

# Compensation Plan Compliance: Are You at Risk?

A primary reason for the shift in physician practice acquisitions is the economic pressure on private practicing physicians and the effect on their compensation. The application of physician compensation plans helps to ensure return on investment for the hospital, but it also adds compliance risks.

In the past, physicians were generally able to sell their practice assets, including substantial amounts paid for goodwill. They would then become employed by the hospital with guaranteed compensation under long-term contracts. As a result, there was little incentive for the physicians to produce, which led to significant decreases in productivity and practices operating at constant losses.

Today, the future success of the physician employment relies heavily on precautions taken by the hospital, the most significant of which pertains to development of physician compensation plans. Historically, physician compensation plans rarely included performance criteria. In contrast, hospitals today generally build some level of performance expectations into their compensation plans.

In addition to developing compensation plans that address physician performance, hospitals and physicians must also maintain compliance with the Stark Law, the Anti-Kickback statute, and in the case of not-for-profit hospitals, IRS regulations. A common thread running through most of these laws and regulations is the requirement that compensation paid must be fair market value (FMV). Further, the Stark Law specifically requires compensation to be set in advance and be documented in a signed written agreement for no less than a one year term.

In order to comply with these regulations, hospitals commonly develop employment agreements with compensation terms set in advance for a period of more than one year and require the agreement to be signed

by all parties. Often, compensation plans include a base salary with an opportunity for a performance bonus. In many cases, these plans contain a provision for an annual reconciliation, and require payback in the event the compensation paid exceeded what was actually earned by the physician. The plan can also include requirements for periodic review to ensure compliance with FMV, as well as appropriate steps should the arrangement fail to be FMV.

Many hospitals have taken a proactive approach to compliance through the creation of contract committees. Such committees are generally responsible for reviewing new physician contracts for compliance with the various regulations. This approach can significantly reduce the risk of non-compliant employment agreements. However, compliance issues within compensation agreements are still commonplace, including:

- Expired employment agreements without renewal;
- Compensation paid inconsistently with the terms of the agreement;
- Compensation overpaid without performance of required reconciliation;
- Additional services provided by physician, but not documented;
- In the case of medical director agreements, adequate time logs are not maintained; and
- Incentive to overcode in production-based compensation plans.



Hospitals can take specific steps to address these issues, including:

1. Develop a mechanism for notification of significant events (contract expiration, etc.). A number of software systems are available to perform this function.
2. Develop internal and external audit procedures. Examples include:
  - Reconciliation of compensation paid to employment agreement criteria;
  - Medical record coding and documentation review;
  - Documentation/time logs pertaining to medical director activities; and
  - Tests to ensure that either internal or external FMV analyses are performed according to the contract terms.

These procedures should be developed to correspond to the hospital's specific requirements and of course, should be completed within the constraints of the hospital's budget.

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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