



The Fair Market Value Conundrum

Presenters:

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Types of Arrangements

- General FMV guideposts - FMV 101
- Employment arrangements
- Practice acquisitions
- Medical directorships/call coverage
- Chemo infusion under arrangements
- Co-management arrangements
- Restructuring “per click” and “under arrangements” deals (e.g., stereotactic radiosurgery JVs)
- Hospital lease/management arrangements (e.g., for radiation therapy)

FMV 101: Healthcare Arrangements & Transactions

- Generally, any transaction between potential referral sources must be
 - (i) consistent with FMV; and
 - (ii) commercially reasonable.
- A transaction can be “FMV,” but not commercially reasonable, and vice versa.
- Healthcare regulations impose specific guidance that directly impacts FMV analysis:
 - Avoid tainted market values
 - Avoid improper valuation methodologies



Examples of arrangements that may be consistent with FMV but *not* commercially reasonable

- A hospital enters into an arrangement with physicians involving a profitable service line and foregoes much of the expected future profits.
- A hospital enters into a one-year lease of physician-owned equipment at a “short-term rate premium,” but the lease continues to renew year after year.
- A hospital enters into a transaction with a physician group whereby the transaction costs (e.g., management time, attorney fees, valuator fees) exceed the expected benefit of the arrangement.
- Hospital leases at prevailing rents excessive space, which it does not need, in underutilized building owned by MDs.

“Tainted” Market Data

- Generally, any market data used to establish FMV must be “arm’s-length.” Healthcare transactions are frequently suspect.
- A market approach is the preferred valuation approach for many types of compensation arrangements.
- For certain types of arrangements, virtually no “non-tainted” data is available.
- The valuator must consider alternate approaches.
 - Consider whether the arrangement can be “cross walked” to a non-healthcare setting. If the arrangement would make sense in a non-healthcare setting, it may make sense in healthcare (provided that referrals are never considered/valued).



FMV Considerations in Employment Arrangements

- Confucius Statistician say...If you torture the data long enough, it will confess to the crime it did not commit.
- MGMA data can be misused in a variety of ways, including:
 - Cherry picking from among different tables (e.g., regional data vs. state data)
 - 90th percentile compensation times
90th percentile wRVU productivity
 - Failure to consider ownership/ancillary profits that may be inherent in 90th percentile compensation



FMV Considerations in Employment Arrangements

- Compensation “stacking” (or as Juliet would say, “A rose by any other name...”)
 - Medical director fees
 - Management fees
 - Administrative fees
 - Quality bonuses
 - Sign-on bonuses
 - Retention bonuses
 - Tail coverage, etc.
- Consider that the data reported by the compensation surveys generally include all sources of income.
- Contemplate possible future changes in CMS reimbursement (including RVU values).



FMV Considerations in Employment Arrangements

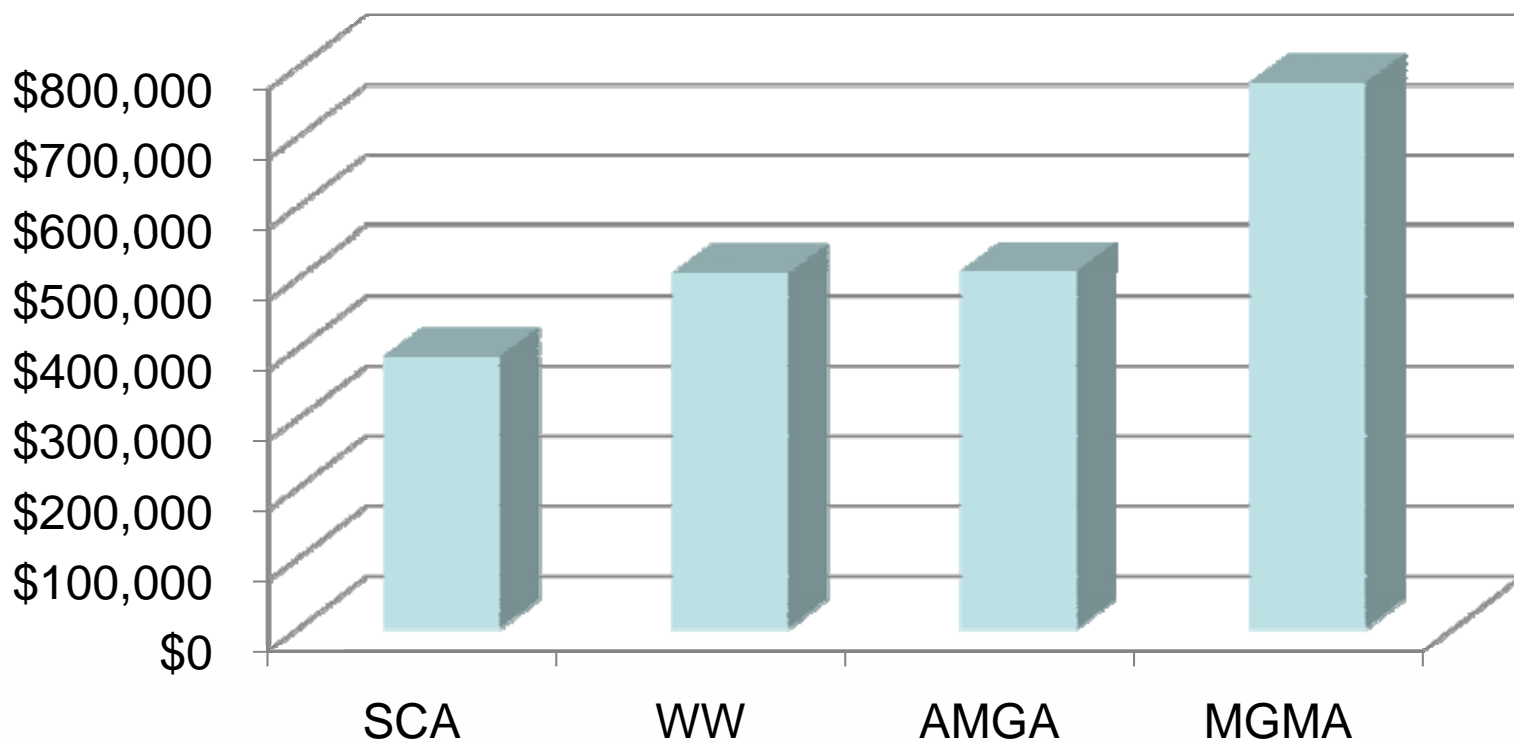
- Sources of compensation survey data
 - Medical Group Management Association (MGMA)
 - Sullivan Cotter & Associates
 - Hospital & Healthcare Compensation Service
 - American Medical Group Assn (AMGA)
 - Watson Wyatt Data Services





Salary Survey Data Hematology/Oncology - 2008

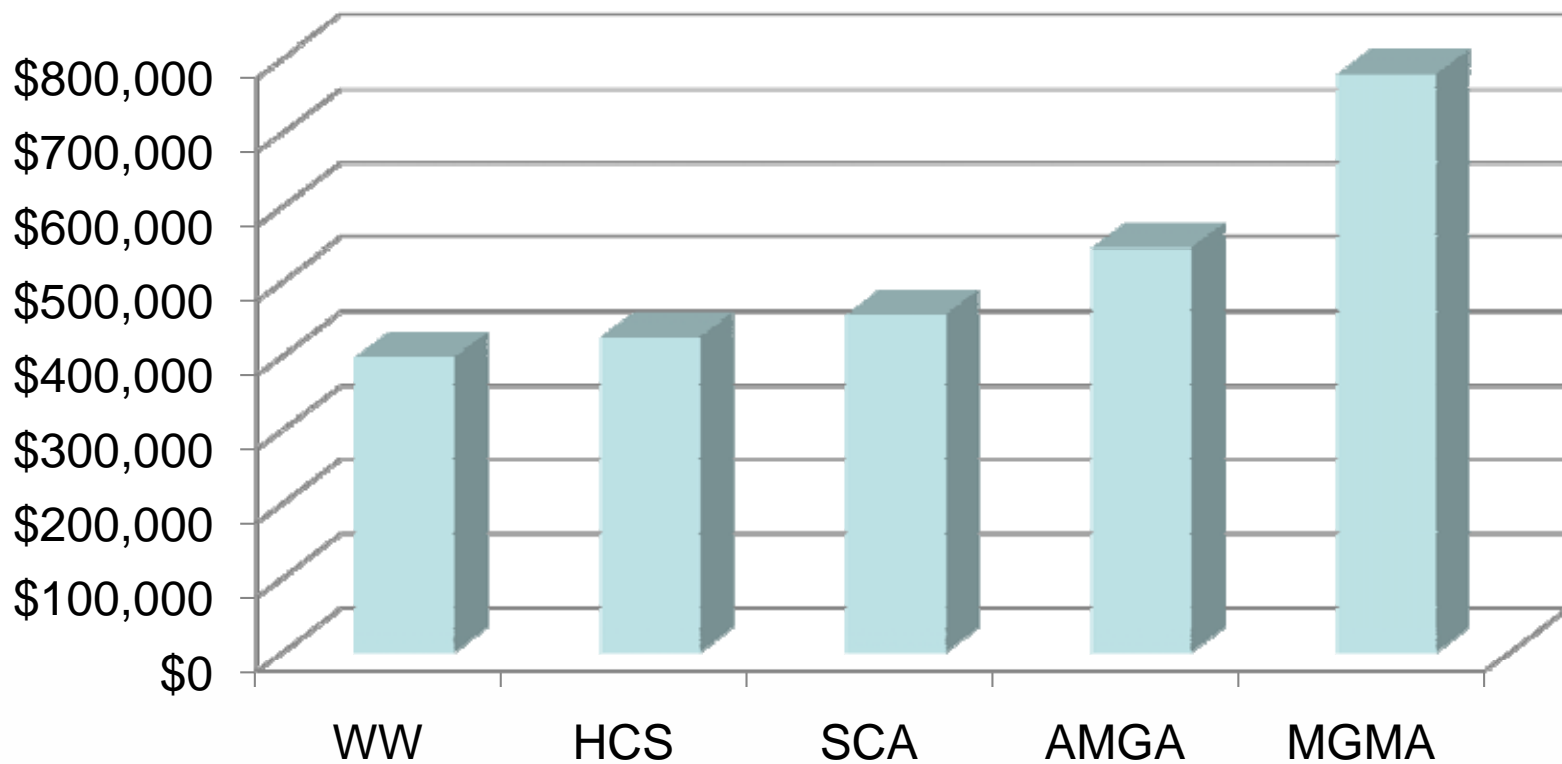
90th Percentile





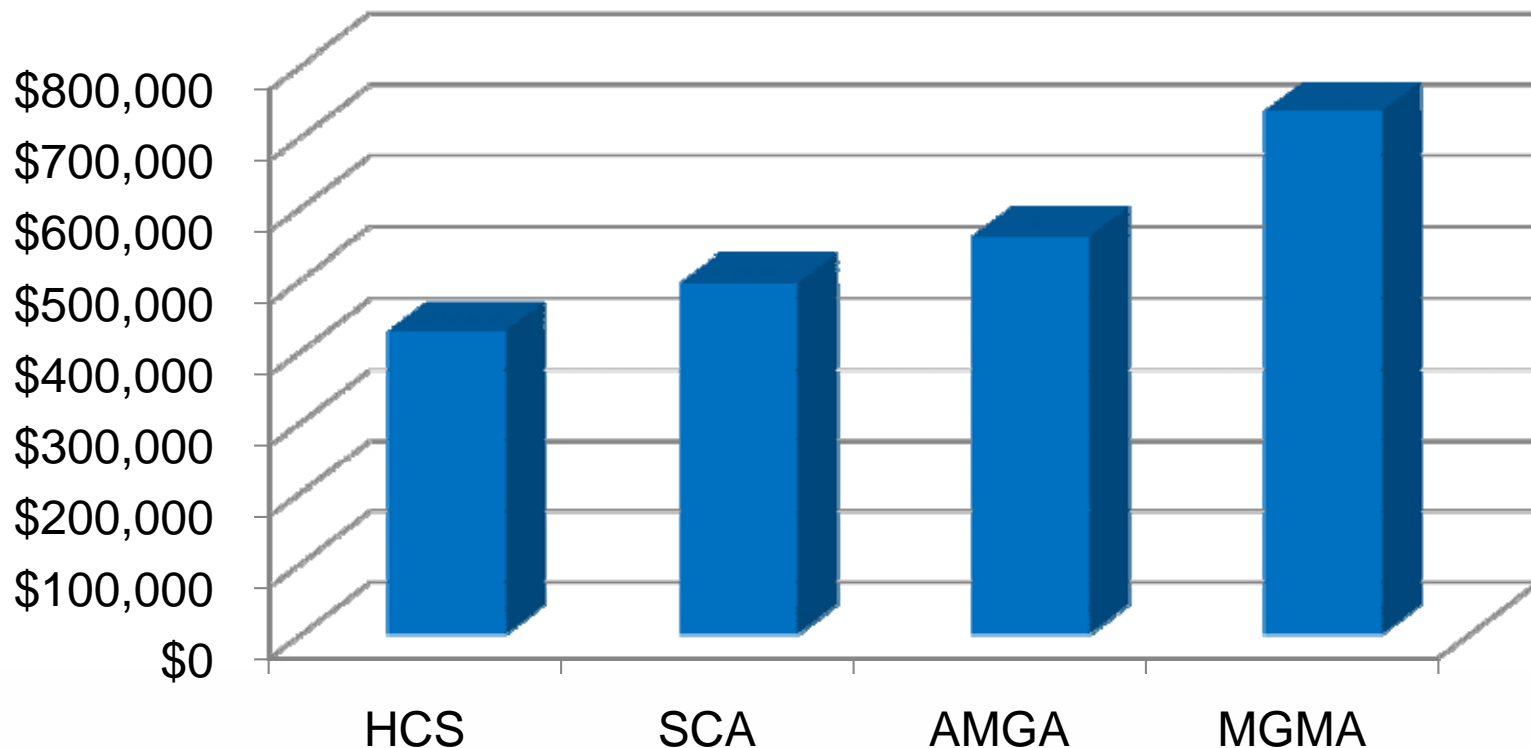
2009 CANCER CENTER BUSINESS SUMMIT

Salary Survey Data Hematology/Oncology - 2009 90th Percentile





Salary Survey Data Radiation Oncology - 2009 90th Percentile



Independent Contractor Model

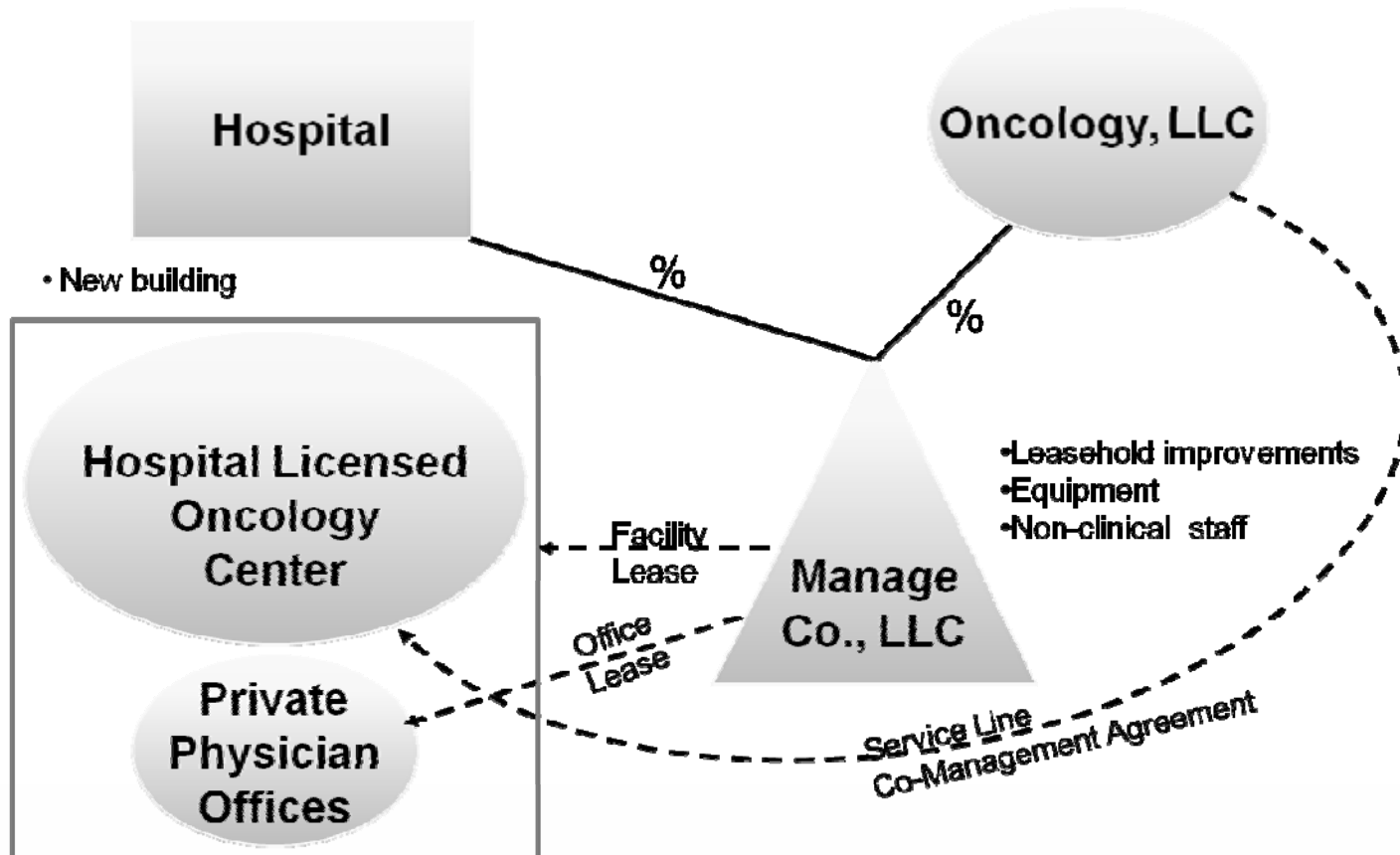
- Instead of employment, new arrangements are gaining traction whereby medical oncologists retain their own practice, and are compensated on a productivity basis (e.g., per wRVU) for their clinical services.
- A transaction may involve the purchase of the oncologists' tangible assets and payment for workforce in place (or an employee leasing arrangement).
- The wRVU rate payable to the oncology group is a “gross” rate that includes certain overhead expenses incurred by the group practice.
- The FMV analysis should give careful consideration to pre- and post-transaction compensation to the physicians.

FMV Considerations in Co-Management Arrangements

- These arrangements typically involve physician/hospital ventures to manage hospital service lines, with compensation consisting of base and incentive components.
- Oncology service lines seem very appropriate for co-management arrangements.
- Pay for performance models seem to have broad support (including with regulators).



Service Line Co-Management Example



FMV Considerations in Co-Management Arrangements

- Compliance with FMV is critical for regulatory compliance, but also for the ultimate success of the project.
- Available valuation methodologies are limited and somewhat subjective.
- In considering the primary valuation approaches (cost, income and market), an income approach can likely be eliminated.
- Using a cost approach, FMV of the management fee can be established by assessing the estimated number of work hours needed to provide the management services multiplied by a FMV hourly rate.
 - However, the exact number of required work hours cannot reasonably be determined in advance.
 - Further, a key ideal of most co-management arrangements is to reward **results** rather than time-based efforts.

FMV Considerations in Co-Management Arrangements

- A market approach recognizes that each co-management arrangement is unique, and considers specific market and operational factors related to the subject arrangement.
 - Break the specific services down into specific tasks and objectives, and then compare to other arrangements
 - On an item by item basis, assess the relative worth of each task/objective, and determine necessary adjustments to the comparable arrangements.
- The cost and market valuation methodologies described above must be reconciled to arrive at a final conclusion of value.
- The FMV of the *total management fee* must be established, as well as the *base* and *incentive* components.

FMV Considerations in Infusion Under Arrangements

- Stark IV regulations generally prohibit the under arrangement entity from being the “provider of the service.”
- No bright-line answer on how to avoid being the DHS entity.
- *e.g.*, certain clinical staff must be employees of the hospital.
- Higher hospital reimbursement levels may appear enticing, but
 - Heed caution regarding a “top down” approach; and
 - Consider the “before” and “after” analysis.



FMV Considerations in Infusion Under Arrangements

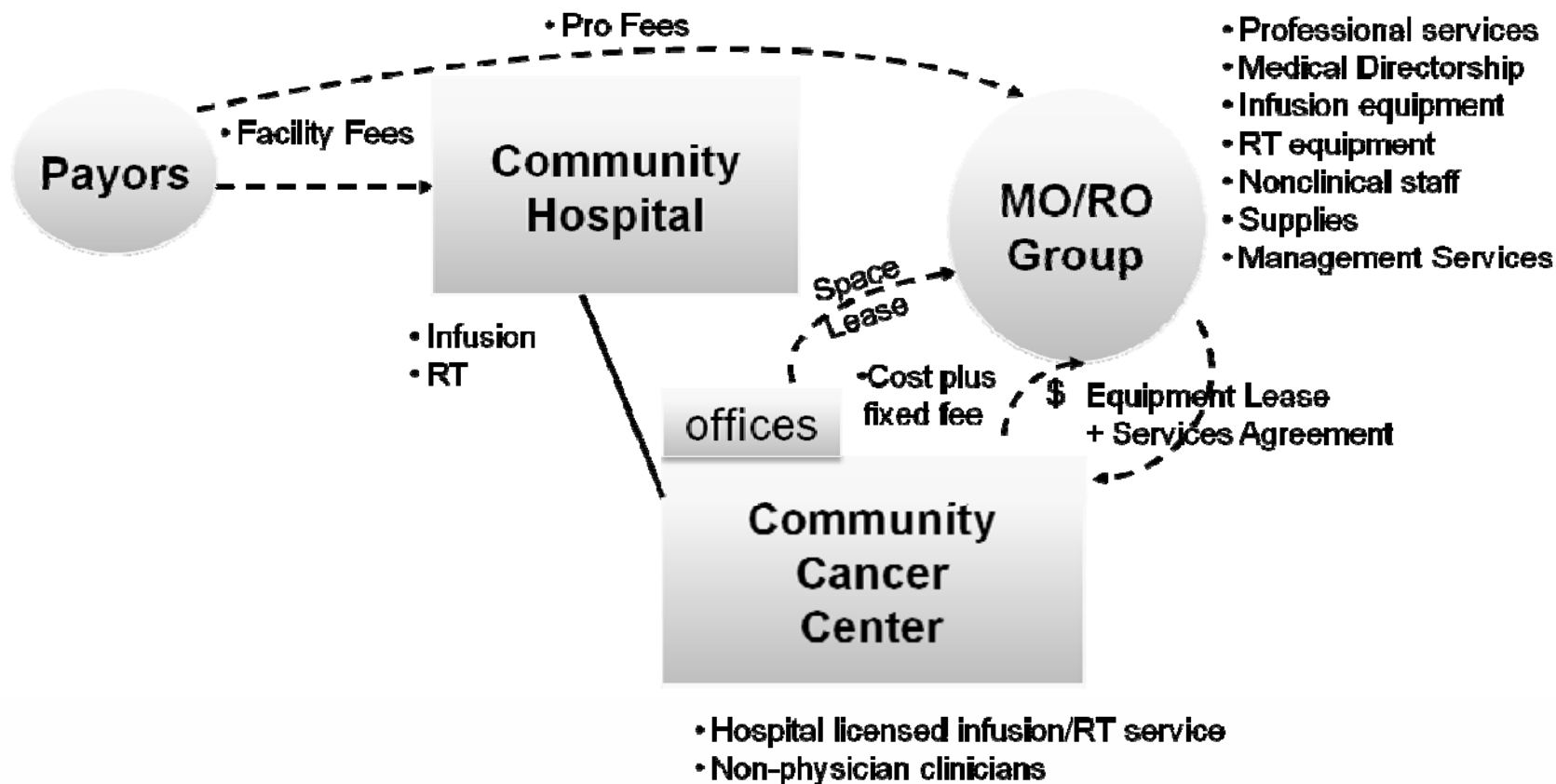
- A “top down” approach “passes through” all of the hospital's reimbursement, less a portion retained by hospital related to its services (e.g., certain staff, billing, and other hospital services).
- This approach leaves open significant opportunity for challenge.
 - The *actual services* provided by the under arrangement entity must be FMV, and the valuation approach should primarily consider the value of such services.
 - The level of reimbursement received by a hospital may have no bearing on the FMV of the services.
 - Consider a “crosswalk” to non-healthcare scenarios.



FMV Considerations in Infusion Under Arrangements

- Stark affects investment in “under arrangements” entities and turn-key management or leasing companies
 - Stark prohibition on ownership interest in entity that performs the DHS (411.351, definition of “entity”, effective Oct 1, 2009)
 - Exception for under arrangements contract with a single group
 - Exception for ownership interests in rural providers and public companies
 - CMS declined to provide guidance on what it means to “perform” the service (*i.e.*, what combination of providing space, equipment, supplies, non-physician clinicians, administrative staff, executive services)
 - FAQ on topic promised for 12 months

Cancer Center Example Permissible Under Arrangements Venture





Medical Director Rates

- Sources: Integrated Healthcare Strategies
 - Medical Oncology
 - Radiation Oncology

INTEGRATED HEALTHCARE STRATEGIES™

Cancer Center/Oncology Medical Director Fees

	N	P25	MEAN	P50	P75	P90
Net Revenue (millions)	53	\$476.40	\$231.10	\$424.9	\$575.0	\$878.90
Number of Beds	52	565	312	450	677	1,079
Hours Worked per Year	47	673	192	333	795	1,957
Hourly Rate	48	\$158.83	\$125.00	\$147.24	\$200.00	\$218.70

Radiation Oncology Medical Director Fees

	N	P25	MEAN	P50	P75	P90
Net Revenue (millions)	19	\$390.20	\$213.90	\$334.00	\$547.80	\$591.80
Number of Beds	18	418	302	389	451	752
Hours Worked per Year	14	290	147	190	309	480
Hourly Rate	13	\$184.59	\$140.00	\$178.00	\$200.32	\$241.38



Making the Transaction Work (If at all possible)

- Ensure that the valuator does not instill undo conservatism in the analysis. Ensure that the valuator can support their assumptions, methodologies, and findings.
- Identify the intended goals of the transaction, and consider multiple structural alternatives.
- Walk the regulatory line carefully. Some deals are not meant to be.



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