Negotiating Tough Physician Deals: Preparing for Success and Regulatory Compliance

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Negotiating a physician contract always poses a challenge, both for the hospital or health system pursuing the arrangement and for the physicians. Compensation under the arrangement must be consistent with fair market value (FMV), commercially reasonable, and not based on the volume or value of referrals. Both the healthcare provider organization and the physicians face regulatory exposure.

Depending on the geographical area, healthcare climate, and type of physician, however, hospitals and health systems may find themselves at a disadvantage in these negotiations. Recruiting can be difficult in small towns and rural areas, in larger markets where there is fierce competition, and in markets where independent physicians in a given specialty are limited. In such scenarios, healthcare leaders often make the case that they need to pay more than the apparent FMV to recruit and retain physicians for reasons including the following:

- "A competitor is making an outrageously high employment offer to woo an important physician away."
- "Some of our community physicians refuse to take emergency department call coverage without a large stipend."
- "These physicians are so critical that if I don't pay them what they want and they leave, I will have to shut down my hospital/service."

In some instances, paying a premium may be valid, but the validity of a premium must be demonstrated, not assumed.

Healthcare organizations can position themselves more strongly for negotiations by taking the following actions.

Educating everyone (e.g., management and physicians) on FMV and commercial reasonableness. Just because another organization is willing to pay at a certain level doesn't mean that that level is consistent with fair market value. Reinforce for physicians the implications of excessive compensation and the fact that they too are at risk. The more physicians understand the risks, the more they should be willing to negotiate terms.

Reducing reliance on a single physician or group for a service line. If there is only one independent surgery group in town and that group demands excessive compensation to provide emergency department (ED) coverage, a hospital or health system will be better positioned if it has hired its own physicians.

Saying no to demands that the hospital or health system cannot reasonably meet. A physician who continues to apply pressure for a premium on his or her compensation, in spite of regulatory requirements, may not be the optimum partner.

If a hospital or health system determines it should pay a premium in some negotiations, the need for that premium can be demonstrated through the following steps:

- Diligently documenting the rationale for premium payments—based, for example, on community need and recruitment efforts (including numbers of interviews, visits, and offers; details of offers; and reasons why declined)
- Regularly evaluating compensation to ensure the organization is competitive, working with recruiters, benchmark surveys, and compensation experts
- Ensuring the organization accounts for all the physician's proposed duties (e.g., full-time clinic work, administrative leadership, midlevel supervision, excess ED call coverage).

With respect to the third point: In small towns and rural areas, the limited number of physicians may require more frequent call coverage than in other areas. In such instances, compensation for excess call may be justified. Similarly, hospitals in these markets often employ a higher than average ratio of advanced practice providers to physicians, due to the limited supply of physicians. This situation may provide a justification for paying for physician supervision in excess of typical supervision requirements.

Article reprinted from the hfm Healthcare Finance Blog, December 2017.

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