

Report on Medicare Compliance Volume 28, Number 27. July 29, 2019

Under Stark, Factors Besides Productivity May Support FMV Compensation, Attorney Says

By Nina Youngstrom

A hospital found itself in a jam this summer when its only employed cardiologist threatened to leave unless his compensation was increased considerably. The hike would make the cardiologist's pay out of whack with his productivity, which is a risky proposition because of the Stark Law. Hospitals that pay referral sources must qualify for an exception under the Stark Law, which requires compensation to be fair market value and commercially reasonable.

Although its hands seemed tied, the hospital may be able to consider other factors to "justify the disparity" between compensation and productivity, says attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. "Compliance officers are really struggling with this amorphous issue of what is fair market value. The gold standard is if you can align productivity with compensation, but what if you can't?" Factors like the loss of the sole specialist could be used to support fair market value, and he thinks the Department of Justice, HHS Office of Inspector General and lawyers for whistleblowers should keep them in mind before making assumptions about Stark Law violations that form the basis of a False Claims Act lawsuit.

The cardiologist told the hospital he would quit immediately unless he could reduce his work week from five days to four days with the same pay, which is a 20% increase, Wade says. The annualized compensation would then exceed the 90th percentile for cardiologists, but his productivity was much lower, based on work relative value units (RVUs), according to data from the Medical Group Management Association. Because meeting the physician's payment demand posed potential risks under the Stark Law, the hospital looked for other options while it recruited a replacement for the cardiologist.

This document is only available to subscribers. Please [log in](#) or [purchase access](#).

[Purchase Login](#)