

## Increased Scrutiny of Physician Compensation Arrangements

On September 27, 2007, the Office of Inspector General (OIG) issued Advisory Opinion No. 07-10 regarding compensation paid for physician services related to on-call coverage, stating that the key inquiry for determining whether the compensation arrangement for providing emergency on-call coverage violates the anti-kickback statute “*is whether compensation is: (i) fair market value in an arm’s length transaction for actual and necessary items or services; and, (ii) not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties.*”

The subject arrangement involved a non-profit hospital experiencing a shortage of physicians providing emergency department and follow-up care due to the high volume of indigent patients unable to pay for services. Some hospitals have responded to certain specialists’ refusal to provide services without compensation by paying per diem rates to physicians who entered into a two (2) year contract to provide care in the emergency department.

While the OIG found that the subject arrangement did not fall the safe harbor for personal services and management contracts because the amount of compensation was not set in advance and varied monthly, the compensation arrangement was nevertheless deemed low risk because: (1) the per diem rates were at Fair Market Value without regard to referrals, and the physicians were required to treat any patient who entered the emergency department until discharge with no additional compensation, in addition to providing certain volunteer (uncompensated) services; (2) because the emergency department was understaffed prior to on-call compensation being paid, the likelihood that the arrangement was instituted to provide remuneration to physicians for referrals was minimized; and, (3) because all physicians were required to work the same number of hours each month, majority of payments.



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Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



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Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



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