




# Compliance TODAY

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A professional portrait of Marla Berkow, a woman with curly brown hair and glasses, wearing a dark blazer over a white top. She is standing with her arms crossed, looking directly at the camera with a slight smile. The background is a warm, out-of-focus interior setting.

## Compliance and behavioral health

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an interview with  
**Marla Berkow**



Understanding human nature and what the evolutionary psychologists call, “hardwiring” and working with it, rather than against it, is really important in corporate compliance.



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VOLUME 20, ISSUE 1

by Jen Johnson, CFA

# Compensation and compliance: Five common sense steps

- » Understand if the service is needed (absent referrals) to help establish that the arrangement is commercially reasonable.
- » Confirm that the value or volume of referrals is not considered as a basis for compensation.
- » Ensure the transaction or compensation terms are clearly outlined, set in advance, and agreed upon in writing.
- » Properly document the supporting evidence for establishing the compensation is at fair market value.
- » Monitor the arrangement to ensure the services are still necessary and being performed in accordance with the agreement terms.

*Jen Johnson (Jen.Johnson@vmghealth.com) is Managing Director and Chief Commercial Officer at VMG Health located in Dallas.*

**B**ased on the healthcare industry's increased emphasis on the requirement for physician compensation arrangements to be fair market value (FMV) and commercially reasonable, health system executives are faced with the importance of



Johnson

these standards. These standards can sometimes seem challenging to digest and apply to arrangements based on vague regulatory guidance, as well as evolving physician alignment strategies. That said, many factors supporting these standards can be met by stepping back and applying common sense.

The nuances of how to determine FMV compensation appropriately for the myriad of physician arrangements (e.g., on-call, pay for performance, employment) is beyond the scope of this article. Similarly, navigating all the appropriate questions, which should be asked to ensure an arrangement is commercially reasonable, is often a robust analysis that is also not the focus here. The

point is to demonstrate that both of these standards have some common themes, which are easy to “check the box” on, and important to keep in mind for any physician compensation arrangement.

A growing number of settlements involve the breach of the FMV and commercially reasonable standards. These settlements often display obvious non-compliant structures for compensating physicians. In addition, there are simple steps to ensure an arrangement is properly set up, and these steps will be critical to any compliance policy for physician compensation.

The following is a checklist to help ensure your physician compensation arrangements have met the “common sense” regulatory litmus test:

1. **Understand if the service is needed (absent referrals) to help establish that the arrangement is commercially reasonable.** Here are a few common sense questions:
  - Do you need the service?
  - Do the services being provided by the physician(s) overlap with what

- the hospital or health system's staff is providing?
- Are any "excess" physicians engaged?
2. **Confirm that the value or volume of referrals is not considered as a basis for compensation.**
    - The mechanism for payment to the physician should not fluctuate with the value or volume of referrals.
    - The establishment of the payment must be based on sound valuation theory absent any consideration for the value or volume of referrals.
  3. **Ensure the transaction or compensation terms are clearly outlined, set in advance, and agreed upon in writing.**
    - This process must be consistent with regulatory guidelines. This will be critical if an arrangement was reviewed.
    - Engage legal teams that are aware of this requirement and can help with documentation.
  4. **Properly document the supporting evidence for establishing the compensation is at fair market value:**
    - The valuation analysis or documentation for the payment amount should reflect and match the terms of the agreement.
    - If a third-party appraiser was engaged to provide the analysis, they should have appropriate credentials and a sound methodology reflective of current regulatory guidance.
    - The appropriate party representatives to the arrangement should review, understand, and verify the assumptions and value drivers relied upon in the analysis.
  5. **Monitor the arrangement to ensure the services are still necessary and being performed in accordance with the agreement terms.**
    - Ongoing review of the necessity for the arrangement is crucial to pass the common sense test.
    - Confirming services are actually rendered, ideally through documentation, will be important if the arrangement was to be reviewed by regulatory authorities.
- Numerous moving parts to physician alignment strategies will complicate compliance. That said, these five simple steps are a solid beginning to ensure your health system is on the right track. 📌