

# *Executive Resources, LLC* *(“EXEC”)*

*Health Care Issues*

*Special Edition, June 2009*

## **Physician Compensation and Market Valuation Services**

Executive Resources, LLC's (EXEC) background and qualifications in the physician arena, provides physician-related and hospital/physician-related services to hospitals, health systems, MSOs, physician groups, and governmental entities in multiple states. As a results-oriented firm we deploy a “hands-on” style relative to our engagements. Relative to the physician side of our health care consulting practice, we perform joint venture development, business planning, assessments, medical staff plans, market studies, and practice valuations/operational reviews.

EXEC believes that a Physician/Community Needs Assessment is recommended (as the base for recruitment) in order to: 1) Recruit and retain physicians in your service area, 2) Compensate them based on specific methodologies, and 3) Comply with regulatory guidance for practice recruitment and start-up.

In order to analyze your physician compensation, this is our recommended course:

### ***Our Approach and Methodology***

- Meet with your Management Team and agree to common understanding of objectives to be achieved relative to the project and compensation plan arrangements and how they are integral to operations and finances, i.e. salaries/benefits vs. compensation package; and
- Define elements of a compensation plan, need for Management Team buy-off on base compensation, incentive arrangements, etc. and scope.

EXEC's consultants specialize in the valuation of market-based compensation. As such, we will address: 1) **Evaluation**, 2) **Base Compensation**, and 3) **Incentive Compensation**. Further, we perform detailed reviews and analyses and provide findings and results to establish a procedure and methodology for future consistent use by your institution.

### ***Sample of Tasks for the Evaluation Phase:***

- Review of physician specialties, i.e. primary care, medical specialties, surgical specialties, hospitalist, laborist;
- Gather current physician contractual agreements;
- Develop an inventory and develop a matrix of physician specialties and specific physicians;
- Determine base compensation rates based on EXEC's database and other to-be-determined nationally recognized databases;
- Develop benchmarks by specialty; and
- Compare and evaluate current performance of your institution compensated physicians by specialty to practice benchmarks.



### ***Sample of Tasks for the Base Compensation Phase:***

- Develop compensation rates by RVU, by specialty, and standardized to meet industry standards for base compensation which has been acceptable to the OIG and IRS;
- Review current physician contracts provided by the institution;
- Develop clear definition of physician specialty, along with job functions, responsibilities, over future contractual arrangements;

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## Physician Compensation and Market Valuation Services (Continued)

- Develop guidelines for Medical Director compensation with duties and sign-in timesheet to justify compensation paid;
- Review contracts relative to compensation arrangements in place – base salary/remuneration, incentive clauses, benefits (i.e. CME), on-call, administration/AS&T, etc.
- Develop a methodology for establishing and documenting on-call payments;
- Develop on-call rate for restricted and unrestricted for each specialty;
- Assist your institution in standardizing current and future physician contracts based on their marketplace (equalized by region); and
- Establish the process for your institution for establishing base salaries and measuring physician work productivity.

### **Sample of Tasks for the Incentive Compensation Phase Includes:**

- Prepare matrix of incentive arrangements by type, percentage, specialty, quality, etc.;
- Determine benchmark amounts and/or percentages for incentive arrangements by specialty;
- Develop base salary and incentive arrangements by RVUs along with protocol and procedure for physician compensation for current and future contracting; and
- Develop incentive compensation based on worked RVUs based on practice profitability by physicians' using worked RVUs in the practice for distribution to individual physicians partners.

EXEC's prior market surveys, compensation surveys, and other financial and statistical analysis projects in our database are utilized in the development of methodologies, protocols, and procedures, for the physician compensation phase.

For additional information, please contact us at (732) 974-7200.



### **Physician On-Call Compensation—Overview OIG Advisory Opinion #09-05 Issued May 14, 2009**

This advisory opinion relates to compensating physicians for on-call services in a hospital's emergency department on behalf of the hospital's uninsured patients. It should be noted that this opinion was issued to a specific hospital and was based upon the facts and circumstances as provided by that specific hospital. This opinion must be read in its entirety before any decision on physician compensation for on-call payments is determined and the opinion be used as the basis for your hospital's developing on-call compensation arrangements. If a hospital contemplates a similar arrangement it should request an advisory opinion.

**The Case:** The Hospital has no arrangements in place to compensate its physicians for on-call services they render to Emergency Department patients who are indigent and uninsured. The Hospital reported that most of their physicians dislike the duty of performing on-call coverage. The on-call obligation creates additional medical liability for care rendered to persons with whom there is often no previously established patient-physician relationship, increasing the risk of claims of medical malpractice. The hospital was forced to outsource emergency care pursuant to transfer agreements and protocols with other hospitals. The Hospital's By-laws will be amended to reflect a new on-call coverage policy (need

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## Overview OIG Advisory Opinion #09-05 Issued May 14, 2009 (Continued)

to read the policy in the OIG Opinion), which will allow participating physicians to submit claims for payment for services rendered to certain indigent and uninsured patients seen in the Hospital's Emergency Department. The new policy in the By-Laws includes patients covered, physicians eligible, physician compensation and billing rights.

**The Law:** The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program section 1128B (b) of the Act. The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals.

### ***The OIG's Analysis:***

#### **The on-call coverage issues:**

There is a legitimate reason for the arrangement due to lack of certain specialties available.

- The compensation is fair market value and an arm's length transaction and is not based on volume or referrals;
- The designed payments do not reflect lost income to the physicians,
- The payment compensate physicians for an identifiable services provided;
- The on-call payments are not disproportionately high compared to the physician's regular medical practice income; or
- The payment structures does not compensate the on-call physician for professional services for which he receives separate reimbursement from insurers or patients, resulting in the physician essentially being paid twice for the same service.

The anti-kickback statute neither compels hospitals to pay for on-call services, nor compels physicians to provide on-call services without compensation. Rather, the statute requires that parties refrain from making unlaw-

ful kickback payments in any form. Each on-call coverage arrangement must be evaluated under the anti-kickback statute based on the totality of its facts and circumstances.



**The Hospitals Proposed Arrangement:** For a combination of the following reasons, the OIG believes in this instance that the Proposed On-Call Arrangement presents a low risk of fraud and abuse.

- The Hospital has certified that the payment amounts are within the range of fair market value for services rendered, without regard to referrals or other business generated between the parties;
- Hospital has a legitimate rationale for revising its on-call coverage policy;
- The on-call policy arrangement will be offered uniformly to all physicians and will impose tangible responsibilities on them; and
- The on-call arrangement appears to contain safeguards sufficient to reduce the risk that the remuneration is intended to generate referrals of Federal health care program business.

Based on the facts in reference to emergency department on-call, the OIG stated that the on-call policy arrangement appears to contain safeguards sufficient to reduce the risk that the remuneration is intended to generate referrals of Federal health care program business. This advisory opinion provides some insight on how the OIG approaches issues similar to this, however, it does not mean that situations similar to this will result in the same conclusions as the OIG.

Visit our web site [www.execresources.net](http://www.execresources.net) to read the complete opinion.

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