

Part B Insider (Multispecialty) Coding Alert

Compliance: Confused About On-Call Coverage Arrangements?

Get the facts before you enter into an on-call payment agreement.

Year in and year out, on-call coverage finds its way into the OIG's Semi-Annual Reports as a major player in the Medicare fraud game. As the demand for physicians available for hospital call coverage rises, there's never been a better time to get a grip on the basics of on-call coverage arrangements.

Background. With a plethora of OIG Advisory Opinions on the subject, an abundance of advice exists to help avoid the primary risks of setting up compensation for on-call coverage. Chief among those are references to the Stark Law and the Anti-Kickback Statute, which the Insider covered extensively in our last issue and should be taken into account as the agreement is structured.

Quick reference. Both the Stark Law and the Anti-Kickback Statute (AKS) relate to the Fair Market Value (FMV) of on-call coverage arrangements, and both physicians and the organizations they contract with should be mindful of how the two can negatively influence these types of agreements.

"OIG has written that the key inquiry is whether the compensation is fair market value in an arm's-length transaction for actual or necessary items and services, and not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties," say **Michael D. Bossenbroek, Esq.** and **Reesa Handlesman, Esq.** of Wachler & Associates, P.C. in Royal Oak, Michigan.

Watch Out for These Problem Areas

Since every arrangement is different and unique to the circumstances of specialty, geography, demand and other various concerns, the Stark Law particularly uses the terminology "commercially reasonable" to define what would be the acceptable reasoning for the terms of agreement.

"While every arrangement is evaluated under the totality of its own facts and circumstances and the AKS does not compel a physician to provide on-call services without compensation," Bossenbroek and Handlesman advise. "OIG has identified problematic compensation structures that might disguise kickbacks."

The top four issues OIG looks for in this type of contract, according to Bossenbroek and Handlesman, are:

- "Lost opportunity," or questionable payments that do not reflect actual lost income.
- Payment systems that reward providers despite no identifiable services.
- "Aggregate on-call payments that are disproportionately high compared to the physician's regular medical practice income."
- Agreements that "pay on-call physicians for professional services for which they receive separate reimbursement from insurers or patients," resulting in two payments for the same service.

What is FMV?

What your FMV is will depend on a myriad of different circumstances, many of which might be beyond your control. These factors may affect the design of your contract layout, too. Location and geography, specialty and your level of expertise and experience, and the hospital's need combine to impact your eventual on-call payment arrangement. In addition, there are also "parameters OIG often references in its opinions," Bossenbroek and Handlesman say, and they should be addressed as well.

"Providers can work with independent valuers or consult published survey data as methods of evaluating FMV.

Whether an on-call coverage arrangement makes sense financially to the physician will depend on whether a provider feels comfortable with the terms and the compensation (which should be consistent with FMV)," Bossenbroek and Handlesman add. "Physicians should probably realize, however, that the FMV of their on-call availability will not equate with the actual provision of services."

Negotiations Inventory

As you go into negotiations and review your on-call payment arrangement, it is a good idea to have guidelines to follow to ensure that your contract meets your own personal and professional criteria.

Here is a short list of factors you must consider when entering into an agreement:

- **Scheduling.** What do your practice demands and lifestyle allow in the way of on-call availability? This is one of the most important issues because of the variety of on-call services. For example, calls can range from restricted, which require the physician to stay at the hospital for the entire call period, or unrestricted, which allows you to be off the premise but respond to calls during a certain time period. **Note:** You may feel more comfortable with a telephone-only on-call arrangement, which is another option to consider.
- **Frequency.** How often you are on-call and when you are on-call is going to influence the terms of your contract? Under this area of concern are things like concurrent call-coverage, when you might be on-call for more than one hospital in a hospital system, tiered-pay based on how often you are inconvenienced, and excess call pay for the occasions when you go over the limit or set time of your initial framework. **Note:** You may want to be firm about the maximum number of dates you will be on-call and the level of notice you will need to be available.
- **Specialty.** Your specific area of expertise will greatly alter the level of your compensation. For example, if you are a surgeon, your on-call coverage pay will likely be at the highest rate because you are capable of addressing trauma care and the most serious injuries, illnesses, and incidents. **Note:** This is called the "acuity of care" in the world of on-call coverage arrangements and oftentimes physicians whose specialties fall under the trauma realm have a higher likelihood of being called and paid.

Take a second look. Finally, when you come to the table to sign your on-call coverage agreement, it is always a good idea to have your legal representative take a second look to ensure your arrangement is both compliant and fair.