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HANDOUTS

Physician Service Agreements: Reduce Risk & Get Paid More

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Presented by:
Allison Pullins

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Allison Pullins is a healthcare executive with 15 years of industry experience. She is currently Vice President, Chief Strategy and Operating Officer at MD Ranger, Inc. based in Burlingame, California. Allison has expertise in healthcare provider organizations and has worked with hundreds of hospitals and medical groups as clients. Prior to MD Ranger, she held leadership roles at The Advisory Board Company.

Allison has been the lead speaker in more than 80 educational webinars to thousands of healthcare professionals across the US and has been published in Becker's Hospital Review. She has spoken for the Health Care Compliance Association and been featured in the American Health Law Association's "Health Law Disruptors 2030" video series.

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Learning objectives

- Understand Stark Law and AKS; know the risks of financial arrangements with hospitals
- Learn to recognize revenue opportunities for hospital contracts and the services for which physicians are getting paid
- Learn how to negotiate competitive, compliant arrangements with hospitals and understand the hospital administrator perspective on physician relationships and transactions
- How to obtain and interpret compensation data; better understand the FMV process and how it impacts your pay
- Build successful partnerships with area hospitals

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My perspective

I offer an "insider look" at how hospitals and health systems view contracting with physicians

- Get inside the minds of hospital administrators
- Understand and appreciate negotiation levers
- **Remember**: understanding the hospital perspective gives you a better chance of maximizing revenue opportunities and negotiating fair, competitive, and compliant arrangements

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1.
BACKGROUND + CONTEXT

The evolving hospital/physician landscape

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A brief history

Relationships between physicians and hospitals have changed significantly in the past 20-40 years. Clinical transformation, market forces and government regulations have all played a part in this shift.

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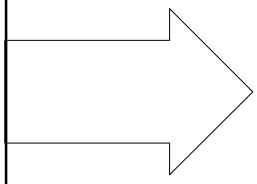

The scope, type, and volume of contracts between hospitals and physicians, *despite employment trends*, have grown significantly over time.

As a physician or medical group, there is tremendous opportunity to partner with area hospitals across a myriad of services, some of which you may never have considered.

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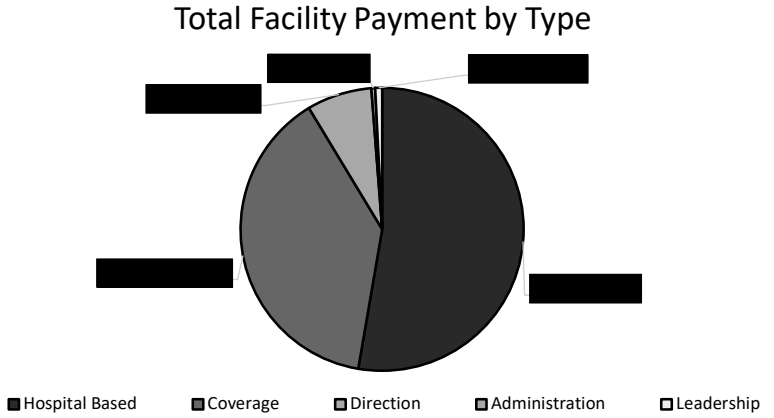
Hospitals spend millions on independent physician contractors



Source: MD Ranger, Inc. 2020

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Trends leading to explosion in growth

- Hyper-subspecialization of physicians create more opportunities for leadership and oversight
- Physician shortages
- Increased pressure on physician incomes
- EMTALA, certification standards, and other federal regulations lead to an increased need from hospitals for physician administrative time and guidance
- Growth in hospital-based physician specialists, with gaps between cost of coverage and reimbursement
- Growing chasm between hospital and ambulatory physician practices, resulting in fewer physicians to staff ED call panels and take on medical staff and/or medical director duties

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Physician contractual arrangements with health care organizations *differ* from other industries

A contract with a hospital is fundamentally different from most other financial arrangements and carries significant legal risks

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Healthcare organizations in financial relationships with physicians must comply with federal and state laws

Key regulations:

- ▷ Anti-Kickback Statute (AKS)
- ▷ Stark Law
- ▷ False Claims Act (FCA)
- ▷ Private inurement (non-profit status)

The intention of these laws are to protect patients and taxpayers against fraud

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Enforcement: Sacramento Cardiovascular Surgeons Medical Group (2019)

- On Nov. 15, 2019, DOJ announced that Sutter Health (Sutter) and Sacramento Cardiovascular Surgeons Medical Group (Sac Cardio) will pay a combined $46 million to resolve allegations arising from claims they submitted to Medicare
- As part of the settlement, Sutter Memorial Center Sacramento (SMCS) will pay $30.5 million to settle allegations that they violated the Stark Law from 2012-14 by billing Medicare for services referred by Sac Cardio physicians *whom SMCS compensated in excess of FMV*, allegedly stacking Physician Assistant Agreements, Medical Director Agreements and Call Coverage Agreements
- **Sac Cardio will pay approx. $500,000 for allegedly submitting duplicative bills to Medicare for services performed by PAs that it was leasing to SMCS**
- Former compliance officer of Sutter Medical Center, Laurie Hanvey, filed lawsuit and will receive nearly $6 million under the settlement (**WHISTLEBLOWERS CAN BE REWARDED UP TO 30% OF A SETTLEMENT**)

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2.
THE REGULATIONS

What you MUST know about Stark and AKS (and FCA too!)

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Healthcare organizations fined millions

In 2020, the U.S. Justice Department recovered more than $1.8 billion from lawsuits involving healthcare fraud and false claims.

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The Anti-kickback Statute (AKS)

The federal Anti-Kickback Statute is a criminal statute that prohibits offering, soliciting, or receiving anything of value to induce or reward referrals to federal healthcare programs

- Practitioner could be financially motivated to refer a patient to a specific practitioner rather than selecting best practitioner for the patient
- Covers any arrangement where one purpose of the payment or offer of payment was to obtain money for the referral of services or to induce further referrals
- The law can apply to all clinicians, not just physicians, where federal reimbursement is involved
- Enforcement authorities could view a seemingly unrelated arrangement as a disguised kickback scheme
- Most states have similar laws governing payments to both CMS and private payers

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The Physician Self-Referral Law (Stark)

Prohibits referrals for the provision of "designated health services" from physicians to health care providers with which they have financial relationships unless an exception applies.

- Civil, not criminal statute, which means that intent does not have to be proven to violate law
- Prohibitions are comprehensive; however, there are many exceptions that aren't covered under the self-referral ban

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Stark Law compliance best practices

Arrangement should ***ideally*** be in writing, signed by the parties, and specify the services, space, or equipment covered

Compensation must be fair market value.

Compensation is not determined in a manner that considers the volume or value of referrals or other business generated between the parties

Arrangement must be commercially reasonable, even if no referrals were made between the parties

Arrangement must serve a legitimate business purpose

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New arrangements and Stark Blanket Waivers

- Issued March 30th ,2020, retro to March 1, 2020
- Waivers are intended to allow providers to act quickly to respond to the pandemic and related to COVID-19 purposes
- Most likely waivers used during this time:
  - Arrangements can start prior to writing and signature
  - Payments could be below or above FMV
  - Incidental payment and non-monetary compensation caps waived
  - Free services can be provided (e.g., childcare, clothing, meals)
  - Office space or equipment rentals paid to or by a physician at or below FMV

New arrangements or amendment payments must be solely related to COVID-19 and are only in effect if we are in a state of emergency. Arrangements must have a limited timeframe and scope.

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*In a memo issued in 2015 by Sally Yates, the OIG made clear that individuals are culpable in corporate wrongdoing cases—**placing individual responsibility and risk on physicians, hospital executives, and hospital board members***

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Two last regs: FCA, private inurement

False Claims Act
- -Oldest regulation; impacts all industries
- -Amplifies penalties under Stark, AKS, and other regulations

Private inurement
- -unjust use of nonprofit organization's income to benefit an insider
- -can and does impact physician income and pay

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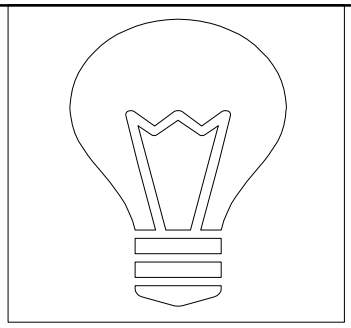

Key takeaways

- ▷ No payments based on volume/referral value!
- ▷ Fair market value
- ▷ Commercially reasonable
- ▷ Because Stark is a civil statute, intent to break the law is not required

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Contracts with area hospitals present potential partnership and revenue opportunities; however, there are financial and state regulations that apply to these payments and if you run afoul of the law, financial and legal consequences can be disastrous.

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Protect your practice

1. Understand Stark Law and AKS; educate members of your practice on what's permissible and not under the regulations
2. Develop internal policies that safeguard against poorly structured deals with hospital organizations
3. Consider working with an attorney well-versed in healthcare law when contracting with a hospital, particularly in a complex situation
4. Train physicians on proper documentation, such as time tracking for administrative arrangements

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3.
BENCHMARKS + FMV

Understand compensation data and how hospitals determine "Fair Market Value"

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Understanding compensation data is critical to successful negotiations

Compensation survey data are invaluable assets. However, accessing survey data can be difficult as an individual physician or group and you must understand how to interpret it.

- What surveys are out there and how to I get them?
- How do I find relevant market data and apply benchmarks to my situation?
- How do I negotiate successfully while using market data?

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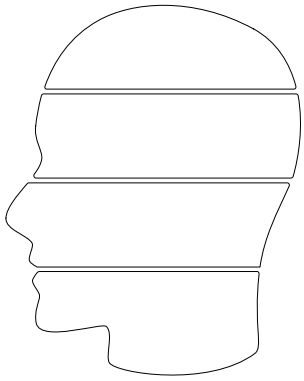
Sources of physician compensation benchmarks

Surveys:

- MD Ranger/Gallagher
- MGMA
- AMGA
- Sullivan-Cotter
- ECG



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Key questions (and answers) regarding market data

- What do physician compensation surveys look like?
- What is reported in "total cash compensation"?
- Where on the market range should you expect to fall?
- How do you obtain compensation benchmarks?
- Where can you find benchmarks for independent contractors?

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Key nuances

FMV isn't a single number, but a range of values.

How the physician is paid (compensation model structure)

The process that is followed to determine physician compensation

What the physician is paid (compared to similar physicians)

On-going management of the contract (e.g., documentation, benchmarking future compensation to market, incentive payments, etc.)

FMV, while data-driven, is based upon analysis of the market and factors impacting compensation

Generally, any payment between the 25th-75th percentile in high-quality market data is likely to be within FMV range, but can be dependent on circumstances, too.

Maximum payment, not just base pay, must be considered, including bonuses, productivity, excess benefits, etc.

Commercial reasonableness is both art and science.

Market competitiveness – other offers; history of recruiting/retaining physicians; competitive environment

Community need – staffing requirements; rural access

Supply and demand for any given specialty

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How do hospitals evaluate pay?

Hospitals, particularly ones affiliated with large systems or integrated networks, have clearly defined policies about how to determine physician payments and document "FMV".

- Fair market value: cost vs. market methods
- FMV process: how hospitals/health systems typically determine physician payments

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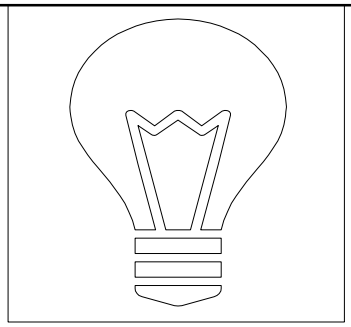

Be reasonable…or realistic

- System policies are often set in stone
- Often there are many hurdles to cross to approve an exceptional payment, if it's even allowed
- You may think you're dealing with an individual hospital administrator when you're really dealing with a corporate attorney or rigid compliance officer

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4.
REVENUE OPPORTUNITIES

Hospitals continue to invest heavily in physicians, presenting opportunities for physician revenue growth.

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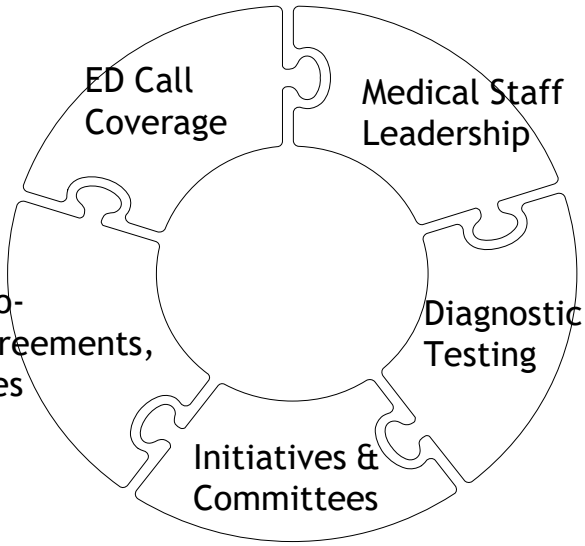
Many opportunities for revenue growth



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ED call services

The cost of ED call pay continues to rise, with some specialties gaining more than others. The average hospital in our database spends $3.5 million annually on these arrangements.

- Types of payment structures include per diem rates, activation payments, and per episode payments. Leveraging these different structures is a potential negotiation strategy
- Pay attention to the type of facility where you take call (it could drive up payments)
- While hospitalist programs have changed ED call panel dynamics there is still opportunity for revenue growth
- Increasing sub-specialization (e.g., interventional radiology) is good for physicians when it comes to contracting opportunities

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Other revenue opportunities

- ▷ Administrative services
- ▷ Ad hoc meeting/committees/initiatives
- ▷ Medical staff leadership
- ▷ Diagnostic testing rates
- ▷ Urgent care, telehealth and COVID
- ▷ …New payments are always emerging, and the scope of these contracts evolve over time

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5.
CONTRACTING + NEGOTIATION BEST PRACTICES

Know your market *and* your counterparty

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Before initiating conversations with an area hospital, understand the hospital administration's perspective. Understand the hospital's constraints like federal/state regulations, internal or systemwide policies, politics, finances, and payer mix. Don't downplay the optics and above all, be reasonable.

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Do your research

- Obtain benchmarks
- Evaluate your market and service
- Know your group's strengths and weaknesses
- Understand the hospital's policies on ED call pay or whatever service you're negotiating
- *NOTE: it is very rare for hospitals pay differential rates for the same panel*

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Consider practicality

Hospitals don't have much ability (or tolerance) for negotiating agreements that go outside internal policies and norms. This is especially true for health systems. Don't succumb to the temptation: attempting to 'blow up' their system of contracting doesn't work and will only alienate your group.

- If the hospital's 'guardrails' don't work for your group, move on
- It's highly unlikely that your group will get paid more than current physicians on the panel
- If the hospital has a threshold that they do not go above, you will need very good reasons – and exceptional negotiating skills- to get above it
- Beware of the new sheriff in town

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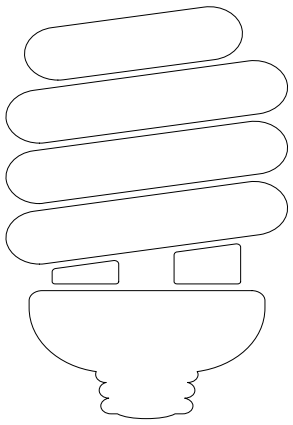
Best practice recap

1. Before contracting with area hospitals for services, understand both the risks and rewards.
2. Stark and AKS aren't just threats to hospital organizations: physicians have personal culpability and can be fined/receive jail time.
3. Yet, contracting with hospitals can provide significant upsides: higher quality care, strengthening relationships within the physician community, and revenue growth opportunities for your practice.
4. Be realistic when negotiating rates with hospital administrators. Know their constraints and operate within them. Truly an exceptional situation? Proceed with care and respect—as well as proof.



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Questions?

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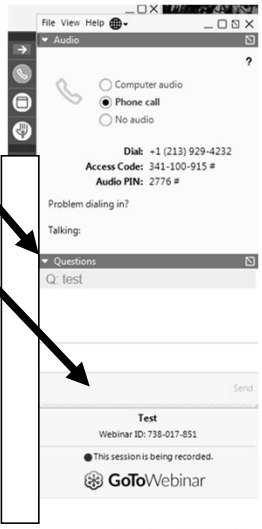

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Thank You For Attending!

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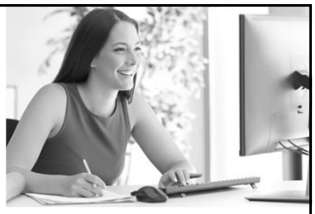

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