



PHYSICIAN COMPENSATION
FINANCIAL TRANSACTION

FAIR MARKET VALUE AND COMMERCIAL REASONABLENESS



**Physician
Compensation /
Financial Transaction
Fair Market Value
and Commercial
Reasonableness
OPINION CATALOG**

INTRODUCTION

This catalog covers opinions for the following types of compensation arrangements and financial transactions with physicians and/or advanced practitioners:

- Clinical/professional service
- Advanced practitioner oversight/supervision
- Medical directorship compensation
- Physician consultant/advisory
- On-call coverage
- Co-management arrangements
- Practice acquisition

In addition to provider compensation and subsidy opinions, we can also provide fair market value and commercial reasonableness opinions for clients regarding practice asset purchases, time share/overhead sharing arrangements, and clinical co-management arrangements. HSG can also provide fair market value and commercial reasonableness opinions for clients regarding financial subsidies of hospital-based specialties/services (Anesthesia, Emergency Medicine, Hospitalists, Intensivists, Pathology, and Radiology)



HSG's opinion of fair market value will be largely dependent on our review, evaluation, and comparison of the proposed compensation with relevant industry benchmark data. This data is purchased by HSG for utilization in such market-based assessments.

When possible, we will use the most recently published surveys.

We will strive to utilize surveys published in the year an opinion is sought, but we acknowledge that some surveys are bi-annual rather than annual. In these instances, we will make a judgment if the most recently available survey is still relevant. If so, we will use it in our study.

FAIR MARKET VALUE AND COMMERCIAL REASONABLENESS

BACKGROUND & DEFINITIONS

Our opinions are developed to reflect and be consistent with the Fair Market Value and Commercial Reasonableness definitions below.

Fair market value is defined by the IRS in Revenue Ruling 59-60 as “the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.”

The federal self-referral statute (commonly referred to as Stark II) further defines General Market Value as “the price that an asset would bring, as the result of bona fide bargaining between well informed buyers and seller 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 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.”

The test for commercial reasonableness is a threshold that is distinct from the standard of fair market value.

According to the Federal Register, Vol. 69, No. 59 16093, Rules and Regulations, dated March 26, 2004 (Stark Law commentary), the test for commercial reasonableness is a threshold that is distinct from the standard of fair market value, and can be defined as follows:

“An arrangement will be considered “commercially reasonable” in the absence of referrals if the arrangement would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable physician, family member or group practice of similar scope and specialty, even if there were no potential designated health service referrals.”

The Centers for Medicare & Medicaid Services in the Federal Register, Vol. 63, No. 6 1700, Proposed Rules, January 9, 1998, initially defined commercial reasonableness as: An arrangement which appears to be “a sensible, prudent business agreement, from the perspective of the particular parties involved, even in the absence of any potential referrals.”

The Office of Inspector General of the U.S. Department of Health and Human Services (“HHS”) also provided guidance on the meaning of commercial reasonableness: **In order to meet the threshold of commercial reasonableness, compensation arrangements with physicians should be “reasonable and necessary.”**

Commercial reasonableness assesses the overall arrangement, including qualitative considerations such as strategy, mission, community need, and operations. Whereas, fair market value assesses the financial components of an arrangement with a physician.

Commercial reasonableness considers the deal in aggregate. Fair market value of the compensation represents just one component of commercial reasonableness.

DELIVERABLES

HSG will provide you with individual fair market value and commercial reasonableness opinion letters for each unique compensation model or a financial arrangement with a physician, advance practitioner, or group. The opinion letter will clearly define what is being valued, the valuation approach, and will acknowledge your organization's intended use of the opinion, which is to assure compliance with federal healthcare laws, namely Stark and Anti-Kickback. Each opinion will specify an effective date and period of validity, which is the period of time for which the opinion shall remain valid. We will officially certify each opinion according to the certification statements and professional standards provided by the *Uniform Standards of Professional Appraisal Practice*.

Finally, HSG will deliver each individual opinion letter on a timely basis. Most single provider opinion letters take 5 to 10 business days to prepare and deliver, once all necessary data and information is provided by a client organization. Large batches of letters requested at one time may take longer.

As large groupings of opinions are requested, HSG will advise as to a reasonable delivery date. We request clients be cognizant and respectful of the time it takes to create a quality opinion letter, particularly as large quantities are requested at one time.

SCOPE OF SERVICE

Our project fees typically do not include negotiations with physicians, executives, or practice managers. If a client wishes to engage HSG to lead or participate in negotiations, associated hours are usually billed at our standard hourly rates. HSG can also provide fair market value and commercial reasonableness opinions for clients regarding financial subsidies of hospital-based specialties/services (Anesthesia, Emergency Medicine, Hospitalists, Intensivists, Pathology, and Radiology).

QUALIFICATIONS

HSG is a national healthcare consulting firm that is frequently retained by hospitals and healthcare systems to render opinion on the fair market value and commercial reasonableness of physician compensation arrangements. HSG utilizes its experience in the healthcare industry and relies heavily on survey data provided by industry and trade organizations in formulating its opinion of fair market value.

GETTING STARTED

We want to help your organization safely and successfully navigate through the complexities and obscurity of provider compensation, Fair Market Value, and Commercial Reasonableness opinions. Please contact Neal Barker or Beth Simpson in order to begin a discussion about your provider compensation issues today.



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Neal's practice focuses on assisting hospitals and health systems in contractually securing needed clinical/professional services, call coverage, medical direction, and physician leadership through compliant and appropriately aligned financial incentives and compensation programs. Mr. Barker also advises healthcare organizations in physician strategy development, physician network growth and development, service line strategy and expansion and physician practice performance improvement.

Neal is a member of the American College of Healthcare Executives and a candidate member of the American Society of Appraisers. He holds a Master's Degree in Business Administration with a concentration in Healthcare Administration from the University of Louisville in Kentucky.



BETH SIMPSON

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Since joining HSG, Beth has contributed extensively to the completion of hundreds of fair market value and commercial reasonableness opinions for physician and advanced practitioner compensation, hospital-based services subsidies, medical directorships, on-call coverage compensation, asset valuations, and overhead sharing arrangements. She is also integral to HSG's efforts in practice operational assessments and physician compensation redesign.

Prior to joining HSG, Beth worked as a Quality of Care Analyst at Rocking Horse Community Health Center in Springfield, Ohio. She served as Business Manager at University of Cincinnati Medical Center and completed her Administrative Residency at Mayfield Clinic in Cincinnati, Ohio.

Beth holds a Bachelor's of Science in Fitness and Wellness Management from Eastern Kentucky University and a Master's in Health Services Administration from Xavier University. She is also a member of ACHE and MGMA.

WHO WE ARE

From boosting market power and financial strength to preparing for value-based care, we can help you define your strategy, implement that strategy, and manage your physician network. We guarantee results and deliver the greatest value as a trusted member of your team.



Physician Strategy

- Health System Strategic Plans
- Employed Physician Network Strategy
- Growth Strategy
- Shared Vision and Culture Development
- Service Line Strategy
- Provider Manpower Planning
- Co-Management



Physician Leadership

- Shared Vision and Culture Development
- Physician Burnout
- Physician Governance and Leadership



Performance Improvement

- Network Performance Improvement
- Performance Improvement Implementation
- Network Revenue Cycle
- Practice Care Model Transformation
- Practice Acquisition



Network Integrity

- Patient Share of Care
- Patient Flow
- Provider Service Location Analysis
- Market Insight



Physician Compensation

- Compensation Plan Design
- Fair Market Valuation
- Commercial Reasonableness Opinions

**We Build
High-Performing
Physician Networks**
so Health Systems
can Address
Complex Changes
with Confidence.

HSG