



Timely, Tough, or Tricky – Physician Compensation and Fair Market Value Topics in 2023

THE END TO PUBLIC HEALTH EMERGENCY & ITS
IMPACT ON PHYSICIAN COMPENSATION

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Speakers



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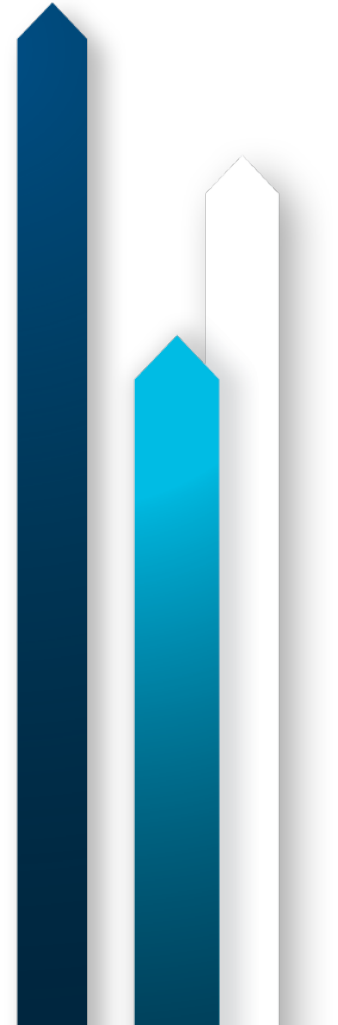
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Introduction

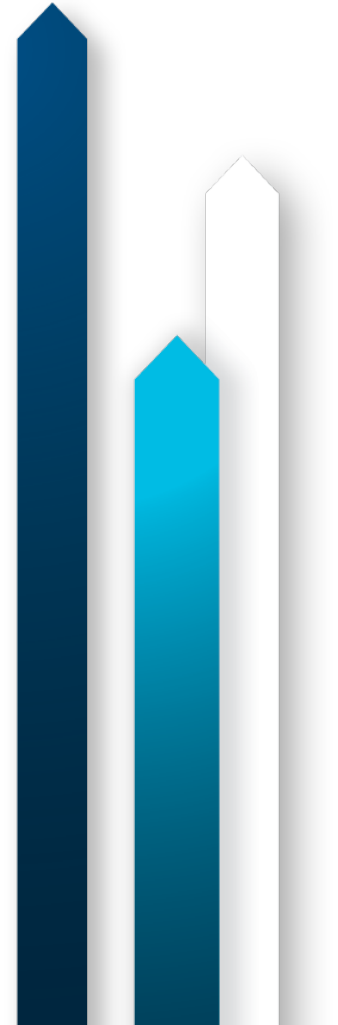


- In 2022, PYA surveyed more than 30 physician compensation experts to understand their collective thoughts on timely, and occasionally, tough or tricky topics in physician compensation and fair market value. Feedback resulted in 6 webinars covering the following topics:
 - The 2021 (and 2022) Medicare Physician Fee Schedule
 - Telehealth Services
 - Group Practice Exception Regulatory Changes
 - Advanced Practice Practitioners
 - Value-Based Arrangements
 - Nuances Surrounding Compensation per wRVU
 - Changes to Commercial Reasonableness
 - Using Benchmark Data
 - Physician Services in Rural Markets
 - Call Coverage Compensation
 - Proposed 2023 Medicare Physician Fee Schedule



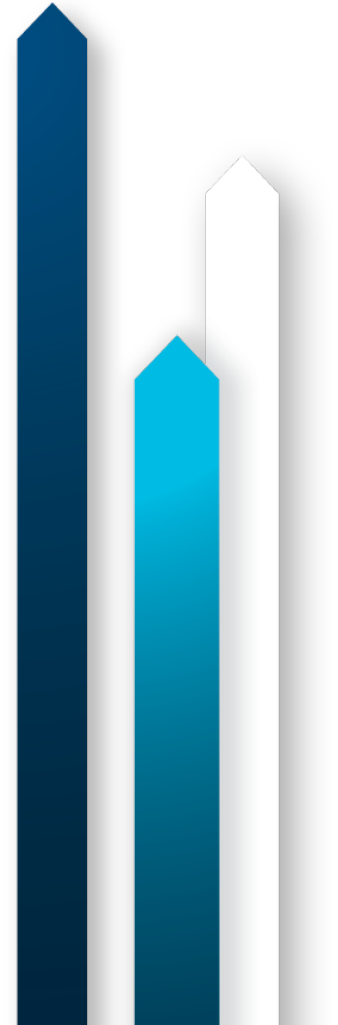
Agenda

- What Was Waived & Why?
- What Has Changed from March 30, 2020 to May 11, 2023?
- What Should Entities Be Doing to Prepare?
- What Other Tips Do We Have?



What Was Waived & Why?

- Themes of Stark Law waiver for 18 types of financial relationships
 - Half of the waivers permitted compensation greater or less than FMV
 - Bi-directional
 - Loans permitted at less than FMV
 - Arrangements not documented in writing
- COVID-19 purposes included:
 - Secure the services of health care professionals
 - Ensure the ability of and expand capacity of health care providers to address patient and community needs
 - Address business interruption in order to maintain the availability of medical care for patients and the community
 - Diagnosis or treatment of COVID-19
 - Shifting the diagnosis/ patient care to appropriate alternative setting.




What has Changed Since March 30, 2020?



- Key Advancements Include But Are Not Limited to:
 - Medicare Physician Fee Schedule
 - Stark Law and Anti-kickback Statute
 - Survey benchmark data
 - Compensation plan changes
 - Court decisions

What Should Entities be Doing to Prepare?




- Identify all applicable arrangements
 - Perform audit of arrangements
 - Stratify arrangements by risk level
- Document
 - Utilize checklist/other resources to ensure appropriate documentation
 - Stark Law Blanket Waiver Documentation Checklist 
 - Identify COVID-19 purpose, waiver relied upon, and how the payment & compensation arrangement was established

Stark Law Blanket Waiver Documentation Checklist

If your organization answers "Yes" to most of these questions, there may be a sufficient record to help meet the documentation requirements under the Stark Law blanket waivers published March 30, 2020—although effective back to March 1—with the express goal of maintaining appropriate physician resources for coverage and care provision in all specialties. Further, depending on a healthcare organization's specific facts and circumstances, other documentation may be required, and some of the documentation suggested in the checklist may not be applicable. Ultimately, an organization should perform a thorough professional analysis (including appropriate legal review) before making any changes to a physician's compensation.

	Yes	No	NA
1. Is a physician (or physician specialty) impacted by the deferral of elective/non-essential procedures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the physician's services essential to the treatment of COVID-19 patients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does an organization expect a sizeable number of elective/non-essential procedures to be canceled because of COVID-19?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is a physician (or physician specialty) impacted by a "stay at home" order?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Is physician compensation projected to be impacted by more than 15%?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is it difficult to mitigate the change in the physician's compensation by providing telemedicine consults?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is it unreasonable to redeploy the physician to another service line to mitigate any potential change in compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. If a physician resigned over any change in compensation, would there be few, if any, other business alternatives for his/her replacement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the loss of the physician create any defaults (e.g., on lease arrangements)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Is there no ability to change the physician's hours/shifts/coverage schedules to mitigate any potential lost physician compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Is it infeasible to redeploy a clinical physician's services to meet a legitimate administrative business need associated with COVID-19?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Would it be impossible to lease an employed physician to another entity who may have supplemental physician need and thus mitigate any potential change to physician compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Is it impractical to change the cost structure of the practice to maintain physician compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Does the physician lack any alternative payment structures (e.g., shared savings) that may serve as supplemental compensation for the physician during the COVID-19 pandemic?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Are commercial payers unwilling to create temporary payment streams that might be applied to physician compensation in a logical way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. According to your physician supply-and-demand analysis, is the physician's specialty essential to meet community need?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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What Should Entities be Doing to Prepare?



- Recalibrate
 - Evaluate changes in applicable regulations & compliance guidance
 - Stark/Anti-Kickback changes
 - Group practice exceptions
 - 2021, 2022, and 2023 MPFS Changes
 - Other (e.g., court decisions, etc.)
 - Identify arrangements that need to be updated before May 11, 2023 so they are compliant starting May 12, 2023
 - Update according to the priority by risk level
 - Obtain legal review of entire arrangement, including seeking a fair market value and commercial reasonableness opinion

What Other Tips Do We Have?

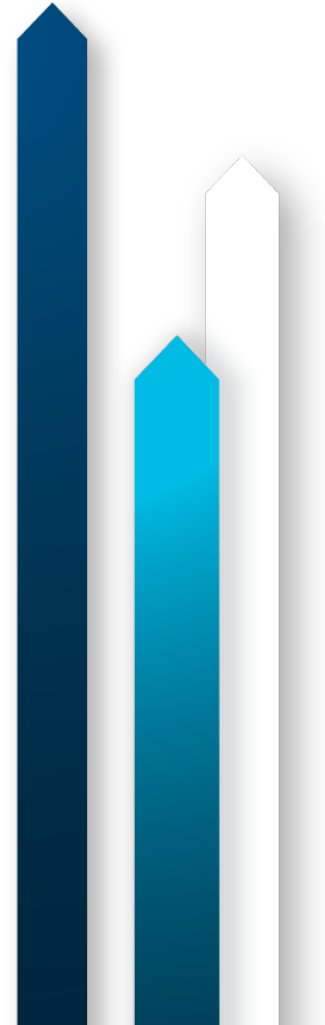
- Educate all vested parties about the upcoming change, and the process your entity will use to ensure compliance
- Require return of loaned items to physicians (equipment, etc.)
- Ensure non-monetary compensation and incidental benefits are less than their current limits
- Evaluate any loans made to physicians to the terms of lenders who do not receive the physician's referrals/ business generated
- Ensure any temporary facility growth capacity is appropriately approved
- Ensure each arrangement meets the applicable writing/ signature requirements
- If you cannot meet an applicable exception, terminate the agreement



Timely, Tough or Tricky 2023 Topics



- Topics identified by more than 35 physician compensation experts surveyed in early 2023 include:
 - 2023 Medicare Physician Fee Schedule Impacts on Compensation
 - Advanced Practice Provider Collaboration Compensation and Trends
 - Call Coverage and Medical Director Needs Assessments
 - Quality and Value-based Compensation Structures
 - Compensation Stacking
 - New Survey Benchmark Data Trends and Nuances
 - Hospital-based Arrangements and Compensation Practices
 - Key Opinion Leader or Health Care Provider Compensation



Thank you!



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