

**CPA LEADERSHIP INSTITUTE**  
**PHYSICIAN COMPENSATION ARRANGEMENTS:**  
**FAIR MARKET VALUE AND COMMERCIAL REASONABLENESS**  
**WEBINAR SYLLABUS**

**OBJECTIVES:** After attending this session, participants should be able to understand:

- The regulatory requirements applicable to physician compensation transactional arrangements;
- Methodology for benchmarking physician compensation for clinical, administrative, or executive services; and,
- How a certified opinion regarding fair market value and commercial reasonableness of a compensation arrangement is determined.

**INTRODUCTION**

- **Growth of Physician Employment by Hospitals – Current Trends**
- **Compensation for Hospital-Employed Physicians**
- **Increasing Scrutiny of Physician and Executive Compensation**
  - Rebuttable Presumption
  - February 2009 – IRS Report
  - May 2009 - Fraud Enforcement and Recovery Act (FERA)
  - 2009 - DOJ and HHS create Health Care Fraud Prevention and Enforcement Action Team (HEAT)
    - *Launched over 1,000 investigations*
    - *Leading to 800 indictments*
    - *Resulting in 600 convictions*
  - 2009 - \$2.5 billion was recovered and returned to the Medicare Trust Fund

**FAIR MARKET VALUE (FMV)**

- **Definitions**
  - Stark Law
  - Centers for Medicare & Medicaid Services (CMS)
  - Case Law
  - Internal Revenue Service (IRS)
- **Stark Law Implications**
  - Stark Law Exceptions
  - Independent Contractors vs. Group Practice Physicians
  - Compensation Paid Under Exceptions to the Stark Law
- **Anti-Kickback Statute Implications**
  - Exceptions to Anti-Kickback Statute
  - IRS Determinates of “Employee” Status
  - Anti-Kickback Safe Harbors
  - Can the opportunity to earn a FMV return or payment violate the Anti-Kickback Statute?

**COMMERCIAL REASONABLENESS (CR)**

- **Definitions**
  - Department of Health and Human Services
  - Stark II, Phase II

**CPA LEADERSHIP INSTITUTE**  
**PHYSICIAN COMPENSATION ARRANGEMENTS:**  
**FAIR MARKET VALUE AND COMMERCIAL REASONABLENESS**  
**WEBINAR SYLLABUS**

- **Determining Commercial Reasonableness**
  - IRS' Determination of Commercial Reasonableness
  - IRS' Determination of *excess benefit transaction rule*
  - Violations of *FMV & CR* Under Stark and Anti-Kickback

**ESTABLISHING FMV & CR**

- **Stark II, Phase II Updates**
- ***U.S. vs. SCCI Hospital Houston (2004)***
- **Covenant Medical Center (Covenant) in Waterloo, IA agrees to pay \$4.5 million to the U.S. Government to settle fraud allegations (*August 25, 2009*)**
- ***Settlement and Notes-SCCI Hospital Houston:***
- **Tuomey Healthcare System, Inc. was found to have violated Stark Law by providing compensation to 18 part-time physicians that was in excess of fair market value (*May 29, 2010*)**

**OVERVIEW OF COMPENSATION ARRANGEMENTS**

- **Guiding Economic Concepts Related to Valuing Services**
  - Opportunity Cost
  - *Principle of Utility*
  - *Principle of Substitution*
  - Economic Value Analysis
  - Work RVU as a Fungible Commodity
  - *“Money is the classic example of the fungible product. It represents recognized value, but one dollar bill is just as good as the next...the doctor-patient visit as a fungible commodity? Why not?”*
- **Enterprises? Assets? Services?**
  - A wRVU is a wRVU!
- **Employment Compensation Arrangements May Include**
- **Physician Compensation Expense Allocation**
- **Compensation Benchmarking Sources**
  - Generally accepted benchmarking data related to valuation of physician and executive compensation for clinical, administrative, and on-call services.
- **Physician Clinical Services**
  - Gainsharing
- **Physician On-Call Services**
  - Growing need for compensation for provision of on-call services
  - OIG Approval of On-Call Compensation Arrangements
  - OIG Guidelines for Setting On-Call Compensation Arrangements at *FMV*
- **Physician Administrative Services**
  - Assessing FMV of Medical Directorships
- **Documentation per Type of Physician Service**
- **Types of Compensation Arrangements for Physician Services**
- **Valuation Methodology for Physician Services**

**CPA LEADERSHIP INSTITUTE  
PHYSICIAN COMPENSATION ARRANGEMENTS:  
FAIR MARKET VALUE AND COMMERCIAL REASONABLENESS  
WEBINAR SYLLABUS**

**ROLE FOR THE VALUATION TEAM**

- **Role of the Valuation Consultant**
- **Role of Legal Counsel**

**CONCLUDING REMARKS**

- **Adherence to *Commercial Reasonableness* Thresholds**
- **OIG *Compliance* Program Guidelines**
- **Summary of *CR* Compensation Arrangements**
- **Importance of Documentation and Obtaining a Certified Opinion of Value**