



June 27, 2005

Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Proposed Fair Market Value Safe Harbor in Stark II Phase II Interim Final Rule

Dear Dr. McClellan:

On behalf of the American Medical Group Association (AMGA), I am writing to express AMGA's serious concern over a new safe harbor found in the Stark II Phase II Interim Final Rule (Rule) that creates a safe harbor provision under the definition of "fair market value" for hourly payments to physicians for their personal services.

This new safe harbor may result in decreasing medical director payments by more than 50 to 70 percent. Because of this steep decline in reimbursement amounts, we believe that experienced physicians will have little choice but to forgo serving as medical directors in hospital inpatient departments resulting in a decline of delivery of health care. Further, though the Centers for Medicare and Medicaid Services (CMS) asserts that adherence to the safe harbor is "voluntary", there is little doubt that many health care providers will use this flawed reimbursement methodology as the default methodology when reimbursing medical directors. What is equally troubling is the safe harbor became legally effective before there was any opportunity for CMS to consider public comment.

AMGA is an association that represents medical groups, including some of the nation's largest, most prestigious integrated health care delivery systems with a total of approximately 60,000 physicians. AMGA's mission is to shape the health care environment by advancing high quality, cost-effective, patient-centered, and physician-directed health care. The members of AMGA deliver health care to more than 50 million patients in 40 states, including 15 million capitated lives. The average AMGA member group has 272 physicians and 13 satellite locations. Headquartered in Alexandria, Virginia, AMGA is the strategic partner for medical groups providing a comprehensive package of benefits, including political advocacy, educational and networking programs and publications, benchmarking data services, and financial and operations assistance.

The Safe Harbor Will Not Be Voluntary

While CMS states in the Rule that compliance with the safe harbor methodologies is completely voluntary, we believe the evidence and recent experience suggest otherwise. Given the intense regulatory environment health care providers find themselves, large health systems will invariably require physicians to accept hourly payment rates that fall four square into the safe harbor methodologies to ensure that their medical director payments are deemed by regulators as fair market value. It is reasonable to assert that the safe harbor compensation methodology will become the default payment rate methodology for virtually all medical director agreements. This will necessarily hamper efforts to recruit high quality physicians to serve as medical directors.

Basing Medical Director Compensation on Hourly Wage Rates

Developing a safe harbor payment methodology for medical directors based upon an hourly wage rate, whether based upon the hourly wage rate for emergency room physicians or the fiftieth (50th) percentile of specialty compensation rates completely fails to capture the scope and complexity of medical director activities and the decision-making necessary to effectively serve in these capacities. As an example, a cardiologist serving as a chief on an inpatient cardiology department traditionally provides comprehensive oversight of cardiology clinical care, including technology assessments, professional staff privileging, departmental policies and procedures, liaison with nursing staff and strategic planning. These are not areas of expertise for “the 50th percentile cardiologist”. Typically this position is optimally held by a senior cardiologist who has several years of administrative experience in addition to his/her clinical practice. Despite the complexity of these services however, a cardiologist, we have been told, can expect to be reimbursed no more than approximately \$130 per hour under the safe harbor methodology. This is significantly less than most healthcare consultants receive.

It is also of note that the six surveys cited in the Rule were never intended for this use. These surveys are based on compensation for physicians serving in an exclusively or principally patient care clinical role. The “market” compensation for qualified administrative or director level roles is significantly different from those aggregate professional categories reflected in these surveys.

The present safe harbor attempts to link fair market value to hourly physician specific compensation. While this may be appropriate in some settings, such as for physicians directly employed by large health systems, it is wholly inappropriate for many other situations. The hourly compensation amounts must cover the expenses necessary to support the physician, including administrative overhead, licensing, continuing education, professional liability coverage, to name a few. Unlike physicians practicing in large health system settings, an independently practicing or employed physician has little way of offsetting the fractional overhead in his or her office. This is an unfair and inappropriate outcome.

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Limited Opportunity for Comment and Community Input

AMGA believes that the lack of any opportunity to comment on the safe harbor prior to its effective date is highly problematic. Though this issue may negatively impact thousands of medical director arrangements, the safe harbor proceeded from initial publication to a legally effective date in approximately 120 days without any opportunity for CMS to consider public comments. Thus, CMS could not review and carefully consider concerns, such as AMGA's, that establishment of the safe harbor methodologies will lead to a decrease in quality care, especially in the inpatient setting, as more and more qualified physicians refuse to enter into these arrangements.

Thank you very much for your consideration of our deep concerns over this matter. If you or a member of your staff has any questions regarding this issue, please feel free to contact me or Chet Speed, at 703 838-0033 ex. 364 or at cspeed@amga.org.

Sincerely,



Donald W. Fisher, Ph.D
President and CEO