

Compliance Today – March 2019 Compliance 101: The road to fair market value

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As a former plaintiff's personal injury attorney, I was always focused on getting my client the maximum amount of recovery for their particular case. I had knowledge regarding the potential value of the case; however, it was always my intent to recover above and beyond that perceived value. This was to ensure a happy client and to build future business.

As a compliance professional, I learned on day one that “value” in the healthcare universe had a much different meaning. Specifically, compensation for physicians was centered on the concept of fair market value (FMV). What is FMV? To define FMV between the two business communities (non-healthcare and healthcare) is to find that there is not much difference in the actual wording.

Case in point, FMV in the non-healthcare realm is the price, expressed in terms of cash equivalent, between a knowledgeable buyer and seller that facilitates the exchange of property/services, without any compulsion to do so.^[1]

However, the Stark Law (also known as the federal self-referral statute) has defined FMV as “...the value in arm's-length transactions, consistent with general market value...”^[2] “General market value” is further defined as the compensation for services resulting from sincere bargaining between well-informed parties.^[3]

The difference between the non-healthcare and healthcare FMV concepts emerges through the presence of two federal statutes. FMV to the healthcare professional transforms under the aforementioned Stark Law and the Anti-Kickback Statute (AKS). These statutes offer protections from prosecution (criminal and civil) and monetary fines, but only if compensation paid to a physician is set at FMV. It is important to also know that FMV is a range of compensation and not a single, specific salary point.

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