
Fair Market Value in Healthcare Transactions



Keith Pinkerton
Kim C. Stanger
(3-18)

This presentation is similar to any other legal education materials designed to provide general information on pertinent legal topics. The statements made as part of the presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speaker. This presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of law to your activities, you should seek the advice of your legal counsel.

Overview

- Why is FMV so important?
 - Legal
 - False Claims Act
 - Civil Monetary Penalties Law
 - Anti-Kickback Statute
 - Stark
 - 501(c)(3)
 - Business
- Determining and documenting FMV



Written Materials

- Presentation
- OIG Letter re Fair Market Value (12/22/92)
- OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4867 (2005))
- OIG Fraud Alert: Physician Compensation Arrangements May Result in Significant Liability (6/9/15)

Preliminaries

- Submit questions via:
 - chat feature, or
 - kcstanger@hollandhart.com.
- The session will be recorded and available for download at <http://www.hhhealthlawblog.com/webinar-recordings-and-presentations>.

General Rule



Fair Market Value: Different Standards

- IRS: agreed value of transaction between willing and informed buyer and seller.
- Fraud and Abuse Laws: “FMV means ... the compensation that would be included in a service agreement as a result of *bona fide* bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party....” (42 CFR 411.351)

501(c)(3) Tax Exempt Status



501(c)(3) Tax Exempt Status

- Organization's net earnings shall not inure in whole or part to the benefit of private individuals.
- Penalties
 - Loss of tax exempt status
 - Intermediate sanctions if paid excessive economic benefits*
 - Return of the excess benefit.
 - 25% of the excess benefit.
 - 200% of the excess benefit if not corrected within time.

*“Excess benefit occurs when the value of the benefit provided by the organization exceeds the value of the services received. Fair market value is the benchmark used to determine value.”

(IRS Health Care Provider Reference Guide at 6 (2004))

501(c)(3) Tax Exempt Status: Intermediate Sanctions

- Rebuttable presumption of FMV if—
 - Disinterested board or committee reviews transaction before it is finalized to evaluate FMV.
 - Review based on comparable data typically generated by outside party, e.g., valuation consultant.
 - Board bases determination on the comparable data.
 - Decisions documented in minutes, including rationale that supports a value higher than the consultant may have generated.



OIG Office of Inspector General
U.S. Department of State • Broadcasting Board of Governors

HELP FIGHT

FRAUD. WASTE. ABUSE.

DOJ/OIG
recovered
\$30 billion
since 2009;
\$2.5 billion in
2016

If you suspect wrongdoing, contact:



C

If y
Fed
sub
from
reci

Co
to

E

Fraud and Abuse Laws

- False Claims Act
- Anti-Kickback Statute
- Ethics in Patient Referrals Act (“Stark”)
- Civil Monetary Penalties Law
- Similar State Laws

Transactions with Referral Sources

- Employment
 - Services contracts, e.g., clinical services, medical directorships, call coverage, management services, IT support, etc.
 - Leases for space or equipment
 - Practice or sale of items or services, e.g., practice acquisitions
 - Practice support or subsidies
 - Joint ventures
 - Investments
 - Others
- **Generally require that fair market value (“FMV”) be paid.**
 - **Under or over FMV = inducement for referrals.**

Recent Cases	Penalty/Settlement
Adventist Health allegedly pays physicians compensation above FMV, based on referrals	\$115,000,000
North Broward Hospital allegedly pays physicians above FMV, based on referrals	\$69,500,000
Citizens Medical Center allegedly pays excessive compensation to cardiologists based on formula that considers referrals	\$21,750,000
Halifax Hospital allegedly paid physicians above FMV and bonus based on drugs ordered by physicians	\$85,000,000
Tuomey Healthcare allegedly entered long term, part-time employment contracts that exceeded FMV and required referrals	\$74,000,000



Home » Office of Public Affairs

JUSTICE NEWS

Department of Justice

SHARE

Office of Public Affairs

FOR IMMEDIATE RELEASE

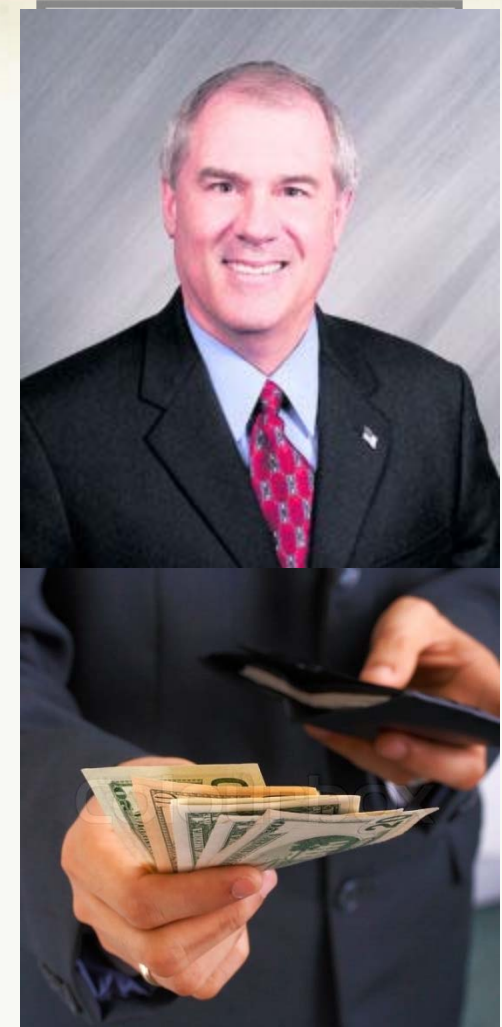
Tuesday, September 27, 2016

Former Chief Executive of South Carolina Hospital Pays \$1 Million and Agrees to Exclusion to Settle Claims Related to Illegal Payments to Referring Physicians

The Department of Justice announced today that it has reached a \$1 million settlement with Ralph J. Cox III, the former chief executive officer of Sumter, South Carolina-based Tuomey Healthcare System, for his involvement in the hospital's illegal Medicare and Medicaid billings for services referred by physicians with whom the hospital had improper financial relationships.

Under the terms of the settlement agreement, Cox will also be excluded for four years from participating in federal health care programs, including providing management or administrative services paid for by federal health care programs. The illegal physician arrangements resulted in a \$237.4 million judgment against Tuomey following a jury verdict. On Oct. 16, 2015, the United States resolved its judgment against Tuomey for payments totaling \$72.4 million, and the hospital was sold to Palmetto Health, a multi-hospital healthcare system based in Columbia, South Carolina.

"Sweetheart deals between hospitals and referring physicians distort medical decision making and drive up the cost of healthcare for patients and insurers alike," said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division. "Patients have a right to be confident that a physician who orders a procedure or test does so because that service is in the patient's best interest, and not because the physician stands to gain financially from the referral. Today's settlement demonstrates that the Justice Department and its law enforcement partners will hold individual decision makers accountable for their involvement in causing the companies and facilities they run to engage in unlawful activities."



Offender

False Claims Act

- Cannot knowingly submit a false claim for payment to the federal government.
 - Includes submitting claims in violation of federal fraud and abuse laws (e.g., Stark, AKS, CMPL). *U.S. v. Escobar*(S. Ct. 2016)
- Must report and repay an overpayment within 60 days.
- Penalties
 - Repayment plus interest
 - Civil monetary penalties of \$11,000 to \$22,000 per claim
 - 3x damages
 - Exclusion from Medicare/Medicaid

(18 USC 1347)

- Subject to *qui tam* suits.

Civil Monetary Penalties Law

- Cannot offer or transfer remuneration to Medicare or state program beneficiaries if you know or should know that the remuneration is likely to influence the beneficiaries to order or receive items or services payable by federal or state programs from a particular provider.
 - Remuneration = transfer of items or services for less than FMV.
- Penalty:
 - \$10,000 for each item or service.
 - 3x amount claimed.
 - Repayment of amounts paid.
 - Exclusion from Medicare and Medicaid.
- Also a likely violation of the Anti-Kickback Statute

(42 USC 1320a-7a(a)(5); 42 CFR 1003.1000).

Anti-Kickback Statute

- **Cannot knowingly and willfully offer, pay, solicit or receive remuneration to induce referrals for items or services covered by government program unless transaction fits within a regulatory safe harbor.**
- **Penalties**
 - Criminal penalties of 5 years in prison and \$25,000 fine
 - Civil penalties of \$73,600 per violation + 3x damages
 - False Claims Act liability
 - Exclusion from Medicare/Medicaid.

(42 USC 1320a-7b(b))

- “One purpose test”: Anti-Kickback Statute applies if one purpose of the remuneration is to induce referrals even if there are other legitimate purposes. (*U.S. v. Greber*, 760 F.2d 68 (3d Cir. 1985))

Ethics in Patient Referrals Act (“Stark”)

- If a physician (or a member of the physician’s family) has a financial relationship with an entity:
 - Physician cannot make referrals to that entity for certain designated health services (“DHS”) payable by Medicare.
 - Entity cannot submit a bill for payment for DHS rendered pursuant to a prohibited referral.

unless transaction is structured to fit within a regulatory exception (“safe harbor”).

- Penalties:
 - Repayment of amounts from Medicare/Medicaid
 - Civil fines of \$24,000 per service
 - False Claims Act liability

(42 USC 1395nn(a), (f); 42 CFR 411.353)

Stark and Anti-Kickback Safe Harbors

- ***Key to compliance: structure transactions with referral sources to fit within a regulatory safe harbor, e.g.,***
 - Employment
 - Services Contracts
 - Purchase/Sale Agreements
 - Items or services
 - Leases
 - Space, equipment or timeshares
 - Others
- ***FMV is a common requirement.***



Importance of FMV

- “[B]ecause many exceptions to the Stark law require fair market value compensation for items or services actually needed and rendered, hospitals [and other healthcare providers] should have appropriate processes for making and documenting reasonable, consistent, and objective determinations of fair market value and for ensuring that needed items and services are furnished or rendered.” (OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4863 (2005))

Employment

Stark (Physicians)

- Compensation must be:
 - **Consistent with fair market value (“FMV”) of services.**
 - Does not take into account the volume or value of referrals for DHS
 - **Commercially reasonable even if no referrals made.**

(42 CFR 411.357(c))

Anti-Kickback

- Compensation paid to *bona fide employees* for furnishing items or services payable by Medicare/Medicaid.
(42 CFR 1001.952(i))
- Safe harbor may not apply to excess payments for referrals instead of “furnishing items or services”. (OIG Letter dated 12/22/92 fn.2)

Services Contract

Stark (Physicians)

- Writing signed by parties.
- Compensation formula is:
 - Set in advance.
 - **Consistent with FMV.**
 - Does not take into account the volume or value of services or other business generated by the physician.
- Arrangement is **commercially reasonable** and furthers legitimate business purpose.
- Compensation may not be changed within 1 year.

(42 CFR 411.357(d) or (l))

Anti-Kickback

- Writing signed by parties.
- Aggregate compensation is:
 - Set in advance.
 - **Consistent with FMV.**
 - Does not take into account the volume or value of referrals for federal program business.
- Aggregate services do not exceed reasonably necessary to accomplish **commercially reasonable** business purpose.

(42 CFR 1001.952(d))

Services Contract: “Fair Market Value”

Stark (Physicians)

- FMV = “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 otherwise in a position to generate business for the other party*... Usually, the fair market is the ... compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement, where the ... compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals.”

(42 CFR 411.351)

Services Contract: “Fair Market Value”

Anti-Kickback Statute

- FMV = “**arms-length transactions** and is not determined in a manner that takes into account the volume or value of any referrals...”

(42 CFR 1001.952(d)(5))

- “[I]n determining the fair market value of services rendered by employee or contract physicians, it may be necessary to seclude from consideration any amounts which reflect or relate to past or future referrals or any amounts which reflect or are affected by the expectation or guarantee of a certain volume of business by either the physician or the hospital...”

(Letter from OIG to IRS (12/22/92)).



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



Fraud Alert: Physician Compensation Arrangements May Result in Significant Liability

June 9, 2015

Physicians who enter into compensation arrangements such as medical directorships must ensure that those arrangements reflect fair market value for bona fide services the physicians actually provide. Although an arrangement may violate the Stark Law, it does not automatically mean that the arrangement compensates a physician for business. OIG encourages physicians to carefully review medical directorships and other com

OIG recently reached settlements with several physicians who entered into questionable medical directorship and other compensation arrangements. In these cases, the physicians entered into these arrangements under the Stark Law, which prohibits physicians from receiving compensation under the anti-kickback statute if the arrangement does not take into account the physicians' volume of services to be performed, and if the arrangement is not for under the agreements. OIG found that these physicians entered into compensation arrangements under which an affiliated health care entity paid the salaries of the physicians'

“[E]nsure that arrangements reflect fair market value for *bona fide* services the physicians actually provide.”
(OIG, Fraud Alert: Physician Compensation Arrangements May Result in Significant Liability (6/9/15))

arrangements must ensure that those arrangements reflect fair market value for bona fide services the physicians actually provide. Although an arrangement may violate the Stark Law, it does not automatically mean that the arrangement compensates a physician for business. OIG encourages physicians to carefully review medical directorships and other compensation arrangements. In these cases, the physicians entered into these arrangements under the Stark Law, which prohibits physicians from receiving compensation under the anti-kickback statute if the arrangement does not take into account the physicians' volume of services to be performed, and if the arrangement is not for under the agreements. OIG found that these physicians entered into compensation arrangements under which an affiliated health care entity paid the salaries of the physicians'.

arrangements under which an affiliated health care entity paid the salaries of the physicians'.

arrangements under which an affiliated health care entity paid the salaries of the physicians'

Services Contract: FMV Factors

- Comparable compensation for similarly situated providers in region (e.g., MGMA, Merritt Hawkins, etc.)
- Provider's compensation before becoming employed/contracted
- Services actually provided by provider
- Services actually required by the employer
- Provider's specialty
- Provider's experience
- Provider's past and anticipated personal productivity (not referrals)
- Past attempts to recruit provider to community
- Market demands
- Community need
- Other?

Services Contract: FMV Factors

- Evaluate total compensation, including:
 - Salary
 - Bonuses
 - Benefits
 - Pension
 - Deferred compensation
 - Insurance
 - Other
- Ensure compensation correlates to services performed
- Monitor performance over term of contract

Services Contract: Common Valuation Methods

- Published compensation surveys
 - MGMA, Merritt Hawkins, Sullivan Cotter, Hay Group, etc.
 - Ensure comparables are appropriate
- Compensation paid to other similar providers in the area
 - Preferably those who are not in referral relationship
- Outside valuation firm

Purchase/Sale of Practice (or maybe similar transactions)

Stark (Physicians)

- Price is:
 - Fair market value.
 - Not based on volume or value of referrals.
 - Commercially reasonable even if no referrals.
- No additional transactions for 6 months except those that fit within safe harbor.

(42 CFR 411.357(f))

Anti-Kickback Statute

- *See* 42 CFR 1001.952(e)

Payments by a Physician

Stark (Physicians)

- Payments by a physician for item or service under circumstances not otherwise covered by safe harbor.
- Compensation is **fair market value**.

(42 CFR 411.357(i))

Anti-Kickback Statute

- No similar safe harbor

Purchase/Sale: “Fair Market Value”

Stark (Physicians)

- FMV = “value in arm's-length transactions, consistent with the general market value. “General market value” means the **price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party** Usually, the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market ..., where the price or compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals.”

(42 CFR 411.351)

Purchase/Sale: “Fair Market Value”

Anti-Kickback

- “[T]raditional or common methods of economic valuation do not comport with the prescriptions of the Anti-Kickback Statute. Items ordinarily considered in determining fair market value may be expressly barred by the kickback statute’s prohibition against payments for referrals. Merely because another buyer may be willing to pay a particular price is not sufficient to render the price paid to be fair market value. The fact that a buyer in a position to benefit from referrals is willing to pay a particular price may only be a reflection of the value of the referral stream that is likely to result from the purchase.
- “Accordingly, when attempting to assess the fair market value (as that term is used in an anti-kickback analysis) attributable to a physician’s practice, it may be necessary to exclude from consideration any amounts which reflect, facilitate or otherwise relate to the continuing treatment of the former practice’s patients...”
- (Letter from OIG to IRS (12/22/92), available at <http://oig.hhs.gov/fraud/docs/safeharborregulations/acquisition122292.html>).

Purchase/Sale: “Fair Market Value”

Anti-Kickback

- “Specific items that we believe would raise a question as to whether payment was being made for the value of a referral stream would include, among other things:
 - payment for goodwill,
 - payment for value of ongoing business unit,
 - payment for covenants not to compete,
 - payment for exclusive dealing agreements,
 - payment for patient lists, or
 - payment for patient records.
- “Payments for the above types of assets or items are questionable where, as is the case here, there is a continuing relationship between the buyer and the seller and the buyer relies (at least in part) on referrals from the seller.”

(Letter from OIG to IRS (12/22/92).

Purchase/Sale: “Fair Market Value”

Anti-Kickback

- “We believe a very revealing inquiry would be to compare the financial welfare of the physicians involved before and after the acquisition.... If the economic position of these physicians is expected to significantly improve as a result of the acquisition, it is likely that a purpose of the acquisition is to offer remuneration for the referrals which these physicians can make to the buyer.”

(Letter from OIG to IRS (12/22/92)).

Purchase/Sale: Common Valuation Methods

- Comparables
 - But difficult to identify objective comparables
- Internal assessment
 - But difficult to obtain objective data
- Outside valuation firm
 - Cost approach?
 - Market approach?
 - Income approach?
- Others?

Lease for Space or Equipment

Stark (Physicians)

- Written arrangement.
- At least 1 year.
- No more than necessary.
- Exclusive use.
- Rent:
 - Set in advance.
 - **Fair market value.**
 - Not based on referrals, including % of services or per-unit of service based on landlord's referrals.
- **Commercially reasonable.**
(42 CFR 411.357(a)-(b); *see also* (y))

Anti-Kickback

- Written arrangement.
- At least 1 year.
- Specifies premises/equipment.
- Specify intervals.
- No more than necessary.
- Aggregate rent:
 - Set in advance.
 - **Fair market value.**
 - Not based on referrals.
- **Commercially reasonable.**
(42 CFR 1001.952(b))

Lease for Space or Equipment: “Fair Market Value”

Stark (Physicians)

- FMV = “the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee. For purposes of this definition, a rental payment does not take into account intended use if it takes into account costs incurred by the lessor in developing or upgrading the property or maintaining the property or its improvements.”

(42 CFR 411.357)

Lease for Space or Equipment: “Fair Market Value”

Anti-Kickback Statute

- **Space:** FMV = the value of rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals for which payment may be made under Federal health care programs.
- **Equipment:** FMV = the value of equipment when obtained from a manufacturer or distributor, but shall not be adjusted to reflect the additional value one party (either the lessee or lessor) would attribute to the equipment as a result of its proximity or convenience to sources of referrals for which payment may be made under Federal health care programs.

(42 CFR 1001.952(b)(6) and (c)(6))

Leases for Space or Equipment: FMV Factors

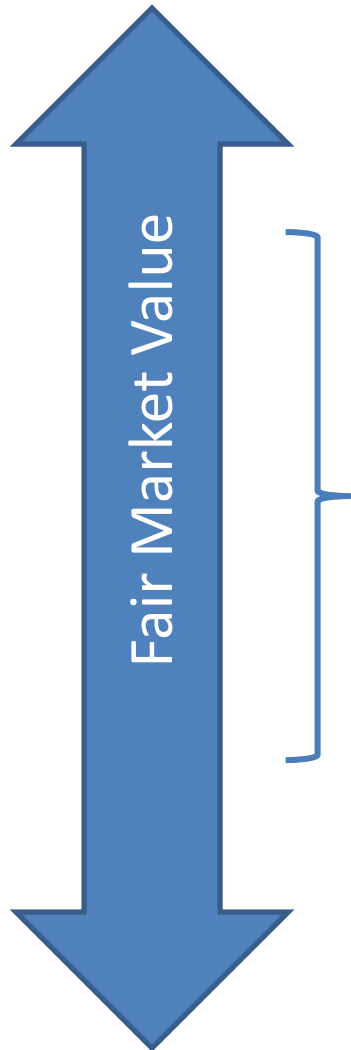
- Comparable leases in the community
 - Ensure validity of comparables
 - Exclude those in referral relationship
- What is included in the lease
 - Taxes, insurance, utilities, additional services, etc.
- Actual need for space or equipment
- Exclusive/non-exclusive
- Frequency of use
- Length of lease
- Cost to lessor
- Tenant improvements

(See OIG Special Fraud Alert, Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer (2/00))

Lease for Space or Equipment: Common Valuation Methods

- Comparables in the community
 - Similar property for general commercial purposes
 - May include buildouts
 - Do not include premium/discount for proximity to referral source
 - Exclude providers who are in referral relationship
- Brokers
- Third party leasing companies
- Cost plus reasonable rate of return
- Outside valuation firm

Assessing FMV



- Fair market value is a range.
- Depends on individual circumstances.
- May use any commercially reasonable method to establish FMV, e.g., FMV analysis, published compensation surveys, comparables, etc.
 - **Be consistent.**
 - **Address specifics of your situation.**
 - **Exclude comparables in referral relationship.**
- Safer if stay around 50% of published surveys for comparable circumstances, but no guarantees.

Assessing FMV

- “The general rule of thumb is that any **remuneration flowing between hospitals and physicians should be at fair market value for actual and necessary items furnished or services rendered based upon an arm’s-length transaction and should not take into account, directly or indirectly, the value or volume of any past or future referrals or other business generated between the parties.**
- “Arrangements under which hospitals (i) provide physicians with items or services for free or less than fair market value, (ii) relieve physicians of financial obligations they would otherwise incur, or (iii) inflate compensation paid to physicians for items or services pose significant risk. In such circumstances, an inference arises that the remuneration may be in exchange for generating business.”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4866 (2005))

Assessing FMV

- “Are the items and services obtained from a physician legitimate, commercially reasonable, and necessary to achieve a legitimate business purpose of the hospital (apart from obtaining referrals)?”
- “Assuming that the hospital needs the items and services, does the hospital have multiple arrangements with different physicians, so that in the aggregate the items or services provided by all physicians exceed the hospital’s actual needs (apart from generating business)?”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4866 (2005))

Assessing FMV

- “Does the compensation represent fair market value in an arm’s-length transaction for the items and services?”
- “Could the hospital obtain the services from a non-referral source at a cheaper rate or under more favorable terms?”
- “Does the remuneration take into account, directly or indirectly, the value or volume of any past or future referrals or other business generated between the parties?”
- “Is the compensation tied, directly or indirectly, to Federal health care program reimbursement?”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4866-67 (2005))

Assessing FMV

- “Is the determination of fair market value based upon a reasonable methodology that is uniformly applied and properly documented?”
- “If fair market value is based on comparables, the hospital should ensure that the market rate for the comparable services is not distorted (e.g., the market for ancillary services may be distorted if all providers of the service are controlled by physicians).”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4867 (2005))

Assessing FMV

- Is the compensation commensurate with the fair market value of a physician with the skill level and experience reasonably necessary to perform the contracted services?
- Were the physicians selected to participate in the arrangement in whole or in part because of their past or anticipated referrals?
- Is the arrangement properly and fully documented in writing? Are the physicians documenting the services they provide? Is the hospital monitoring the services?

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4867 (2005))

Assessing FMV

- “In the case of physicians staffing hospital outpatient departments, are safeguards in place to ensure that the physicians do not use hospital outpatient space, equipment, or personnel to conduct their private practices?”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4867 (2005))

Assessing FMV

- “At minimum, hospitals should develop policies and procedures requiring physicians to document, and the hospital to monitor, the services or items provided under compensation arrangements (including, for example, by using written time reports).
- “In some cases, particularly rentals, hospitals should consider obtaining an independent fair market valuation using appropriate health care valuation standards.”

(OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4867 (2005))

Some safe harbors do not expressly require FMV...

Stark (Physicians)

- Group practice compensation
- Recruitment and retention payments
- Nonmonetary compensation arrangements
- Medical staff incidental benefits
- Professional courtesy
- Compliance training
- OB malpractice insurance subsidy
- Charitable donations by physician
- Certain EMR donations
- Others

(42 CFR 411.357)

Anti-Kickback

- Bona fide employment
- Investment interests
- Investments in group practice
- Ambulatory surgery centers
- Sale of practice
- Recruitment
- OB malpractice subsidies
- Donations to health centers
- Certain EMR donations
- Others

(42 CFR 1001.952)

Remember:

FMV is Not the Only Test...



- “[U]nder the anti-kickback statute, neither a legitimate business purpose for the arrangement, nor a fair market value payment, will legitimize a payment if there is also an illegal purpose (i.e., inducing Federal health care program business).” (OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4864 (2005))
- Confirm compliance with other safe harbor requirements.

Commercially Reasonable

*Don't
forget*



Commercially Reasonable

- “Commercially reasonable” means “that an arrangement appears to be a sensible, prudent business agreement, from the perspective of the parties involved, even in the absence of any potential referrals.” (63 FR 1700; *see also* 69 FR 16093)
- Arrangements that lose money are suspect.
 - See recent cases.
- May be able to justify losses if, e.g.,
 - Payer mix may limit revenue.
 - High proportion of uncompensated care.
 - Services or specialty needed in community even though insufficient population to make service profitable.
 - Startup time.
 - Other?

The Role of Independent Valuators

Independent valuers

- Not required, but often helpful, especially in riskier transactions, e.g.,
 - Riskier transaction (e.g., compensation > 75% of surveys)
 - Physician has existing referral stream
 - Acquire physician practice or assets
- May help avoid bad business decisions.
- May help manage physician expectations.
- Supports “rebuttable presumption” under IRS intermediate sanctions.
- No guarantee of protection.
- **Ensure valuator understands Stark and AKS standards.**

Most unique for valuation purposes?

Restaurant



C-Store



Manufacturer



Call Center



Self-Storage



Med Practice



Jeweler



Auto Dealer

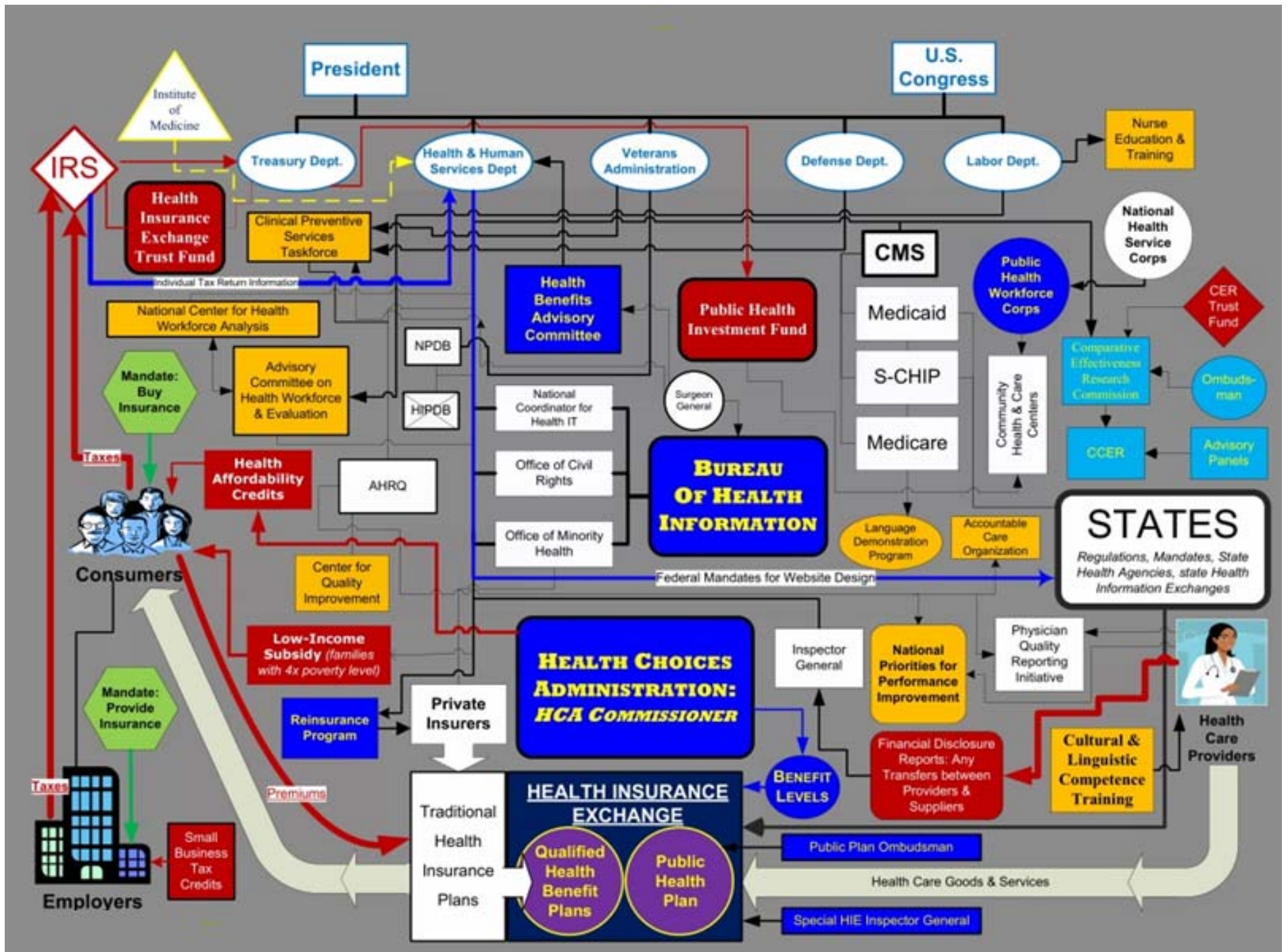


Excavator



Hardware







Matching Professionals and Assignments

To Value:

- Real Property
- Medical Equipment and Devices

Consult with:

- Real Estate Appraiser
- Machinery & Equipment Appraiser

- Medical Practices
- Professional Service Agreements
- Lease Agreements

- Business Appraiser
- Business Appraiser, Others?
- Business Appraiser, Others?

Business Valuation Credentials

Credential	CFA	ASA	ABV	CVA
Certifying Organization	CFA Institute	American Society of Appraisers	American Institute of Certified Public Accountants	National Association of Certified Valuation Analysts
First Year Offered	1963	1981	1997	1991
Number of Holders	Approximately 130,000	Approximately 1,500	Approximately 2,800	Approximately 5,500
Designations required	None	None	CPA	CPA
Experience	4 years	10,000 hours	150 hours	None
Education & Testing	CFA Level I, 6 hour exam CFA Level II, 6 hour exam CFA Level III, 6 hour exam	BV 201, 4 hour exam BV 202, 4 hour exam BV 203, 4 hour exam BV 204, 8 hour exam Ethics Examination USPAP Exam	Part I ABV, 3 hour exam Part II ABV, 3 hour exam or Other Valuation Credential	5 hour exam
Peer Review of Appraisal Reports	No	Yes	No	No
Continuing education required	No	Yes	Yes	Yes

Standards Driven by Who Renders the Opinion

<u>Credentialed Appraiser</u>	<u>Standards</u>
➤ ASA	ASA BV Standards/USPAP
➤ CPA/ABV	SSVS-1
➤ CVA	SSVS-1
Business Broker	None <u>Required</u>
Economist	None <u>Required</u>
Financial Analyst	None <u>Required</u>

<u>Standards</u>	<u>Level of Service</u>	<u>Type of Conclusion</u>	<u>Form of Required Report</u>	<u>USPAP*</u>
ASA	Appraisal	Unambiguous Opinion of Value	Appraisal Report	Yes
	Limited Appraisal	Estimate of Value	Restricted Use Appraisal Report	Yes
	Calculations	Approximate Indication of Value	No restrictions on form	No
AICPA	Valuation	Conclusion of Value	Detailed Report or Summary Report	No
	Calculations	Calculated Value	Calculation Report	No

These are not necessarily the same thing.

Practice Valuations

- Value of practice without consideration of referrals
- Must consider all aspects of a transaction
 - Example: If cash does not transfer, then value should not include cash;
 - Example 2: If employment agreement is to be signed, must take its terms into account (or not if terms are clearly within FMV bounds).
- Should at least attempt to consider all three approaches to valuation:
 - Market Approach
 - Income Approach
 - Asset Approach

Practice Valuations: Market Approach

<u>Business Description</u>	<u>Date Sold</u>	<u>Net Revenues</u>	<u>EBITDA</u>	<u>Practice Value</u>
Medical Doctors Office	08/01/08	\$1,200,000	\$480,000	\$480,000
Urgent and Primary Care Practice	09/15/09	\$800,000	\$256,000	\$125,000
Single Physician Owned Clinic	02/28/10	\$357,000	\$99,960	\$98,000
Medical Clinic	07/31/10	\$762,390	\$343,076	\$381,195
Urgent Care	03/15/11	\$556,000	\$333,600	\$389,200
Family Medical Practice	04/15/12	\$140,233	\$81,335	\$98,163

PPACA signed into law 3-23-10

No EHR payments?

Substantial EHR payments

Practice Valuations: Income Approach

$$\uparrow \text{Value} = \frac{\text{Cash Flow} \uparrow}{\downarrow \text{Risk} - \text{Growth} \uparrow}$$

Often:

Collections
- Practice Expenses and Overhead
= Equals Provider Compensation

Practice Valuations: Asset Approach

Asset Accumulation Method

	Accounting Basis	Economic Adjustments	Economic Basis
Current Assets			
Cash	\$93,821		\$93,821
Accounts Receivable	\$750		\$750
Inventory	\$13,500		\$13,500
Total Current Assets	\$108,071		\$108,071
Fixed Assets			
FF&E	\$372,550		\$372,550
Accumulated Depreciation	-\$322,565		-\$322,565
Net Fixed Assets	\$49,985		\$49,985
Other Assets			
Intangible Assets	\$0	\$233,000	\$233,000
Total Other Assets	\$0		\$233,000
Total Assets	\$158,056	\$233,000	\$391,056
Current Liabilities			
Accounts Payable	\$15,425		\$15,425
Total Current Liabilities	\$15,425		\$15,425
Total Liabilities	\$15,425		\$15,425
Total Equity	\$142,631		\$375,631
Total Liabilities and Equity	\$158,056		\$391,056

Practice Valuations

<u>Asset</u>	<u>FMV</u>
Trade Names, Logos & Graphics	\$1,000
Contracts with Payors	\$5,000
Internet Websites	\$3,000
Internet Domain Names	\$250
Trained and Assembled Workforce	\$163,872
Customer Lists and Relationships	
Active Patient Charts	\$57,950
Personnel Manuals	\$1,000
Other Licenses and Permits	\$1,000
Established telephone/facsimile numbers	\$500
FMV of Identifiable Intangible Assets	\$233,572



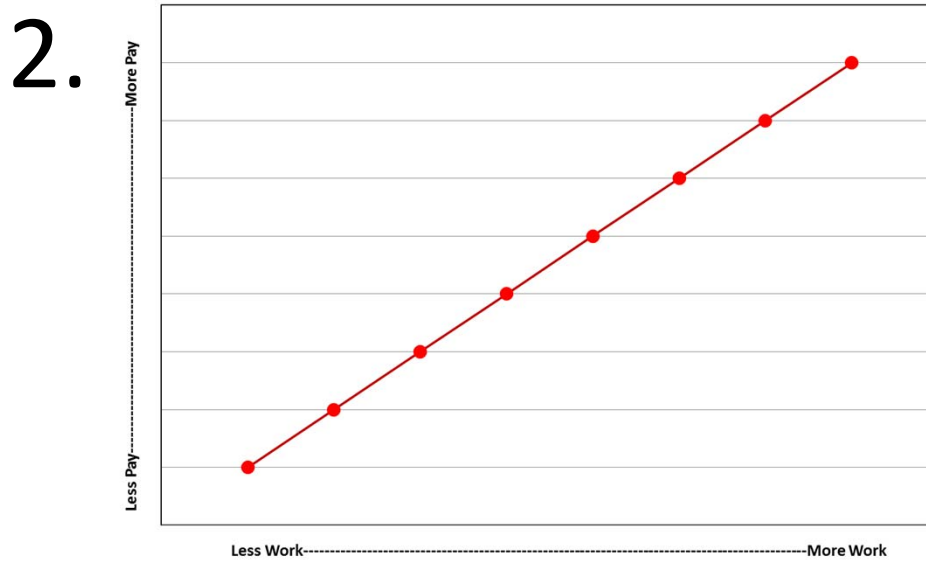
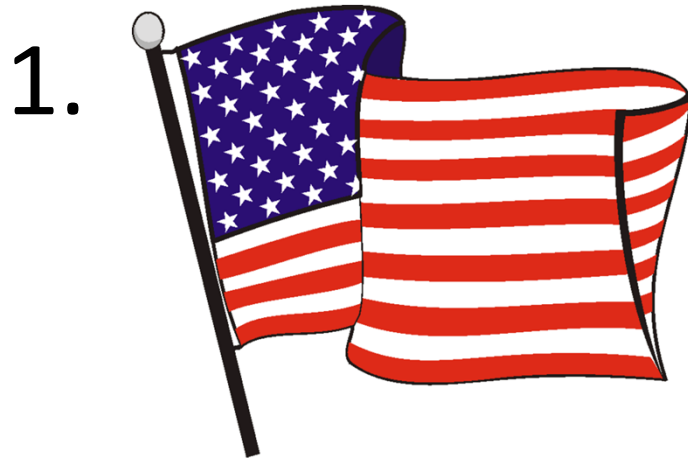
"Our employees are our greatest asset. I say we sell them."

Professional Service Agreements (PSAs)

Finally—Relevant Professional Literature!

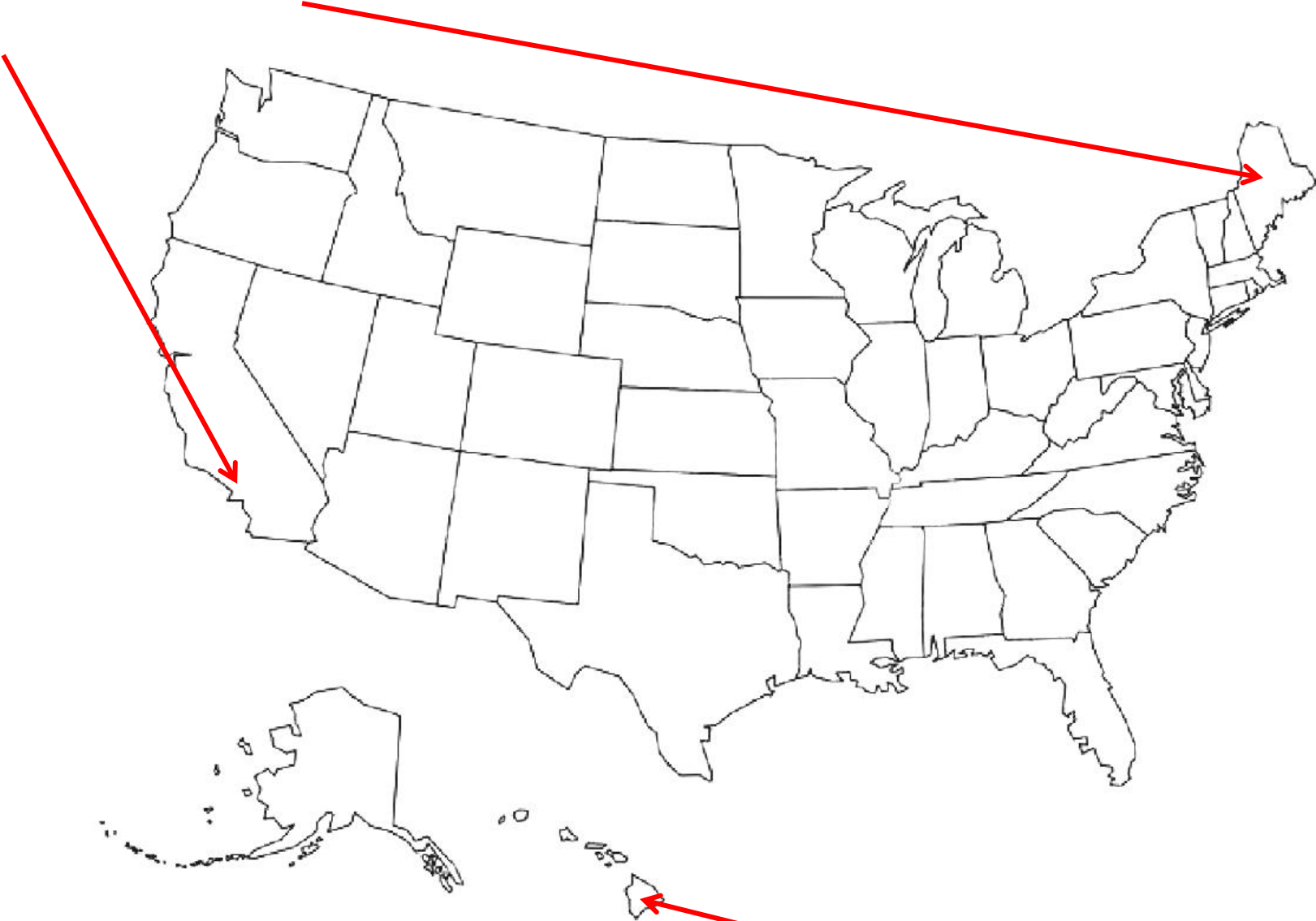
- 1. Healthcare Valuation, The Financial Appraisal of Enterprises, Assets, and Services*, by Robert James Cimasi, published by John Wiley & Sons, ISBN: 978-1-118-83297-4**
- 2. BVR/AHLA Guide to Valuing Physician Compensation and Healthcare Service Arrangements*, by Timothy Smith and Mark Dietrich; ISBN 978-1-62150-140-4**

PSAs: Two Principles



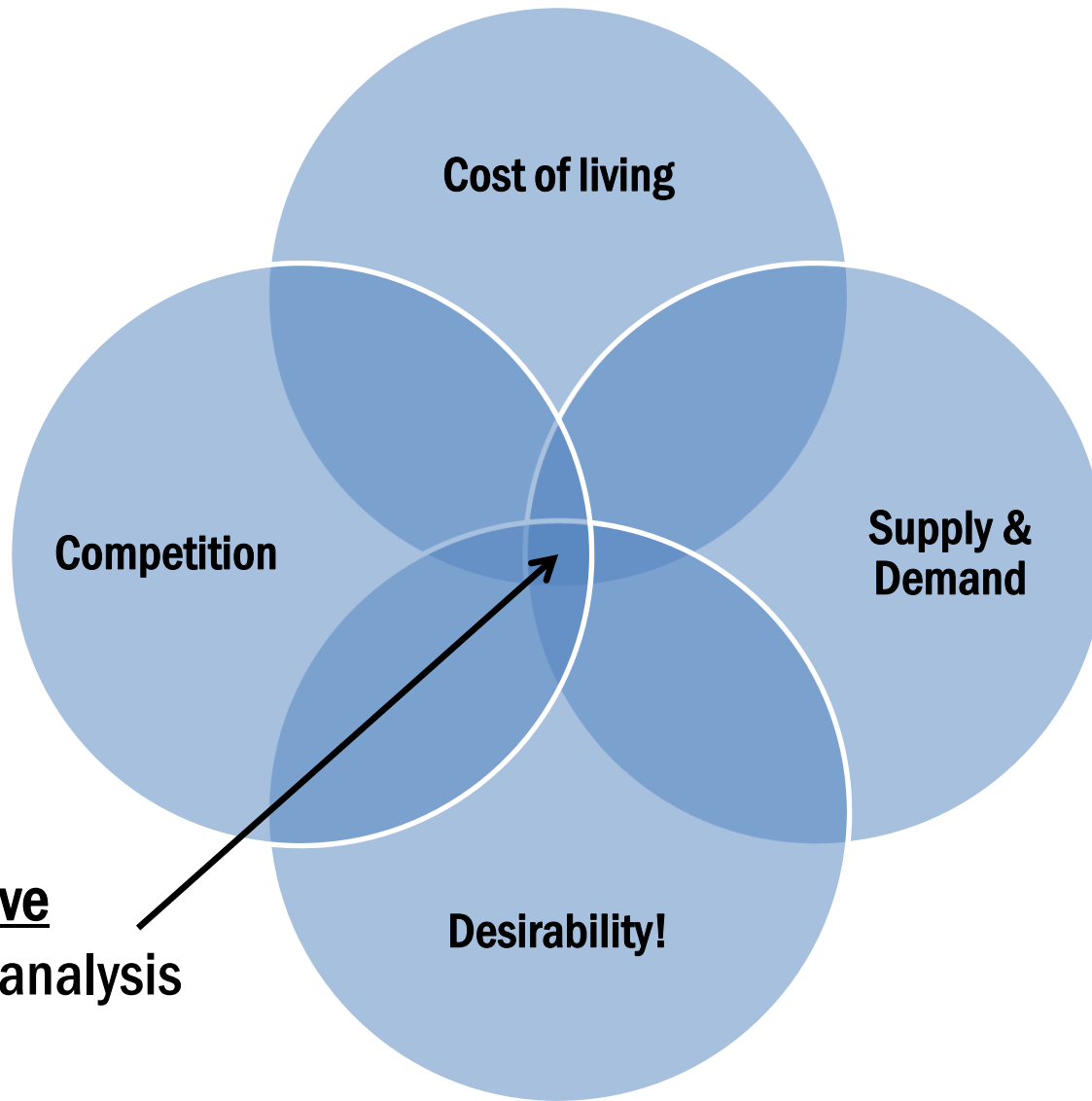
**Does the same salary survey
apply here as well as here?**

PSAs: Location, Location, Location

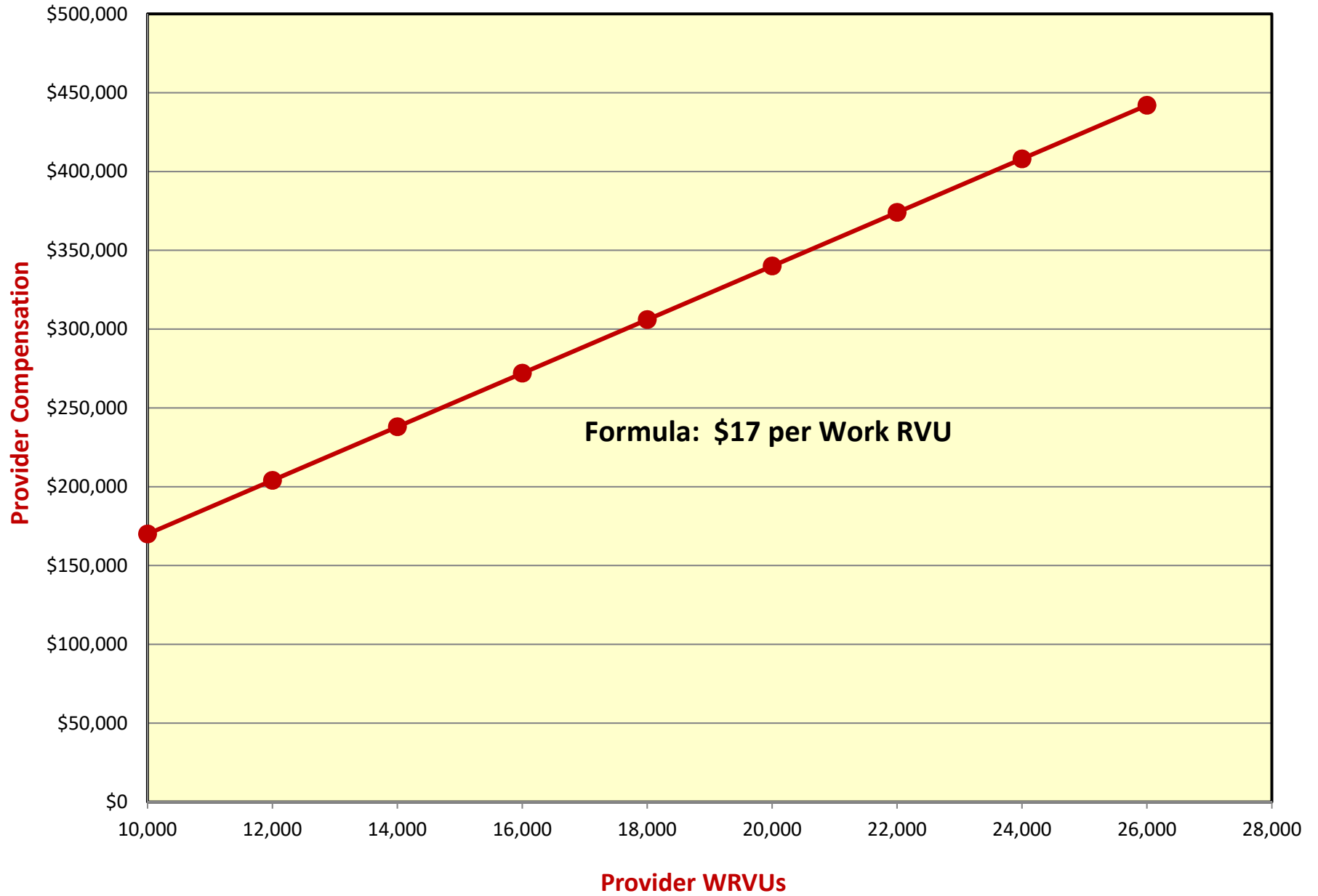


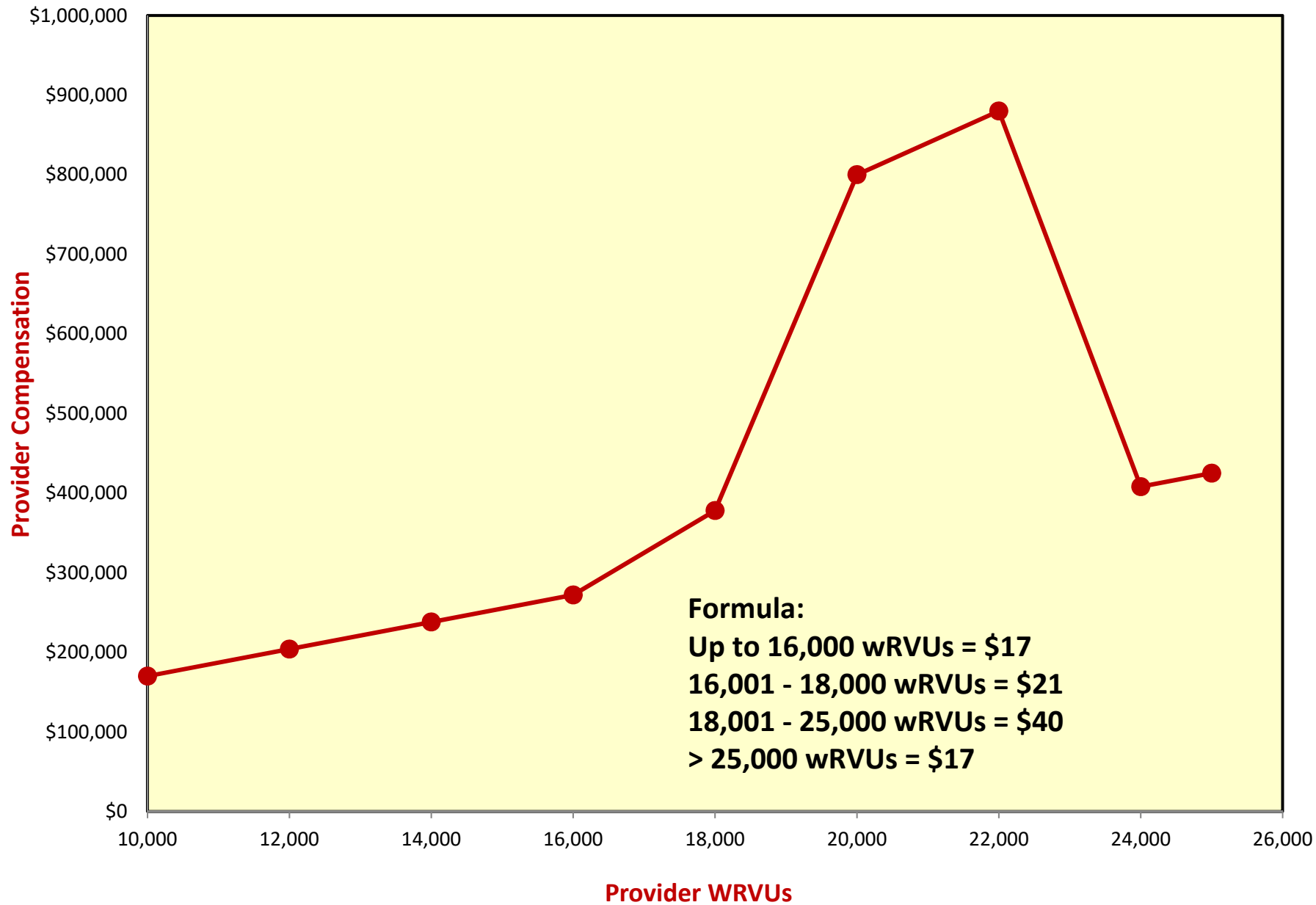
What about here?

PSAs: Relevant Geographic Market



A comprehensive compensation analysis resides here.





Leasing Arrangements

FMV of a Loaf of Bread?

- New York City \$15.00
- Convenience Store (Boise) \$ 3.25
- Albertsons' (Boise) \$ 1.95
- Wal-Mart (anywhere): \$ 0.95
- Amazon.com \$ 0.12



Note: completely made-up numbers; probably closer to \$50 in NYC 😊

Leasing Arrangements

- Lease terms may not account for volume or value of referrals between the parties;
- Lease terms drive value (Note: most market data is TNL);
 - Example 1: bargain purchases
 - Example 2: Tenant Improvements
- Be very careful regarding convenience . . .
- Consider local market conditions
- Most entities will have comparables “in house”
- Cost plus reasonable rate of return?
- May want real property or M&E specialists involved.

About

Keith Pinkerton is a partner in **Coles Reinstein, PLLC**, in Boise, Idaho.

He has a bachelor's degree in Economics, an MBA in Finance and is both Chartered Financial Analyst and Accredited Senior Appraiser. In 2015, he completed the ASA's Advanced Multidisciplinary Healthcare Valuation Education Program.

He has consulted extensively with healthcare clients regarding economic concepts and valuation issues and has been retained on several occasions by US regulatory agencies as an economic expert on various Stark and Anti-Kickback matters.

Phone: 208.345.2350

Email: keith@colesreinstein.com



Additional Resources



https://oig.hhs.gov/compliance/

The screenshot shows a Windows Internet Explorer browser window displaying the 'Compliance' page of the Office of Inspector General (OIG) website. The address bar shows the URL 'https://oig.hhs.gov/compliance/'. The browser's Favorites bar includes links to 'AHLA Lists', 'AKS', 'CMS home', 'CMS Stark', 'eCFR', 'EMTALA guidelines', 'Gmail', 'HIPAA', 'Hotmail', 'Idaho Statutes', 'IDAPA DHW', 'IDSOS Search', 'MapQuest', 'Nursing Facilities', 'OCR HIPAA', 'OIG', and 'Stark'. The website header features a 'REPORT FRAUD' button, navigation links for 'Home', 'FAQs', 'FOIA', 'Careers', 'HEAT', and 'Contact Us', and social media icons for YouTube and Twitter. The main navigation menu includes 'About OIG', 'Reports & Publications', 'Fraud', 'Compliance', 'Recovery Act Oversight', 'Exclusions', and 'Newsroom'. The 'Compliance' section is active, showing a breadcrumb trail 'Home > Compliance' and a search bar. The page content is divided into two columns. The left column has a 'Compliance' heading and two sub-sections: 'Accountable Care Organizations' and 'Advisory Opinions', each with a 'Read More' button. The right column features a red 'I'm looking for' callout box with a dropdown menu for topic selection. Below this is a list of topic links: 'Accountable Care Organizations', 'Advisory Opinions', 'Compliance 101 and Provider Education', 'Compliance Guidance', 'Corporate Integrity Agreements', 'Open Letters', 'RAT-STATS', and 'Safe Harbor Regulations'. The Windows taskbar at the bottom shows the system tray with the time '7:43 PM' and date '2/19/2013'.

Compliance | Office of Inspector General | U.S. Department of Health and Human Services - Windows Internet Explorer provided by

https://oig.hhs.gov/compliance/

Convert Select

Favorites AHLA Lists AKS CMS home CMS Stark eCFR EMTALA guidelines Gmail HIPAA Hotmail Idaho Statutes IDAPA DHW IDSOS Search MapQuest Nursing Facilities OCR HIPAA OIG Stark

Compliance | Office of Inspector General | U.S. De...

Home • FAQs • FOIA • Careers • HEAT • Contact Us

U.S. Department of Health & Human Services

Office of Inspector General
U.S. Department of Health & Human Services

Report #, Topic, Keyword.. Search

Advanced

About OIG Reports & Publications Fraud Compliance Recovery Act Oversight Exclusions Newsroom

Home > Compliance

Compliance

Accountable Care Organizations

The Affordable Care Act contains several provisions that support the development of Accountable Care Organizations to manage and coordinate care for beneficiaries.

Read More

Advisory Opinions

The OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to the requesting party's existing or proposed business arrangement.

Read More

I'm looking for

Let's start by choosing a topic

Select One

- Accountable Care Organizations
- Advisory Opinions
- Compliance 101 and Provider Education
- Compliance Guidance
- Corporate Integrity Agreements
- Open Letters
- RAT-STATS
- Safe Harbor Regulations

Done

Internet | Protected Mode: Off

7:43 PM
2/19/2013

<https://www.hollandhart.com/healthcare#overview>



OVERVIEW ▶

PRACTICES/INDUSTRIES

NEWS & INSIGHTS

CONTACTS



Kim Stanger
Partner
Boise



Blaine Benard
Partner
Salt Lake City

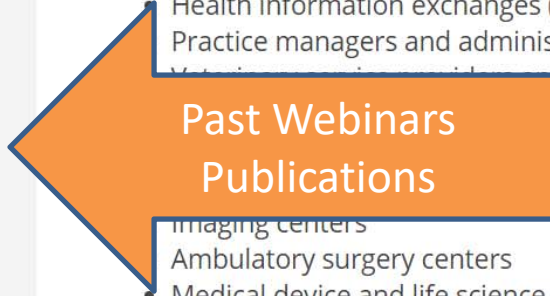


The Healthcare Industry is poised to continue its rapid evolution. With this sector now making up close to 20 percent of GDP, our lawyers stand ready to help as changes unfold.

Issues such as rising healthcare costs, healthcare reform, data and privacy security, and innovations in healthcare delivery, device and pharmaceutical designs are forefront in the minds of many of our clients. We are here to guide our clients through the challenges and opportunities that arise in this dynamic industry.

Clients We Serve

- Hospitals
- Individual medical providers
- Medical groups
- Managed care organizations (MCOs)
- Third-party administrators (TPAs)
- Health information exchanges (HIEs)
- Practice managers and administrators
- Veterinary hospitals and facilities
- Independent Practice Associations (IPAs)
- Imaging centers
- Ambulatory surgery centers
- Medical device and life science companies



Questions?



Kim C. Stanger

kcstanger@hollandhart.com

208-383-3913