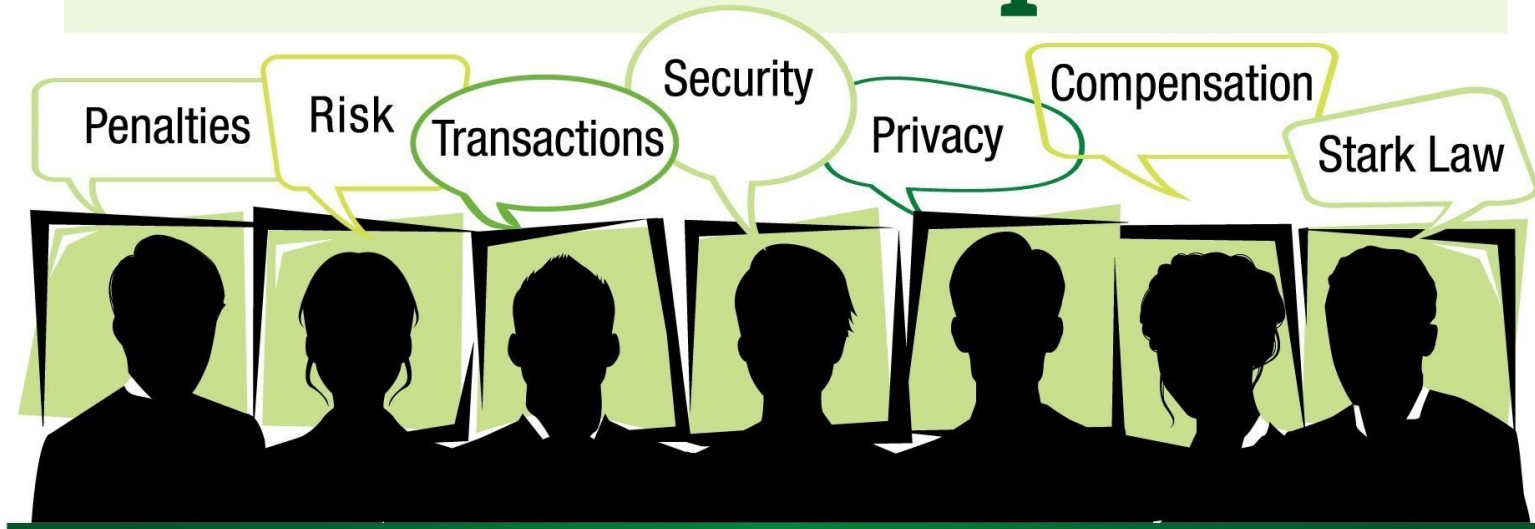


Let's Talk Compliance

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Recent Regulatory Changes Require Fresh Look at Physician Compensation

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Roadmap of Presentation

- Federal Physician Self-Referral Law (a/k/a the “Stark Law”)
 - Background - Strict Liability Fraud and Abuse Statute, Exceptions and Penalties
 - “Fair Market Value”
 - “Commercially Reasonable”
 - “Indirect Compensation Arrangement”
- Changing Landscape of Physician Compensation
- Examples



Federal Physician Self-Referral Law/Stark Law

- Prohibition:

The Stark Law provides that “a physician who has a direct or indirect financial relationship with [a Designated Health Service or ‘DHS’] entity, or who has an immediate family member who has a direct or indirect financial relationship with the DHS entity, may not make a referral for the furnishing of a DHS for which payment otherwise may be made under Medicare,” *unless an exception applies.*

- Further, an entity that furnishes DHS pursuant to a prohibited referral may not present or cause to be presented a claim or bill to the Medicare program or to any individual, third party payer, or other entity for the DHS performed pursuant to the prohibited referral, *unless an exception applies.*



Stark Law Overview (continued)

- Civil statute
 - Strict liability (intent is irrelevant)
 - Covers relationships with **physicians** (and physicians' immediate family members)
 - If Stark is implicated, an exception must be met
 - Potential penalties
 - Payment denial/recoupment by Medicare and Medicaid
 - Civil monetary penalties up to \$15,000 per prohibited service/billing (\$26,125 for 2021)*
 - Circumvention schemes face civil monetary penalties of up to \$100,000 per incident (\$174,172 for 2021)*
 - Exclusion from Medicare/Medicaid participation
 - Liability under the False Claims Act
- *Based on Federal Register (11/15/2021)



Fair Market Value / Commercially Reasonable

- *FMV* - In the December 2, 2020 Final Rule, CMS refused to make a safe harbor or rebuttable presumption based on a range of values in salary surveys – e.g., no presumption that salary at or below the 75th percentile is always appropriate and above the 75th is suspect.
- *CR* is defined to mean that 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.



“Indirect Compensation Arrangements”

- Definition of “indirect compensation arrangement” (42 CFR 411.354(c)(2))
 1. Unbroken chain between referring physician (or member of his/her immediate family member (IFM)) and the entity furnishing DHS and
 2. (a) Aggregate compensation varies with volume or value of referrals or other business generated by the referring physician for the entity furnishing DHS and
(b) The amount of compensation that the physician (or IFM) receives **per individual unit** – (i) is not FMV for items/services actually provided; (ii) could increase as the number or value of the physician’s referrals to the entity furnishing DHS increases, or could decrease as the number or value of the physician’s referrals to the entity decreases; (iii) could increase as the amount or value of the other business generated by the physician for the entity furnishing DHS increases, or could decrease as the amount or value of the other business generated by the physician for the entity furnishing DHS decreases; **or** (iv) is payment for the lease of office space or equipment or for the use of premises or equipment and
 3. The entity furnishing DHS has actual knowledge of, or acts in reckless disregard or deliberate ignorance of, the fact that the referring physician (or IFM) receives aggregate compensation that varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS.

The exceptions that can apply are at 42 CFR 411.355 or 411.357(p)(indirect compensation exception).



Impact of Changes – FMV/CR/Indirect Comp

- Examples of how compensation has changed over time
 - wRVU prevalence
 - APP wRVUs
 - “Personally performed” services (incident to and split shared services)
 - Look at total compensation (not just clinical)
- Valuation examples



Example Analysis 1

	A	B	C	D=B*10%	E=C*D	F	G=E-F
Specialty	Median (50th %ile) Compensation (of 4 2020 National Surveys)	Median (50th %ile) wRVUs (of 4 2020 National Surveys)	Reported Median (50th %ile) Compensation per wRVU (of 4 2020 National Surveys)	APP Impact - 10% (wRVUs)	"Value" of APP Impact (\$)	Estimated Value - APP Supervision Stipend	Difference (Remaining Amount Embedded in Productivity Compensation)
Gastroenterology	\$521,718	7,826	\$65.93	783	\$51,623	\$12,000	\$39,623
Interventional Cardiology	\$649,485	9,860	\$64.58	986	\$63,676	\$12,000	\$51,676
Neurosurgery	\$855,229	9,611	\$89.33	961	\$85,846	\$12,000	\$73,846
Orthopedic Surgery	\$622,203	8,546	\$75.98	855	\$64,963	\$12,000	\$52,963
General Surgery	\$435,378	6,679	\$67.25	668	\$44,923	\$12,000	\$32,923
Urology	\$476,229	7,801	\$61.81	780	\$48,212	\$12,000	\$36,212

This example is for illustrative purposes only and does not represent an opinion of fair market value compensation or determination of commercial reasonableness. Any such determinations would be based on organization-specific facts and circumstances not available or applied in this example.



Example Analysis 1 - Continued

Specialty	A Median (50th %ile) Compensation (of 4 2020 National Surveys)	B Median (50th %ile) wRVUs (of 4 2020 National Surveys)	C Reported Median (50th %ile) Compensation per wRVU (of 4 2020 National Surveys)	D=B*10% APP Impact - 10% (wRVUs)	G=E-F Difference (Remaining Amount Embedded in Productivity Compensation)	H=A/(B-D) Estimated Adjusted Compensation per wRVU	I Estimated Adjusted Compensation per wRVU Benchmark
Gastroenterology	\$521,718	7,826	\$65.93	783	\$39,623	\$74.08	>Mean
Interventional Cardiology	\$649,485	9,860	\$64.58	986	\$51,676	\$73.19	>Mean
Neurosurgery	\$855,229	9,611	\$89.33	961	\$73,846	\$98.87	<Mean
Orthopedic Surgery	\$622,203	8,546	\$75.98	855	\$52,963	\$80.90	~Mean
General Surgery	\$435,378	6,679	\$67.25	668	\$32,923	\$72.43	<Mean
Urology	\$476,229	7,801	\$61.81	780	\$36,212	\$67.83	>Mean

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Example Analysis 1 - Continued

	A	J	K	L=A+J+K	M=L/(B-D)	N
Specialty	Median (50th %ile) Compensation (of 4 2020 National Surveys)	Call Pay	Admin Pay	Total Stacked Compensation	Estimated Stacked Adjusted Compensation per wRVU	Estimated Stacked Adjusted Compensation per wRVU Benchmark
Gastroenterology	\$521,718	\$52,000	\$24,000	\$597,718	\$84.87	>75th
Interventional Cardiology	\$649,485	\$52,000	\$24,000	\$725,485	\$81.75	>75th
Neurosurgery	\$855,229	\$52,000	\$24,000	\$931,229	\$107.66	>Mean
Orthopedic Surgery	\$622,203	\$52,000	\$24,000	\$698,203	\$90.78	>75th
General Surgery	\$435,378	\$52,000	\$24,000	\$511,378	\$85.07	>75th
Urology	\$476,229	\$52,000	\$24,000	\$552,229	\$78.65	>75th

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Example Analysis 2 – 15%

	A	G=E-F	H=A/(B-D)	J	K	L=A+J+K	M=L/(B-D)	N
Specialty	Median (50th %ile) Compensation (of 4 2020 National Surveys)	Difference (Remaining Amount Embedded in Productivity Compensation)	Estimated Adjusted Compensation per wRVU	Call Pay	Admin Pay	Total Stacked Compensation	Estimated Stacked Adjusted Compensation per wRVU	Estimated Stacked Adjusted Compensation per wRVU Benchmark
Gastroenterology	\$521,718	\$65,402	\$78.43	\$52,000	\$24,000	\$597,718	\$89.86	>75th
Interventional Cardiology	\$649,485	\$83,514	\$77.49	\$52,000	\$24,000	\$725,485	\$86.56	>75th
Neurosurgery	\$855,229	\$116,814	\$104.69	\$52,000	\$24,000	\$931,229	\$114.00	~75th
Orthopedic Surgery	\$622,203	\$85,406	\$85.66	\$52,000	\$24,000	\$698,203	\$96.12	>75th
General Surgery	\$435,378	\$55,385	\$76.69	\$52,000	\$24,000	\$511,378	\$90.08	>75th
Urology	\$476,229	\$60,318	\$71.82	\$52,000	\$24,000	\$552,229	\$83.28	>75th

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Example Analysis 3 – 20%

	A	G=E-F	H=A/(B-D)	J	K	L=A+J+K	M=L/(B-D)	N
Specialty	Median (50th %ile) Compensation (of 4 2020 National Surveys)	Difference (Remaining Amount Embedded in Productivity Compensation)	Estimated Adjusted Compensation per wRVU	Call Pay	Admin Pay	Total Stacked Compensation	Estimated Stacked Adjusted Compensation per wRVU	Estimated Stacked Adjusted Compensation per wRVU Benchmark
Gastroenterology	\$521,718	\$91,180	\$83.33	\$52,000	\$24,000	\$597,718	\$95.47	<90th
Interventional Cardiology	\$649,485	\$115,352	\$82.34	\$52,000	\$24,000	\$725,485	\$91.97	<90th
Neurosurgery	\$855,229	\$159,692	\$111.23	\$52,000	\$24,000	\$931,229	\$121.11	>75th
Orthopedic Surgery	\$622,203	\$117,850	\$91.01	\$52,000	\$24,000	\$698,203	\$102.12	<90th
General Surgery	\$435,378	\$77,846	\$81.49	\$52,000	\$24,000	\$511,378	\$95.71	>75th
Urology	\$476,229	\$84,424	\$76.31	\$52,000	\$24,000	\$552,229	\$88.48	<90th

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Angie consults with physician practices and healthcare systems in the areas of fair market value compensation; commercial reasonableness; physician compensation design, development, and strategy; physician/hospital alignment models; and value-based compensation. She assists physician practices and healthcare systems with strategic, financial, and operational issues. Angie serves as managing principal of PYA's Tampa office.

An author and frequent speaker, Angie has presented in live, webinar, and roundtable/panel settings for various organizations, including the American College of Healthcare Executives, Association of Corporate Counsel, Association of Healthcare Internal Auditors, American Health Law Association, Health Care Compliance Association, American Association of Provider Compensation Professionals, and various state hospital associations and societies of Certified Public Accountants.





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Jana's practice focuses on health law issues, including fraud and abuse issues such as anti-kickback and self-referral law compliance; enrollment, coverage and payment issues; licensure issues; and health regulatory due diligence and risks related to acquisitions of health care companies.

Jana has worked with the spectrum of health care entities from academic medical centers (AMCs) to device and pharmaceutical manufacturers. She currently works with health systems, community hospitals, large physician groups, physician and midlevel management and staffing companies, DME suppliers, imaging companies, device manufacturers and distributors, as well as investors in health care entities. Jana is a member of the Health Care Industry Team and the Government Enforcement Defense & Investigations Practice.



Thank you.

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