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THE CHALLENGES OF wRVU-BASED SURVEY DATA IN AN EVOLVING HEALTHCARE INDUSTRY

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For years, physician groups, hospitals, and health systems alike (collectively, "Healthcare Operators") have relied upon provider compensation and production "Surveys" for a variety of operational and contractual purposes, including development of compensation plans with providers that they believe are market appropriate and competitive, and to mitigate compliance risk. The healthcare valuation community also routinely relies upon Surveys as one potential basis for developing fair market value (FMV) indications. Oftentimes, these end users will consult the Surveys with respect to work relative value units ("wRVUs") and other values derived from wRVUs in those instances where compensation models for provider Services are production based (*e.g.*, "compensation per wRVU," "base plus compensation per wRVU," or "greater of base compensation or compensation per wRVU").

Recent guidance issued by CMS has been rumored to reduce the reliance placed on Survey data. In particular, in its November 20, 2020 revisions to the Stark regulations, CMS revised and expanded the definition of general FMV to include the clause "…of the subject transaction," serving to reiterate that in determining FMV, one should consider the unique facts and circumstances of the specific arrangement.[i] We believe that this language reaffirms CMS' stance that determining FMV is not necessarily limited to use of Survey data and/or precise, rigid calculations based upon such data, but, instead, should include (i) careful interpretation and application of available and relevant market data (including Surveys), and (ii) a diligent approach to understanding and vetting all other subject-based data and qualitative attributes to ensure a complete and accurate understanding of the relevant facts and circumstances. Based on CMS commentary coupled with the growing number of Survey participants year over year, Surveys will continue to serve as a comprehensive and invaluable resource for Healthcare Operators and valuation experts in the years to come. As a result, Survey users should be acutely aware of certain current nuances regarding wRVU-derived data.

To better understand these nuances, the following is a brief refresher on wRVU basics. Since 1992, CMS has developed and assigned a unique wRVU for each provider clinical "Service."[ii] Each assigned wRVU is intended to reflect the provider "work" component of each Service, with consideration for provider time, effort, skill, and stress associated with performing each Service. CMS reviews and modifies assigned wRVUs annually in order to ensure the assigned units accurately reflect the professional work component of each Service given the evolving nature of provider services and technologies. Although objective and uniform in nature, underlying data reported by the Surveys and used in conjunction with wRVUs may be tainted as of the 2021 Survey due to the combination of: (i) the lasting COVID-19 pandemic on provider

[i] "Medicare Program: Modernizing and Clarifying the Physician Self-Referral Regulations" Federal Register, Vol 85 (December 2, 2020), p 77492.
[ii] An exception to this is anesthesiology services, which utilizes "ASA Unit" values (rather than wRVU values) determined by the American Society of Anesthesiologists (ASA).

compensation and production; (ii) material changes to certain evaluation and management (E/M) wRVU assignments made by CMS in 2021 and 2022; and (iii) the continuing and growing shift from volume- to value-based compensation models.

The impact of the COVID-19 pandemic on healthcare providers and systems has been uniquely profound and disruptive, including a material reduction in volumes of nonemergent and elective procedures and patient encounters. Accordingly, many Healthcare Operators modified provider compensation arrangements during the Pandemic to ensure necessary provider staffing levels were retained. For many specialties, while total 2020 cash compensation levels remained reasonably consistent with 2019 levels, reported wRVUs dropped significantly, resulting in a material increase in reported compensation per wRVU metrics in the 2021 Surveys.

Additionally, CMS recently made the following changes that directly impact wRVUs as reported in the Surveys:

(i) Under the 2021 Medicare Physician Fee Schedule (MPFS), wRVUs assigned to certain outpatient E/M services were materially increased;[iii] and

(ii) Under the 2022 MPFS, new guidance regarding billing for certain split/shared E/M visits provided in a facility setting, whereby such visits are now exclusively billed under the NPI of the physician or non-physician provider who performed the "substantive portion" of the visit.[iv]

Due to the aforementioned challenging dynamics and uncertainty of future CMS changes, many Healthcare Operators have yet to implement the 2021 or 2022 MPFS for purposes of calculating provider wRVUs. This lack of consistency in MPFS implementation by Survey respondents may call into question the reliability of reported wRVUs beginning with the 2022 Surveys (based on 2021 data).

The varying levels and timing of implementing and transitioning from volume- to value-based compensation models by Healthcare Operators is another factor impacting Survey outcomes. Value-based compensation models consider various non-wRVU factors driving compensation outcomes to providers. Examples of such factors include panel size, patient population attributes, location-specific factors (*e.g.*, rural clinics), and/or quality outcomes (*e.g.*, evaluating the development or use of processes/pathways, outcome measures, cost of care, patient satisfaction, patient access, risk level of patient population, etc.). Increasing participation in Clinically Integrated Networks and Accountable Care Organizations provides further opportunity for additional compensation sources for providers. As the frequency of these compensation sources become more prevalent and material, additional challenges regarding the correlation between cash compensation and wRVU productivity data reported in the Surveys may arise.

The challenges associated with utilizing Survey data in an ever-changing healthcare industry is nothing new to Healthcare Operators and/or the valuation community, and thoughtful utilization of Survey data remains a common and prudent practice. As Surveys and the evolving benchmark data reported therein (including wRVUs) remain ever relevant, Survey users must learn to understand the underlying and inherent nuances, and proceed with an extra level of caution until the effects noted herein have worked their way out of Survey data.

[iii] "Medicare Program; CY 2021 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies;" Federal Register, (December 28, 2020), p 2.

[iv] "Medicare Program; CY 2022 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies" Federal Register, (November 19, 2021), p 421.