

Physician & Health Professional Compensation

Compensation arrangements between health care organizations and their employees, independent contractors and executives are fundamental considerations for the business of health care. Well-structured compensation relationships are essential to securing adequate patient access to care, promoting improved quality, addressing provider burnout and promoting retention, improving the organization's business performance and financial health, and aligning incentives to coordinate care. However, compensation relationships can also present financial, operational, compliance and other challenges. Polsinelli has unique and deep experience in assisting clients to navigate these complex waters.

Our legal advisors are highly skilled in assisting clients in developing, implementing and defending compensation arrangements for all categories of the health care workforce, including physicians, advance practice providers, other health professionals and health care executives.

Compensation Structuring & Relationship Formation Phases

Polsinelli attorneys have experience in designing and drafting compensation arrangements. Our team can help with all elements of compensation formation, ranging from documenting ordinary course employment or independent contractor arrangements through complex co-management arrangements used to support value-based care initiatives.

For any personnel arrangement, Polsinelli attorneys can help you navigate the maze of business and regulatory issues, including:

- Developing and negotiating compensation models consistent with current market trends, including up-to-date methodologies for productivity-based compensation, use of quality of care bonuses, integration of new technological tools, and distribution of payments through managed care or value-based care models (including Accountable Care Organizations, bundled payment models, capitation and funds received through models like the CMS Quality Payment Program).
- Developing affiliation arrangements between providers to promote various levels of integration through compensation arrangements (such as co-management arrangements, service line staffing and management arrangements, joint operating companies and physician recruitment arrangements).
- Assisting with arrangements that properly capture value provided by physicians and other health professionals, including arrangements for supervision, medical director arrangements, outreach payments, care coordination and other administrative tasks.
- Designing compensation relationships compliant with health care fraud and abuse laws, including the Anti-Kickback Statute, Eliminating Kickbacks in Recovery Act (EKRA), Stark Law (including compensation under the special rules for group practices, academic medical centers, and value-based enterprises) and similar state laws.
- Helping clients understand how compensation arrangements may impact their responsibilities under federal and state tax law, including private benefit and inurement considerations for nonprofit organizations.

- Assisting clients to develop and maintain employee benefit plans through a variety of business structures that may be necessitated by health regulatory considerations.
- Developing ancillary compensation arrangements that are often related to physician or health professional compensation, such as leases of space and equipment, access to electronic health records or other software and training, and data analytics or advisory services.

Our team concentrating in health care, employee benefits and tax-exempt law work closely together to use a variety of qualified and nonqualified deferred compensation arrangements to coordinate each compensation arrangement's business objectives with applicable compliance requirements.

Polsinelli attorneys can also help health care entities in the initial stages of relationship-building with outside physicians and other health professionals. We can support negotiations by helping to develop a structure for ongoing dialogue, ensuring compensation systems are built on an appropriate foundation of facts (to support future decisions about fair market value, commercial reasonableness and community benefit), developing a team of compensation and valuation advisors and otherwise putting well-established contracting processes in place.

We understand that each health care organization has different opportunities and challenges. Compensation cannot be built on a "one size fits all" platform. Our attorneys will work closely with your staff to understand your specific business objectives and design appropriate, defensible compensation structures to help you achieve them.

Operational Phase

Our attorneys can help you implement effective operational systems and practices for ongoing compensation arrangements as well. We have a wealth of experience in identifying common operational pitfalls and assisting clients in addressing arrangements that are not or cannot be implemented as originally planned. We work as a team with our clients and each other to consider client business objectives in light of contractual promises, employment law risk and compliance imperatives under tax, fraud and abuse and other applicable laws. We know where problems frequently arise, including in connection with:

- Administrative systems that fail to align with contractual terms
- Data systems that are inadequate to support the selected arrangement
- Inadequate monitoring and reporting systems
- Deficient internal review and compliance strategies and systems that assure ongoing compliance with relevant law
- Remediation of historical problems and recommend changes going forward

Investigation & Defense Phase

Internal compliance processes may identify a problem with a compensation arrangement or in the worst-case scenario, an arrangement may be challenged by a whistleblower or a government agency. Our team has a deep bench of experience in defending challenges and crafting pragmatic solutions. Polsinelli attorneys have experience in civil and criminal investigations, Stark and OIG self-disclosures, *qui tam* actions, agency investigations involving the Office of Inspector General, Centers for Medicare & Medicaid Services (and their relevant contractors), Internal Revenue Service, local U.S. attorneys and in other settings.

Successfully defending a relationship that is challenged requires a combination of factual, legal and other analysis coupled with effective strategy development, and in some cases, trial work and settlement negotiations. The Polsinelli team has been in the trenches as agency lawyers, prosecutors, counsel for *qui tam* defendants and plaintiffs, and in other capacities.