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HealthCare Appraisers' Industry Insight

ACHIEVING PROVIDER COMPENSATION PARITY: CONSIDERATIONS OF FAIRNESS WITHIN FAIR MARKET VALUE

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OVERVIEW

Concerns of compensation discrimination remain a persistent issue across industries, with the most prevalent claims of disparity centered around gender, race, and seniority. These concerns are no different within the healthcare industry, specifically among physicians and other healthcare providers. The Association of American Medical Colleges (AAMC) – whose membership includes representation from 170 accredited medical schools and over 400 teaching hospitals, health systems, and Veterans Affairs medical centers – has conducted surveys revealing that gender and race are the most significant characteristics associated with pay disparities amongst physicians.¹ In 2019, the first academic year in which women represented more than 50% of total enrolled students in U.S., MD-granting medical schools², a survey performed by AAMC reported that “women were paid between \$0.72 and \$0.96 for every \$1 paid to men across different departments and specialties.”³ In the context of the AAMC study, the greatest correlation to pay disparity was between genders, even after accounting for rank, tenure, specialty and training.

With an ever-growing focus on potential pay inequity amongst providers, hospitals must consider more than whether compensation is consistent with requirements of fair market value; assessments of compensation parity should be conducted regularly in order to ensure fairness and equity, as well as protect against potential legal action. In this article, we will explore a recent example of the consequences of physician compensation discrimination allegations and the importance of documentation in addressing and protecting against concerns of unfounded disparities in provider compensation.

CASE STUDY

The recent judgment in the equal pay case of *Boles v. Greenwood Leflore Hospital* highlights that even where compensation is consistent with fair market value, compensation structures may raise prima facie questions of discriminatory compensation structures and hiring practices. *Boles* also places emphasis on the burden of demonstrating non-pretextual, non-discriminatory support for compensation variances.⁴ Operators, counsel, and outside advisors should take caution to ensure that the methodologies and rationale applied to analyses and decisions regarding provider compensation are both defensible and well-documented, and that a plan is in place to facilitate continued compliance with evolving laws and regulations surrounding pay equity.

¹ Redford, Gabrielle, et al. “New Report Finds Wide Pay Disparities for Physicians by Gender, Race, and Ethnicity.” AAMC, 12 Oct. 2021, www.aamc.org/news/new-report-finds-wide-pay-disparities-physicians-gender-race-and-ethnicity.

² <https://www.aamc.org/media/6116/download>

³ Redford, et al.

⁴ *Boles v. Greenwood Leflore Hosp.*, 4:21-CV-88-DMB-JMV (N.D. Miss. Dec. 27, 2022).



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In *Boles*, Dr. Preston Boles, a podiatrist who is black, sued his employer, Greenwood Leflore Hospital, alleging discriminatory pay practices on the basis of race. Specifically, Dr. Boles claimed that he was paid significantly less than Dr. Joseph Assini, a physician who is white, notwithstanding that - other than Dr. Boles being a member of a protected class - their circumstances were nearly identical. Both physicians held similar positions within the hospital, performed comparable duties, and possessed equivalent levels of expertise and experience. Notwithstanding these similarities, Dr. Boles argued that he received a significantly lower salary and unfavorable productivity compensation structure compared to his white colleague. On two occasions, the hospital increased Dr. Boles' base salary and modified his productivity incentive structure. Upon discovering that Dr. Assini's base salary was greater, Dr. Boles requested an increase in the conversion rate applicable to incentive bonuses. Greenwood Leflore Hospital rejected this request on the basis that Dr. Boles' productivity and wRVU production expectations were lower in each year that both physicians were on staff.

In its defense, the hospital set forth that Dr. Boles (i) had initially negotiated a far smaller starting salary than Dr. Assini, (ii) did not negotiate, as Dr. Assini had, additional medical directorships into his initial salary, (iii) had lower production levels and wRVU expectations than Dr. Assini, and (iv) did not have comparable physician leadership duties in the context of Medical Staff activities and the hospital's Centers of Excellence. Dr. Boles provided evidence that terms of the two physicians' employment agreements contradicted this defense - in particular, that in certain years, conversion factors either increased amid decreasing productivity levels or remained static despite increasing wRVUs. In the absence of a defensible rationale for the highlighted compensation differences, the court noted that a pretextual reason for such differences might exist.

POTENTIAL SOLUTIONS

To avoid concerns of provider compensation discrimination, hospitals and health systems must take proactive steps to ensure fairness, transparency, and ongoing compliance. Although there are many different ways to combat inequity, below are a few recommended solutions:

External Compensation Evaluations: Healthcare institutions can engage external experts to conduct regular evaluations of provider compensation structures. These evaluations can yield an unbiased assessment of fair market value and commercial reasonableness, while identifying potential disparities and recommendations for necessary adjustments, as needed.

Regular Compensation Reviews: Hospitals should establish a systematic process and regular cadence for reviewing and updating compensation plans. This may involve assessing the compensation of individual providers, comparing compensation among staff providers and/or to industry standards and internal benchmarks, and promptly addressing any identified disparities.

Equal Pay Policies: Hospitals should adopt explicit, well-structured and adaptable policies that promote equal pay and transparency for equitable compensation models. These policies should be communicated clearly to all employees and include mechanisms for reporting and addressing pay discrepancies. Regular training programs can also mitigate the subtle differences and potential biases involved in compensation structures and serve as active prevention for future concerns of discrimination.⁵

CONCLUSION

Hospitals and healthcare organizations should regularly evaluate provider compensation policies and practices to mitigate any potential gaps related to pay equity. To avoid discrimination concerns amongst physicians and other healthcare providers related to compensation, hospitals and healthcare systems are encouraged to consult with valuation experts when developing compensation models. Certain data could inadvertently serve as *prima facie* evidence of discrimination. However, with appropriate, thorough

⁵ Kevin B. O'Reilly. "Physicians adopt plan to combat pay gap in medicine." American Medical Association 13 Jun. 2018, Physicians adopt plan to combat pay gap in medicine | American Medical Association (ama-assn.org)



business documentation and/or third-party valuator recommendations, coupled with an actionable plan that includes routine compensation re-assessment, hospitals can help lay a strong foundation for compensation parity and eliminate indefensible biases.

As a leader in the healthcare valuation space for over 20 years, HealthCare Appraisers has extensive experience assisting health systems and physician practices to create defensible solutions and fair compensation plans that are not only consistent with FMV, but also support compensation parity amongst similarly situated physicians and other healthcare providers. By implementing transparent and unbiased compensation structures, hospitals can protect themselves against potential legal battles and foster an environment that upholds fairness and equity for all providers, regardless of their backgrounds. Contact HealthCare Appraisers today to learn how we can help your organization design defensible solutions and fair compensation models that are equitable and consistent with FMV for your organization.

