line affected, description of national/state-specific market trends, and how the arrangement may impact the cost, quality, and/or access of patient care.
2. Delineate how the proposed arrangement further effectuates a legitimate business purpose which is essential to the functioning of the entity. Include:
 - a. An overview of the business alternatives.
 - b. A description for how the arrangement helps the organization take advantage of its strengths/opportunities while mitigating weaknesses/threats.
 - c. An explanation of why the selected arrangement is the best alternative for the entity.
3. Outline how the services contemplated in the proposed arrangement relate to the business and/or clinical plans and strategies of the organization. For example, if the arrangement is for physician employment, describe the community need in terms of current physician supply versus demand.
4. Describe how the proposed services contribute to the organization's profits and/or the development of a particular service line without requiring income from proscribed referrals.
5. If collections are anticipated in association with the provision of services under the agreement, explain whether the cost of the agreement is expected to exceed the collection levels; and, if so, list the business reasons for the cost exceeding collections.

Provider Analysis

1. If the proposed arrangement requires a clinical skillset, can the services be performed by a midlevel provider in lieu of a physician? If a physician is needed, describe why a midlevel provider is not sufficient to perform the clinical services.
2. If the proposed arrangement requires a physician of a certain specialty to perform the services, identify the specialty, and describe how the specialist's training, experience, and qualifications make him or her the best candidate to perform these services.
3. Describe in detail:
 - a. The provider's duties under the proposed arrangement.
 - b. The procedures and measures to be used to hold the provider accountable for performance of those duties.
 - c. The method for determining the performance measures.
4. Explain how much time is required of the physician under the proposed arrangement and how such time was determined.
5. Describe what resources have been utilized (e.g., salary surveys) to date to compare the provider to other providers of similar specialty and experience and set the salary levels for the transaction.
6. Delineate the type and amount of costs budgeted for the provider's services under the proposed arrangement.

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On-Demand Webinars

[On-Demand Webinar: Basics Of Fair Market Value & Commercial Reasonableness](#)

[On-Demand Webinar: Stark Reality Ahead New Rule Means BIG Changes in 2021 to FMV, CR, and More](#)

PYA Insights and Articles

[HCCA Article on Stark Regulations and the Impact of Commercial Reasonableness Definition on Medical Directorships](#)

[Lest We Forget Changes to the AKS Three Key Implications for Fair Market Value and Commercial Reasonableness](#)

[Understanding Fair Market Value Compensation and Commercial Reasonableness](#)

[Debunking Myths in FMV and Commercial Reasonableness of Physician Hospital Relationships](#)

[Lest We Forget Changes to the AKS Three Key Implications for Fair Market Value and Commercial Reasonableness](#)

Using Benchmark Data, Including COVID-19 Implications, in 2022



Impacts to Benchmark Data

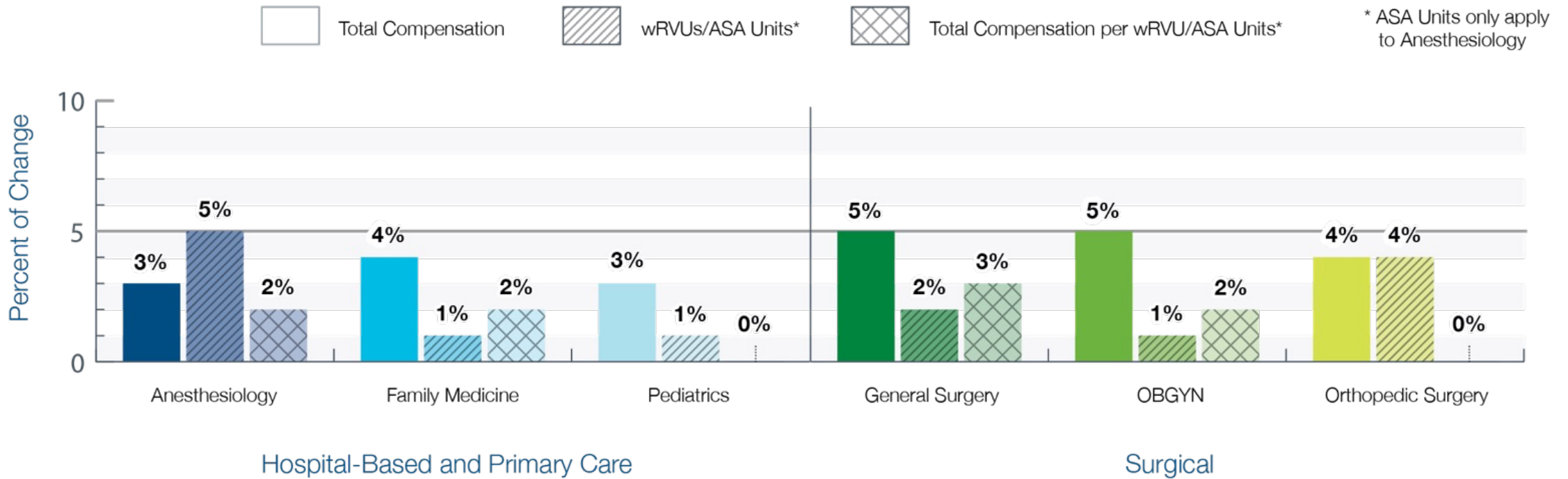


- Productivity Benchmark Data
 - COVID-19
 - Medicare Physician Fee Schedule Changes
- Compensation Benchmark Data
 - Governmental Relief Efforts

Benchmark Data Examination (Pre-Covid)



2019-2020 Specialty Trending Analysis¹

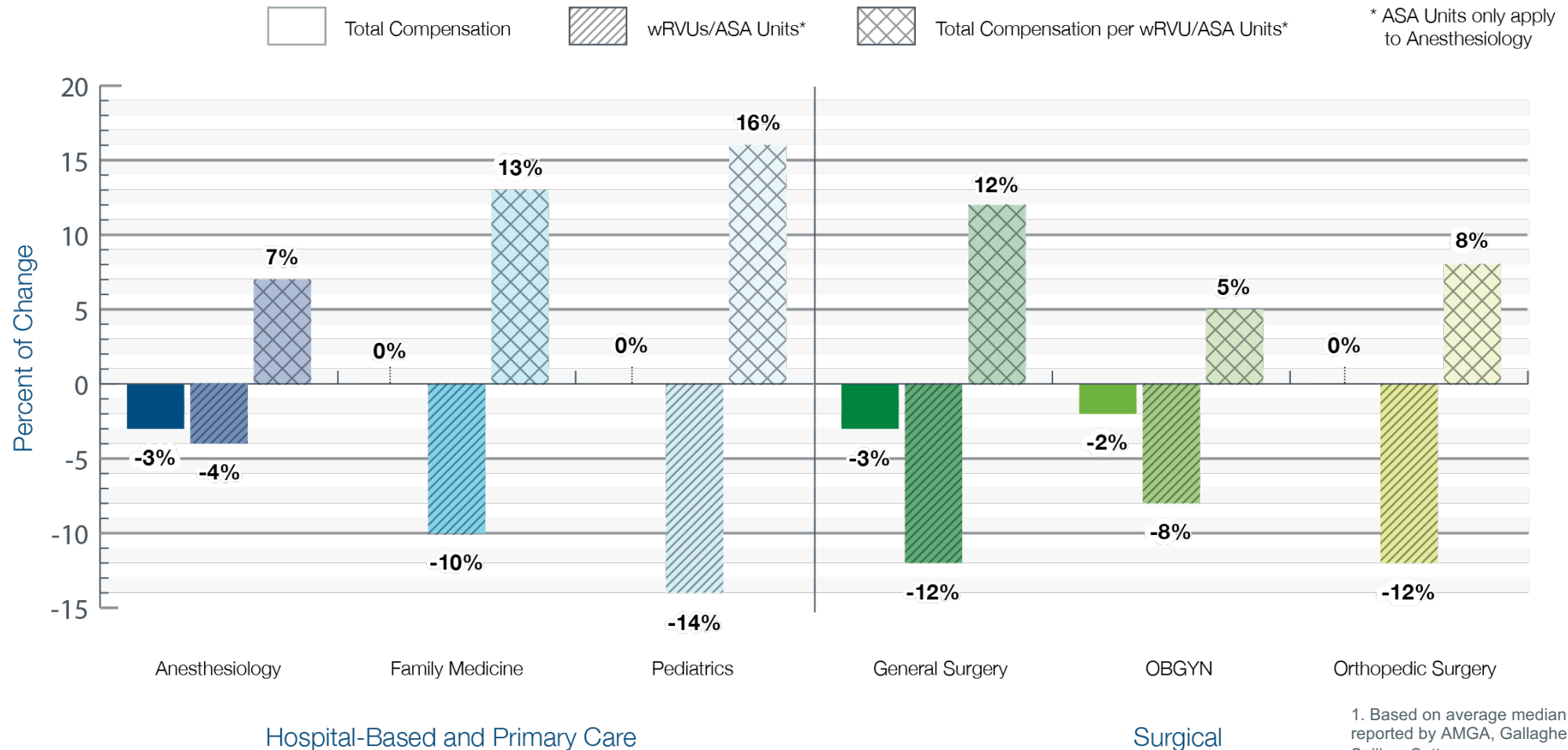


1. Based on average median benchmark data as reported by AMGA, Gallagher, MGMA, and SullivanCotter.

Benchmark Data Examination (Intra COVID)



2020-2021 Specialty Trending Analysis¹

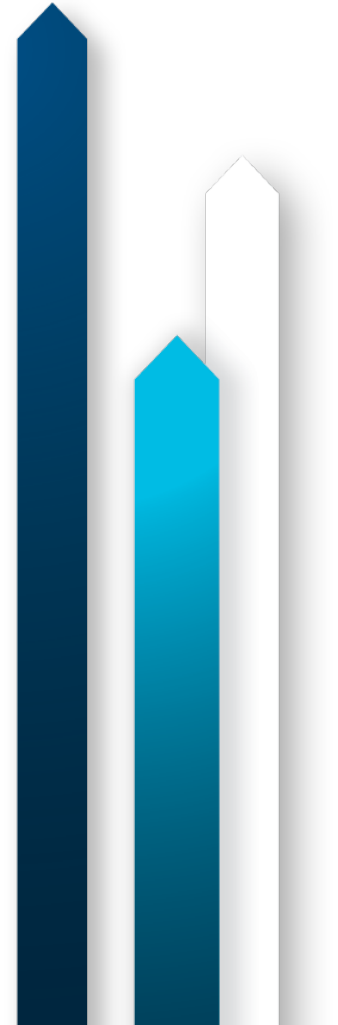


1. Based on average median benchmark data as reported by AMGA, Gallagher, MGMA, and SullivanCotter.

Strategies to Mitigate Impacts of Variability within Survey Data



- Consider utilizing multiple physician compensation and productivity survey sources.
- Trend and/or use a blend of multiple years of physician compensation and productivity survey data.
- Consider impacts of the current MPFS on physician compensation and productivity data.
- Remember: Benchmark surveys are intended to provide directional guidance and should not be used as the single source of information for determining compliance and fair market value compensation.



Thank you!



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