

Professional Services Agreement: An Alternative Strategy to Hospital Employment

Any compensation arrangement between a hospital and physician must meet a litany of regulatory constraints, mainly those implicating the Stark Laws, the Anti-Kickback Statute, and the IRS regulations of not-for-profit entities.

Often, hospitals find the easiest way to avoid problems with Stark and the Anti-Kickback Statute is to meet the employment exception. However, we have encountered a number of situations where a traditional employment model does not meet the needs of the physicians or the hospital. In this article, we will discuss an alternative to traditional employment of physicians, a professional services agreement (PSA). A PSA relies on the personal services exception and is gaining popularity for reasons discussed below.

Overview of a PSA Relationship

A PSA model allows a physician practice to remain intact, while assigning to the hospital the right to bill and collect professional fee-for-service revenue. The hospital then compensates the physician practice for the clinical services at a fair market value (FMV) rate. As a result, the hospital becomes the practice's sole source of professional revenue and the hospital is then responsible to negotiate contracts and collect payments from third party payors and patients.

Typically, all clinical providers (physicians and non-physician providers) remain employed by the physician practice. The structure of the PSA payment can be customized to the needs of the parties, but is generally based upon work relative value units (WRVUs) and a defined conversion factor, as agreed upon by the parties. It is important to consider what items will be reflected in the WRVU conversion factor. The rate can be set to include only compensation for professional services rendered, or can be "built up" to include consideration of benefits such

as payroll taxes, retirement benefits and malpractice.

In addition to professional clinical services, the hospital may choose to contract for support services and overhead from the physician practice. Support services and overhead can be structured in a variety of ways to allow the necessary resources to provide clinical services. For any such services or costs contracted through the physician practice, we typically see a Management Services Agreement or other contract.

The hospital has the option of purchasing hard assets from the practice, or leasing them, at fair market value. Likewise, the hospital can either employ the non-clinical staff directly, or lease them from the physician practice. In addition, the hospital can directly assume overhead expenses, such as rent, utilities, billing fees, supplies and malpractice, or reimburse the physician practice for appropriate expenses. Such expenses can be reimbursed based upon actual invoice cost, set at a "not to exceed" reimbursement, or can be paid directly by the hospital. Any expense that will not be directly controlled by the hospital should be addressed in an agreed upon budget and reviewed annually.

Reasons to Consider a PSA

Many physicians are reluctant to enter into a full employment agreement for a variety of reasons. Some physicians find that PSAs are advantageous because they are able to keep their physician practice entity and maintain some level of control over the following:

- Distribution of physician compensation



- Retirement benefits and other discretionary expenses/benefits
- Leverage from other physicians and mid-level providers

In addition, similar to employment, the risk of collections is transferred to the hospital and the physician practice is insulated from payor contracting, payor mix and indigent or charity care. Hospitals benefit from a PSA model because it allows them the opportunity to align with physicians in situations where employment has not been a viable option. Hospitals often view the PSA model as a transitional model, with the hope of future employment.

Compliance and Fair Market Value

Due to the numerous regulatory constraints discussed above, in addition to Fair Market Value considerations, it is critical to include legal counsel and valuers during the transaction process.

Conclusion

The PSA model is one of many alignment strategies available to physicians and hospitals. PSAs can take many forms, and contemplating the appropriate structure is complex. However, when appropriately structured, implemented and administered, PSAs may serve as a good alternative to traditional physician employment.

This article is part of a series that delves into the economic, compliance and relationship issues that are relevant in hospital physician relationships. To view past articles, [click here](#).

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