Pinnacle Healthcare Consulting's Commercial Reasonableness Checklist

What is Commercial Reasonableness?

Generally accepted regulatory definitions & guidelines related to commercially reasonable healthcare arrangements include:

An arrangement [which is commercially reasonable] appears to be a sensible, prudent business agreement, from the perspective of the particular parties involved, even in the absence of any potential referrals.

An arrangement will be considered 'commercially reasonable'… if the arrangement would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable physician (or family member or group practice) of similar scope and specialty, even if there were no potential designated health services ("DHS") referrals.

Scope of Review

Commercial reasonableness, which can be done internally or via an external resource, is a broad and somewhat abstract concept. As a result, a first step in ensuring regulatory compliance with this requirement is to develop a framework for evaluating each arrangement. This framework should comprise at least three key components related to the specific factors involved, including those which are:

1. Qualitative,
2. Quantitative, and
3. Administrative.

Example Facts & Circumstances to Document Commercial Reasonableness

Qualitative

- Development of a particular service line or introduction of new service;
- Competitive targets including specialized service offerings or market share expansion;
- Achievement of higher quality targets and patient care satisfaction;
- Increased departmental efficiencies, including streamlining of scheduling and proper adherence to applicable standards;
- Improvement in provider education and training targets aimed to improve operations or enable more expedient service line ramp up of new policies; and/or
- Reduction in overcrowding within emergency or operating departments.

Quantitative

- Physicians' compensation which may reflect their specialty, experience, etc., but which is causing losses to a hospital's service line on a sustained basis;
- Lack of volume for the number of providers being compensated/staffed which causes losses within a particular department;
- Staffing on a non-leveraged basis that results in payments from the hospital which are higher than necessary (i.e., when the use of mid-level providers may be appropriate);
- Payment on a market comparable basis in lieu of a cost-to-build model; and/or
- Arrangements with physicians in lieu of negotiating with other providers or substituting alternate staffing models (e.g., hospitalist, laborist).

Administrative

- Physicians receiving compensation for services that they do not actually provide;
- Hospitals entering into or continuing an arrangement without proper documentation and approval; and/or
- Physicians providing services under agreements for which there are no performance reviews or determinations of continued need.

For more information on commercial reasonableness, please contact:
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Basic Framework & Checklist

Qualitative

- ☐ Whether the arrangement is necessary in addition to the resources already available to the hospital (e.g., physicians providing services at the hospital, duties required of the medical staff, and protocols at affiliated facilities)
- ☐ Whether the arrangement has a defined and specified purpose
- ☐ Whether the arrangement will further the goals of the hospital (e.g., business, clinical, or community)
- ☐ Whether the arrangement has a particular objective (e.g., profit contribution or services development)
- ☐ Whether the arrangement will meet patient needs (e.g., access to a particular specialty or service)
- ☐ Whether the patient acuity levels indicate the need for the arrangement

Quantitative

- ☐ Whether a less expensive level of service would be appropriate (i.e., non-physician provider or non-specialty physician)
- ☐ Whether additional considerations exist which may affect compensation (e.g., provider experience or market conditions such as a provider shortage within a particular specialty)
- ☐ Whether an alternate model may result in similar services at lower costs (e.g., hospitalist coverage, equipment purchase in lieu of service leasing)
- ☐ Whether the amount of time required under a particular arrangement has been considered, particularly in combination with other duties required of the physician
- ☐ Whether market comparable data exists which is relevant to the proposed arrangement
- ☐ Whether patient demand justifies the level or amount of service being contemplated
- ☐ Whether the size of the hospital and its patient population is commensurate with the proposed services

Administrative

- ☐ Whether the need for and specific purposes of the arrangement are documented
- ☐ Whether a written agreement contains the material terms of the arrangement
- ☐ Whether the hospital will appropriately engage in the management and attorney review of the proposed arrangements
- ☐ Whether approval of the arrangement will come from decision-makers of sufficient independence (including the board)
- ☐ Whether safeguards are maintained to reduce risks of abuse (e.g., payments for unnecessary or duplicated services)
- ☐ Whether the hospital has a process which will formally evaluate arrangements
- ☐ Whether the hospital will use performance assessments to evaluate whether arrangements are effective and/or needed
- ☐ Whether the hospital will maintain documentation detailing the actual performance of services and the resulting outcomes
- ☐ Whether the hospital will engage in oversight to ensure services are actually performed