

## Physician Arrangements Fair Market Value (FMV)

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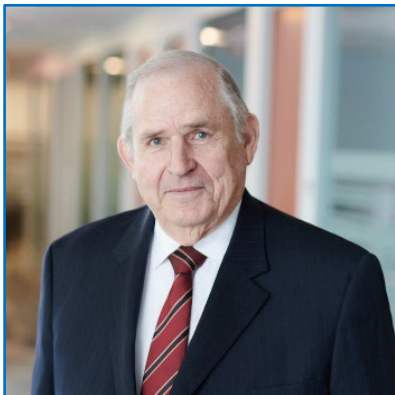
The ongoing and increasing enforcement actions related to arrangements with referral sources require Compliance Officers to pay close attention to how physician arrangements are justified as necessary and ensure that they are created in compliance with legal standards. This is to avoid implicating the Anti-Kickback Statute (AKS) and Stark Laws which are designed to prevent the influence of potential monetary gain in medical decision-making. Compensation arrangements with physicians in a position to make referrals may be related to employment, independent contractors, medical directorships, physician service agreements, on-call coverage agreements, medical staff officer/director stipends, etc. Ensuring arrangements are at the fair market value (FMV) of physician compensation is a fundamental consideration in healthcare compliance to avoid implicating the laws that prohibit healthcare entities from engaging in financial relationships that could lead to overutilization of healthcare services, increased costs to the government, or compromised patient care.

It is critical that physicians are compensated fairly based on market forces and industry standards. Third-party consultants and appraisers specializing in physician compensation can provide an independent analysis of a range of factors that impact fair market value, including the physician's specialty, experience, geographic location, and market demand for their services. Such services allow healthcare organizations to more efficiently structure compensation arrangements that meet industry standards and regulatory requirements, prevent the overutilization of healthcare services, and ensure high-quality patient care. The government has not issued definitive guidance regarding appropriate valuation methodologies for determining the FMV of physician services; the [Stark II \(Phase III\)](#) regulations state that nothing precludes parties from calculating the FMV using any commercially reasonable methodology that is appropriate under the circumstances. The Center for Medicare and Medicaid (CMS) defines FMV as the value in an arm's length transaction that is consistent with the general market value of the transaction.

Compliance Officers should carefully review their compensation and FMV policies to determine if their current policies and procedures result in an appropriate level of scrutiny of physician compensation arrangements. Organizations that consider it acceptable to pay up to the 75th percentile of the market as FMV compensation should consider expanding their definition to add checks and balances relative to productivity, quality, or other performance metrics that may support those higher levels of compensation. FMV is not a particular percentile of the market, and organizations should err on the side of reviewing more arrangements to ensure continued compliance. There are several ways to determine FMV for physicians, including:

- Utilizing salary surveys as a guide to establish compensation and compensation per RVU rates;
- Engaging third-party consultants and appraisers to provide independent analysis of factors impacting FMV, such as the physician’s specialty, experience, and geographic location;
- Conducting real estate market comparisons when leasing is involved to determine FMV; and
- Ensuring that the required hours of service are necessary and demonstrated through performance records.

For more information and advice on this subject contact [rkusserow@strategicm.com](mailto:rkusserow@strategicm.com). You can also keep up-to-date with Strategic Management Services by following us on [LinkedIn](#).



#### **About the Author**

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.