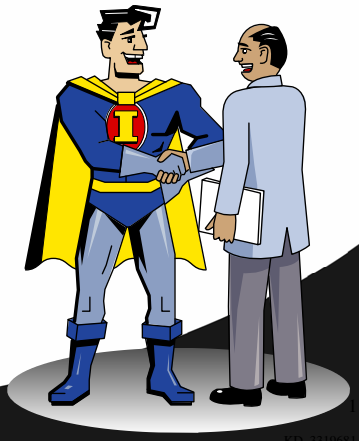


# Fair Market Value Documentation

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RD-3319681



This really will not happen to me, will it?

The government has better things to worry about than one contract between a hospital and physician, right?



## Fair Market Value and Commercial Reasonableness are important factors in:

- Anti-Kickback Statute
- Stark Act
- Intermediate Sanctions



## What Is Fair Market Value?

According to the Stark Act, *fair market value* is “the value in arm’s-length transactions, consistent with the general market value.”



## What Is Fair Market Value?

“General Market Value” means the price that an **asset** would bring as a result of *bona fide* bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the **compensation** that would be included in a service agreement as a result of *bona fide* bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement.

**42 C.F.R. § 411.351**



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## What is Fair Market Value?

A Fair Market Value Safe Harbor for ***hourly rates*** was developed under Stark in the Phase II regulations.

Safe harbor deleted in Phase III regulation. However, OIG stated that the ***safe harbor methodology is still a prudent documentation process.***

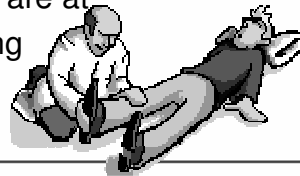


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## Fair Market Value Safe Harbor Deleted

An **hourly rate** is deemed to be fair market value if it meets one of the following two tests:

- 1) Hourly rate is less than or equal to the average hourly rate for emergency room physician services in the market provided there are at least three hospitals providing emergency room services in the market.

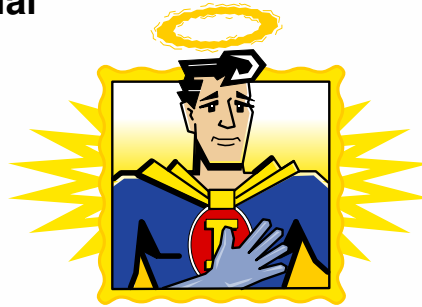


## Fair Market Value Safe Harbor Deleted

- An hourly rate is fair market value if it meets one of the following two tests:
  - 2) Hourly rate is determined by averaging the 50 percentile national compensation level with the same physician specialty in at least four of the following survey, and dividing by 2000.
    - Sullivan, Cotter & Associates, Inc. - Physician Compensation and Productivity Survey
    - Hay Group - Physician's Compensation Survey
    - Hospital and Health Care Compensation Services - Physician Salary Survey Report
    - Medical Group Management Association (MGMA) - Physician Compensation and Productivity Survey
    - ECS Watson Wyatt - Hospital and Health Care Compensation Report
    - William M. Mercer - Integrated Health Networks Compensation Survey

## Documentation of Fair Market Value/Commercial Reasonableness

**For every physician contract, fair market value/commercial reasonableness is the biggest issue.**



## Fair Market Value Indicators

- wRVUs
- Collections
- Gross Charges
- National/Regional Reputation
- Demand for specialty in Service Area
- Lectures
- Books/Articles Published
- Thought Leader
- Historical compensation

## Key Benchmarks

- Compensation
- Collections
- Gross Charges
- Compensation per wRVU
- Compensation as a percentage of collections

Look for ***significant alignment*** between productivity benchmarks and compensation benchmarks

## Internal Medicine Example

	25th Percentile	50th Percentile	75th Percentile	90th Percentile
Compensation	\$160,731	\$197,080	\$250,000	\$316,038
w/RVUs	3,878	4,806	5,844	7,214
Comp/wRVU	\$36.61	\$42.50	\$49.77	\$61.45
Calculated Comp/wRVU (Compensation ÷ Comp/wRVU)	\$41.44	\$41.00	\$42.78	\$43.81
Collections	\$286,241	\$366,622	\$468,383	\$575,809
Comp/Collections	.445	.555	.696	.888
Gross Charges	\$451,680	\$594,411	\$766,494	\$960,362
Hourly Rate (Comp ÷ 2,080)	\$77.27	\$94.75	\$120.19	\$151.94

# Medical Director

**Structure of compensation (and underlying fair market value documentation) may depend upon legal status:**

**Employee vs. independent contractor**



# Medical Director

Clinical v. Medical Director Benchmarks

2 Questions:

1. Do you need a physician?
2. Do you need a physician of a particular specialty?

# Medical Director

## Independent Contractor:

1. Hourly payment (with maximum number of hours in contract)
2. Annual payment (determined by projected number of hours multiplied by Fair Market Value hourly rate)



# Medical Director

**If Annual Payment method is used, need to track hours to make sure consistent with contract.**





# Medical Director Time Sheet

## Duties and Responsibilities:

If physician will be a medical director, require physician to complete a time card, (written statement of services rendered and amount of time dedicated to such services).

[ORGANIZATION NAME]

PHYSICIAN: «FirstName» «LastName», «Title» MEDICAL DIRECTOR OF «JobTitle»

PAY PERIOD \_\_\_\_\_

For a complete listing of duties please reference the Medical Director Agreement.  
Please indicate time in half hour increments.

DUTIES	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
A. Provide program assistance, guidance, and recommendations																																	
B. Provide medical guidance and direction																																	
C. Provide educational inservices and/or conferences																																	
D. Administrative duties																																	
E. Be available to discuss and review treatment																																	
F. Be a physician lecturer																																	
G. Meet regularly with Clinic staff. Attend meetings as requested																																	
H. Other																																	

GRAND TOTAL: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

\* In addition to the above, please generally describe the services performed this month.


Example Included as Exhibit B.



# Medical Director Tracking Tool

EXHIBIT C

## MEDICAL DIRECTOR Tracking Tool



Last Name	Current Hrly Pay	Contract Hrly Pay	Contract Weeks	Actual Total Hrs. Wk	Prorated Hrs.	Contracted Annual Hrs.	Contract Start Date	Contract Expire Date	Total Annual Compensation
Dr. Kilroy	\$102.42	\$114.00	17	65.5	59	180	09/01/05	08/31/06	\$20,520.00
Dr. Bombay	\$117.65	\$102.56	26	68	78	156	07/01/05	06/30/06	\$16,000.00
Dr. Doctor	\$142.12	\$111.00	43	201.5	258	312	08/01/05	07/31/06	\$34,632.00
Dr. I.M. III	\$139.54	\$137.80	4	79	80	1040	08/01/05	07/31/06	\$143,310.40
Dr. Feelgood	\$134.77	\$97.87	26	321	442	884	07/01/05	06/30/06	\$86,520.00

Current Hourly Pay: Current hourly rate based upon total hours documents  
(Total Annual Compensation/52 X Contract Weeks)/(Actual Total Hours Worked)

Contracted Hourly Pay: (Total Annual Compensation)/(Contracted Annual Hours)

Contract Weeks: Number of weeks into current annual contract cycle

Total Hours Worked: Number of hours of services documented by physician during current term based upon time sheets approved

Prorated Hours: Average hours physician would have worked if hours evenly distributed throughout contract term.

Contracted Annual Hours: Number of hours required by contract on annual basis

Contract Start: Effective Date of current annual term

Contract Expiration: Expiration date of current annual term

Total Annual Compensation: Total amount of annual compensation per contract



## CONSULTING SERVICES

Payment for consulting services can be:

- Hourly
- Fixed Payment for Project



## CONSULTING SERVICES

Fixed payments should be developed by estimated number of hours to be dedicated by physician multiplied by fair market value hourly rate using national surveys or third party compensation consultant.



## CONSULTING SERVICES

Actual consulting services should be performed.

### **Good:**

Review and develop written reports/analysis.

Assist with homebound status assessment.

### **Questionable:**

Paid “consulting fee” to sit in an audience to listen about a new product/service.

## FAIR MARKET VALUE



**Fair market value documentation should be developed and documented before offer is made.**

## DOCUMENTATION GUIDELINES

**Board/Committee approval of financial transactions with physicians creates rebuttable presumption under Intermediate Sanction Regulation.**



## DOCUMENTATION GUIDELINES

**For every contract, the following documents should be maintained in a central file:**

- *Executed* and *current* copy of contract
- Fair market value/commercial reasonableness documentation that formed the basis for the contract
- Documentation of legal review
- Officer's certificate (see [Exhibit E](#))

