Provider Incentives and Compensation

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The Fine Print

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.
We will cover…

- Legal Boundaries
- Common Options
- Pros and Cons
- Lots of Opinions

Basis of Opinions…

- We share a common practice management background
- 20 years running individual physician practices and a 200 doctor MSO
- A significant fraction of law practice is advising employers and employees on physician contracts (and compensation schemes)
Legal Issues

Why does the government care what you pay, or what you pay for?

Legal Issues

1. Stark
2. Fraud and abuse
3. Private inurement
Legal Issues
Stark

- Designated Health Services
  - Labs
  - PT, OT, Speech Pathology
  - Imaging
  - Radiation Tx
  - DME
  - Prosthetics
  - Home Health
  - OP Rx
  - IP Hospital
  - OP Hospital
  - Parental & Enteral Nutrients

May not apply if (among other things):
- Written employment contract; and
- Remuneration is FMV and not tied to volume or value of referrals.
Legal Issues
Fraud and Abuse

- Kickbacks or other rewards for referrals (offered or given)

Legal Issues
Private Inurement

What and why
Legal Issues
Private Inurement

- How much is “too much” to pay a doctor or mid-level?
- Use published benchmarks, e.g., MGMA.

Legal Issues
Private Inurement

- MGMA example (2008)
  - Family Practice (without OB)
    Mean  Median  75%ile  90%ile
    $187,953  $173,812  $220,427  $283,000
Legal Issues
Private Inurement

- The government’s concern is that NFPs might pay excess compensation (above FMV) to providers with tax advantaged dollars.
- Note: Inurement applies to physicians, mid-levels and to executives.

Legal Issues
Private Inurement

- The contract should have an absolute ceiling (amount of compensation which can be paid in any one year).
- Revenues streams where the provider does not personally perform services should be excluded, e.g., lab revenues
- Payment must be 409A compliant
Legal Issues

409A Compliant

WHUT?????

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Legal Issues

409A

- New IRS provisions which severely limits “deferred compensation”.

Legal Issues 409A

- “Deferred Compensation”, basically, means anything paid, or payable, to a provider beyond 2 1/2 months after the close of the fiscal/calendar tax year.
- 409A doesn’t make deferred comp. impermissible; it just has to be in compliance with IRS Code.

Legal Issues 409A

- Examples include:
  - Performance bonuses, Expense Reimbursements, Severance Pay, etc.
Legal Issues 409A

- Penalties on non-compliant “deferred compensation” can be onerous
  - Immediate taxation;
  - Plus interest on the compensation deferred;
  - Plus 20% penalty

Moving from the negative constraints to your Options…
Compensation Options

- Options continuum

Compensation Approaches

- Options continuum

Employer totally at risk

Employee totally at risk
Compensation Approaches

- Options continuum

Employer totally at risk

- Straight salary
- Salary + bonus
- RVU
- % of charges
- % of collections

Employee totally at risk

% of net

Contribution Approaches

**Straight Salary**

- Most common in first and second year of new employment.
- Most common in community health centers combined with productivity bonuses.
- Private practices tend to replace it with straight productivity.
- Hospital employers tend to migrate toward base draw +/- net profitability bonuses.
Compensation Approaches
Straight Salary

Pros
- Easy to administer;
- Easy to understand

Cons
- If used on a long term basis, there is no incentive to increase productivity or maintain profitability.
Compensation Approaches
Salary Plus Bonus

- The bonus can be tied to:
  - Patient encounters
  - Charges
  - OV and/or procedures
  - Collections
  - Good citizenship, e.g., no short-notice days cancelled, 90% + coding accuracy, etc.

Compensation Approaches
Salary Plus Bonus

- The amount of the bonus can be tied to bands, e.g., $15,000 bonus for 4,200-5,000 OV; $25,000 bonus for 5,000-6,000 OV or tied to units of production, e.g., $45 additional compensation for each OV over 4,200
Compensation Approaches
Salary Plus Bonus

- The amount of the bonus should be meaningful. A $5,000 per year bonus is not likely to motivate.
- Ideally, progress reports towards bonus (and/or its payout) should be given quarterly or semiannually. If left to annual calculation, everyone is likely to forget it during the year.

Compensation Approaches
Salary Plus Bonus

**Pros**

- Relatively simple to administer and understand;
- You are likely to get what you incent.
Compensation Approaches
Salary Plus Bonus

Cons

- Needs to be substantial in order to motivate. There may be resentment if the base salary is made too small with the preponderance of income subject to a bonus calculation.

- Physicians may give up if they see they will likely end up at a low range of a bonus band or unable to get a bonus at all.

- Does not usually involve disincentives, e.g., lowering compensation below a certain threshold.
Compensation Approaches
Work RVU's

- “RVU” Stands for “Relative Value Units”.
- Most accurate measure of physician work effort; but relatively few community health centers routinely track RVU’s.

Compensation Approaches
Work RVU’s

- Typically, physician compensation is tied in whole, or in part, to a certain dollar payment in compensation per RVU, e.g., $42 per W RVU.
- You need to know your operation revenue and expense numbers in order to correctly set the right W RVU compensation rate.
Compensation Approaches
Work RVU’s

Pros
- Pure productivity measurement
- Insulates physicians from payor and administrative issues
- Within reason, a physician can make as much, or as little, as he/she desires.

Cons
- May require extra administrative effort to track
- Does not precisely align with cost based reimbursement per encounter
- May need to re-train for accurate coding (some physicians may be under-coding since, otherwise, “it doesn’t matter”).
Compensation Approaches
Percentage of Charges

- Can be combined with straight salary, e.g., Base Salary of $X plus % of charges over $Y.
- You need to know your revenue and operation expense numbers to set the correct charge percentage rates.

Compensation Approaches
Percentage of Charges

Pros
- Simple to administer and understand
- Incentivizes productivity
- Insulates the physician from payor mix and collection issues
Compensation Approaches
Percentage of Charges

Cons
- Employer at risk; charges do not always translate to revenue.
- Payment based upon accruals, that is, payment is made to a physician before collections are actually realized.

Compensation Approaches
Percentage of Collections
- May be combined as bonus with straight salary if desired.
- It is a more comfortable fit for centers on a cash basis as opposed to accrual.
- It can be administered on a monthly, quarterly or end-of-the-year basis.
- You need to know your revenue and operation expense numbers in order to correctly set the right percentage for compensation.
Compensation Approaches
Percentage of Collections

Pros
- It is relatively simple to administer and understand.
- It inherently rewards productivity.
- Risk of payor mix and poor collection performance are shifted to the physician.

Cons
- Physician may rebel because of the risk of payor mix and collection performance shifted to him/her.
- Physicians will want/need to “inspect the books” to verify proper compensation.
Compensation Approaches
Percentage of Net Revenue

- Requires advance agreement between employer and physician as to allocated expenses.
- In essence, each physician, or group of physicians, is treated as a discrete profit and loss center.

Compensation Approaches
Percentage of Net Revenue

- Used more by hospital and private practices than community health centers. Although, it is not unusual to be used to compensate a physician brought in from private practice.
Compensation Approaches
Percentage of Net Revenue

Pros
- The employer enjoys the greatest degree of fiscal protection.
- Readily understood by entrepreneurial physicians.

Cons
- May require that physicians become actively involved in expense management and revenue collection issues.
- Accounting systems and staff may have difficulty in producing timely P&L’s.
- Issue may arise if allocated expenses are too high or collection performance is too low.
Compensation Approaches

Special Cases

- *Locum tenens* and part-time:
  - per diem or straight hourly compensation
- New hires: straight salary
- Acquiring private physician: Should be productivity based compensation.

Compensation Approaches

Other Possibilities

- Team bonus with staff or administration
- Use on an annual basis or for specific goals, *e.g.*, new patients, no wait times, etc.
- Pooled incentives split among physician providers.
  - All FP’s or all OB GYN’s etc.
  - Can be allocated by the Board, management or the physicians themselves.
Compensation Approaches

Other Possibilities

- “Bonus” can be projected forward as “raises” in salary compensation for the following year as opposed to the payout of a retroactively a bonus.

Compensation Approaches

Final Advice

- Keep it simple
- Track metrics accurately
- Meet with and communicate often with physicians.
- Obtain Board approval before implementing anything.
Questions?

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