



ALERTS

COVID-19 Pandemic Impact On Physician Financial Arrangements

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The COVID-19 pandemic has caused a number of issues with respect to physician financial arrangements. Fair market value and commercial reasonableness still exist during the pandemic, but such issues can be managed as long as providers are vigilant with respect to physician compensation arrangements.

The compensation issues related to COVID-19 fall into the following two broad categories: 1) contracting with providers to provide direct patient care, screening and treatment related to COVID-19, and 2) impact on current financial arrangements while the COVID-19 pandemic is ongoing.

Because medical screening and treatment related to COVID-19 is based upon emergent services, healthcare providers should consider how to compensate frontline physicians and advanced practice providers (APPs). Regardless of specialty, a commercially reasonable and defensible position may be to provide a fixed compensation for all physicians.

Alternatively, in addition to utilizing emergency medicine benchmark data, it is also commercially reasonable to use the applicable physicians' medical specialty benchmark data, as some physicians may be requested to limit the amount of services. Such physicians are providing in their specialty in order to redeploy those services to assist in the treatment and evaluation of patients related to COVID-19.

Because of the emergent nature of these services, it may be defensible to utilize the upper end of the benchmark range for emergency medicine, depending on the evaluation of the facts and circumstances, or the

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applicable physicians' medical specialty in order to continue the medical services with a focus on COVID-19.

It is also reasonable to add up to a 25% premium for "extra duty" services – for physicians and APPs – during the time of this pandemic. This enhanced compensation for "extra duty" is justifiable, based upon the extenuating circumstances the providers will face in combating the coronavirus.

These increased compensation arrangements and redeployment of services can exist for as long as a medical crisis is occurring in the applicable service area.

The COVID-19 pandemic may also have an impact on current compensation arrangements with physicians, especially those who are compensated based upon productivity. Some physicians, like those who primarily provide office-based services or elective procedures, may experience reduced services during this time. Guaranteeing compensation based upon historical production for such physicians is defensible while the current healthcare crisis remains in the healthcare employer's service area. If a physician is redeployed, like redeploying a primary care physician to the hospital's emergency department, if the physician could generate compensation higher when compared with any guaranteed amount, such physician can receive the higher compensation based upon the COVID-19 impacted services as opposed to guaranteed compensation under the current compensation methodology.

After this coronavirus medical crisis ends, the compensation for the employed physicians can be evaluated on an annual basis. If a physician is compensated based upon productivity, the annualized productivity can be based on production for actual services and credit for any guaranteed period. By way of example, if the medical crisis lasts for three months, the employed physician can receive work relative value unit (wRVU) credit during the applicable three months based upon the guaranteed methodology, and wRVU credit for actual services for the remaining nine months of the applicable year.

A maximum compensation amount under the guarantee may also be suitable.

Let's Get to the Point

Physicians and APPs can receive compensation for services related to COVID-19 related services. The benchmark data could either be based upon emergency medicine or upon the market-specific demands. Fair market value is, after all, market-specific. Further, with respect to current compensation arrangements based upon productivity, physicians can be credited based upon a guarantee for historic production during the medical crisis with a true-up at the end of the employment year, based upon actual production and credited production during the guaranteed period.

Our frontline providers need to be considered and appropriately compensated, in order to assist during this medical crisis.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Bob Wade at 574-237-1107 or

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Note: This alert was written for the American Association of Provider Compensation Professionals. Please visit <https://providercompensation.org> to learn more about AAPCP.

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