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## Compensation: Trends and Evolving Areas

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Hot Topics: Governance and Compliance in Physician Financial Arrangements

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## Presenters

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## Relationship between Compliance and Risk

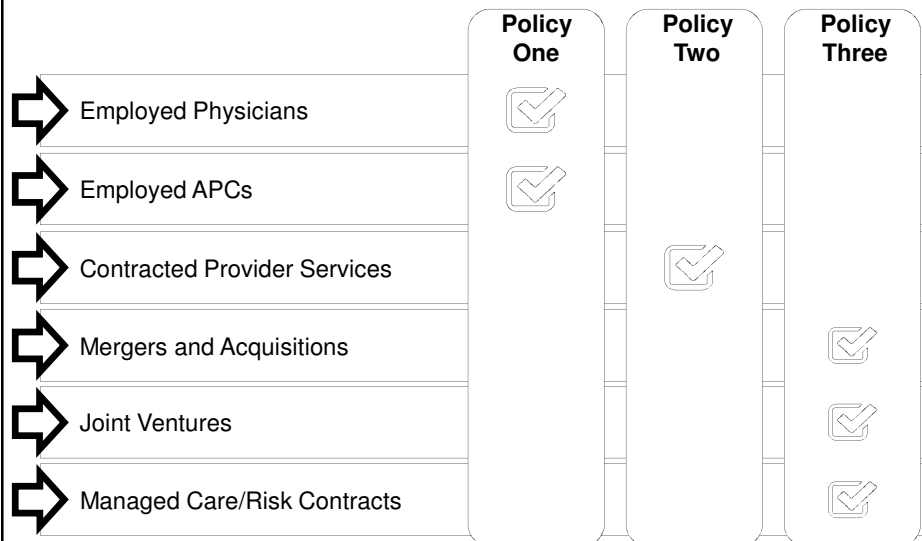
**There is no one-size-fits-all policy, but certain common elements can best position the system for success.**

- » Create a policy that people can and will follow.
  - › Accountability delineated through delegated authorities
  - › Minimal occurrence of special exceptions
  - › Periodic adjustments to policy, where needed
- » Make tools and resources available.
  - › Increased reliance on objective measures
  - › Consistent evaluative frameworks and common methods for internal FMV evaluation
- » Conduct review as early as possible in the process.
  - › Use of approved compensation structures
  - › Avoidance of retrospective reviews
- » Perform risk stratification, and establish review and approval requirements based on risk level.
  - › Risk level may be informed by qui tam allegations and self-disclosures.
  - › More resource-intensive compliance protocols are applicable to higher-risk matters.
- » Independence and objectivity: Reviews and approvals include multiple areas of expertise and individuals who are not directly impacted by the approval decision.

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## Example Policy Application



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## Balancing Business and Regulatory Requirements

Even in situations where executives followed policies designed for compliance with Stark law, the Anti-Kickback Statute, and the Internal Revenue Code, allegations of fraud and abuse by whistle-blowers have resulted in large settlements.



The complexities of business and regulatory planning make it impossible for these to always align perfectly.

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## Common Pitfalls

A well-constructed policy balances expediency with thoroughness while retaining a level of qualified and objective judgement.

- » Conflating risk stratification with FMV
  - › Benchmarking exercises are useful for understanding risk.
  - › However, oversimplifying benchmarks may understate or overstate the risk.
- » Absence of CR assessments
  - › Nearly all qui tam allegations have referenced CR problems.
  - › The lack of regulatory guidance has resulted in inconsistent and highly subjective CR assessments, if they occur at all.
- » Reliance on rebuttable presumptions
  - › Board compensation committees are accustomed to creating a rebuttable presumption.
  - › Rebuttable presumptions are frequently insufficient for compliance with Stark law and the Anti-Kickback Statute.

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## Common Benchmarking Pitfalls

### Stacking

- ❖ Admin work completed during paid standby
- ❖ Paying for call coverage when included in benchmarks

### Compensation/WRVU

- ❖ Assuming one compensation/WRVU statistic applies to all circumstances
- ❖ Failing to consider collections

### Local Variation

- ❖ Regions versus localities
- ❖ Cost-of-living correlation

### Myth of the Median

- ❖ FMV risk versus risk of enforcement
- ❖ Which median (or 75th)?

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## Proposition for the Audience

■ The following property is being offered for sale:



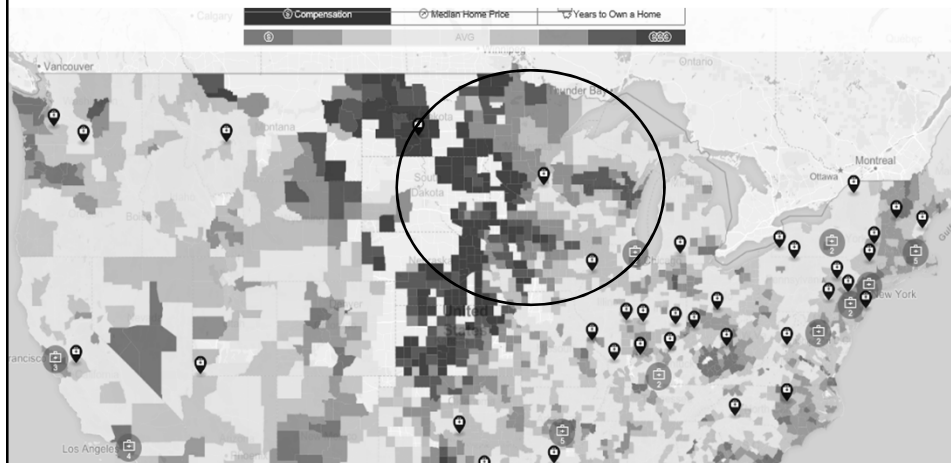
- » It's a private residence with some bedrooms, at least one bathroom, a kitchen, and some other rooms.
- » It is located somewhere in the midwestern region of the United States.
- » A real estate expert reviewed a nonrepresentative sample of home prices across 12 states and concluded that this one is priced at the 75th percentile.

**DO WE HAVE A DEAL?**

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## Physician Compensation Heat Map



Specialists in the Upper Midwest receive higher-than-average pay.

Source: Doximity.

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## CMS's Perspective on Local Pay Variation

**Multiple data sources demonstrate no correlation between cost of living and physician wages. CMS remains divided on the issue and continues to research the matter, but it currently assumes that if librarians make more, so must doctors.**

- » “Since the implementation of the PFS and the RBRVS in 1992, there have been differences of opinion about whether and how to make geographic adjustments to physician work payments and how much the adjustments should be.”
- » Committee members reflected the range of opinions when the deliberations began, showing support for full, partial, and no work adjustment. They settled on a 25% weight but continue to evaluate the topic.
- » Under the current method of GPCI calculations, none of the reference (proxy) occupations are parts of the physician workforce; in fact, only two—nurses and pharmacists—are in healthcare (others include architects, engineers, librarians, coaches, artists, and scientists).

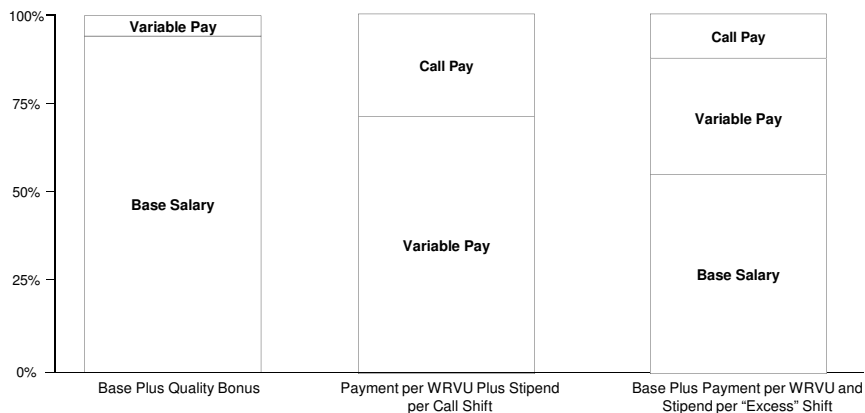
Indeed, some high-cost areas (e.g., Boston, Los Angeles) pay the lowest physician wages, and low-cost areas often pay a premium (e.g., rural Wisconsin, northern Minnesota). The best predictor is professional revenue.

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## Stacking Call Pay for Employed Doctors

Consider three equally productive physicians with similar call obligations who earn equivalent compensation, albeit through different mechanisms.



If an employer pays at benchmark levels and then separately pays for each call shift, the amounts may be excessive.

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## How Frequently Is an Opinion Needed?

Stark Says...

Compensation arrangements must be FMV when entered into, even if factors subsequently change. However, beware of contracts with unreasonably long durations, or arrangements that remain unchecked for extended periods.

From 42 CFR 411.351:

"Fair market value means the value in arm's-length transactions, consistent with the general market value. 'General market value' means the price that an asset would bring as the 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 the 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. Usually, the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition, or the compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement, where the price or compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals."

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# Questions & Answers

