

# The Perils of Payment

The complexity around physician compensation demands defined, layered board oversight

By Kim Mobley and Marc Hallee

Hospitals are employing and developing alignment strategies with physicians in a particularly complex regulatory environment. Compliance failures can be costly, with some settlements and court orders regarding noncompliant arrangements totaling millions of dollars.

As a result, boards must be able to address the many issues associated with physician compensation and financial arrangements and ensure that processes are in place to support decision-making in a high-risk, complex regulatory environment.

As an example, consider ABC Health, a typical health care system today. ABC Health comprises two hospitals, including trauma services and each with its own medical group; a health plan; an accountable care organization; a skilled nursing home; an orthopedic joint venture; an employed cardiology group; and a primary care network. As the system has evolved, it has developed a range of physician and financial relationships that are subject to oversight from the entity's management and board, including:

- simple contracts for specific services, such as medical directorships
- complex revenue-sharing arrangements between the accountable care organization and independent and employed physicians

- joint ventures with a physician group, including a professional services agreement for clinical services
- on-call pay provided to independent physicians for trauma coverage
- physician executives in both hospitals
- compensation arrangements with medical group and primary care net-

work physicians

Each arrangement requires careful oversight from management, compliance officers, legal counsel and the appropriate governing board.

## Define and Document

Developing a process for managing risk is challenging and includes identifying the decisions that should be made at various levels of oversight. Defining oversight responsibilities may result in tension and confusion about whether the local entity, the medical group or the system has authority to make decisions about physician compensation arrangements. Boards also may choose to delegate some decision-making authority. For

example, the board may delegate to an executive committee, composed of key system-level administrators, the authority to make compensation decisions for all employed physicians paid below a certain dollar amount or market position.

As new entities are formed or acquired, the roles and responsibilities of their governing bodies must be articulated. In conjunction with senior leaders, compliance officers and legal counsel, system boards should develop, periodically review and update a checklist of activities to support oversight of physician compensation. These activities should include:

- creating an organizational chart for all entities and partnerships affiliated with the health system
- identifying the governing body responsible for each area
- documenting the types of physician relationships at each entity and determining whether each entity's governing body has a committee with a charter and defined role related to physician compensation governance
- documenting the role of each entity board and committee, and en-

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sureing appropriate oversight by the health system board

- conducting regular audits of all other boards and committees to ensure compliance with documented charters, defined roles and responsibilities

- including physician compensation governance on all merger, acquisition and partnership checklists

- monitoring and providing education to management, physician leaders, transaction team members and board members regarding relevant industry regulations and trends

Boards also can benefit from external perspectives on how other organizations structure the governance of physician compensation.

## Five Questions

Internal activities related to physician compensation also require scrutiny. Systems increasingly are developing processes for centralized control of compensation supported by a defined management, legal and compliance team. The key is to define which decisions can be made locally, which require system approval and which require board approval. There is no single solution, so, in formulating your organization's approach, consider the following questions.

**1. What is the risk to the system if there is a compliance problem?** The greater the risk, the wiser it may be for the system board to have governance responsibilities for physician compensation and financial arrangements.

**2. Are some physician relationships unique to local entities within the system?** If so, local governing bodies could review and approve compensation arrangements within parameters

determined by the system board.

**3. Is it reasonable for the system board to handle governance of all physician relationships?** For large systems, it may not be feasible for the system board to oversee all aspects of compensation. Therefore, the system board may choose to delegate certain types of decisions to management or local boards according to predetermined parameters.

**4. Can the governance process be tiered or divided?** As relationships grow more complex, the system board may create subcommittees for monitoring physician relationships. These committees could leverage local board members with specific expertise.

**5. Can the system board audit the governance oversight local boards provide?** If the system board has the authority and capacity to perform regular audits of local boards, then more authority may be delegated to them.

Every health system has unique or-

ganizational characteristics, management structures and strategic business issues, which means no single approach to governance of physician compensation and financial relationships will work for every system. However, any organization that has a financial relationship with physicians is affected by regulatory and compliance issues. As a result, senior leaders, compliance officers, legal counsel and boards should work together to manage risks associated with overseeing activities such as physician compensation that are critical to building the relationships needed to achieve organizational goals. **T**

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