

## Increased Scrutiny of Physician Compensation Arrangements

On September 27, 2007, the Office of Inspector General (OIG) issued Advisory Opinion No. 07-10 regarding compensation paid for physician services related to on-call coverage, stating that the key inquiry for determining whether the compensation arrangement for providing emergency on-call coverage violates the anti-kickback statute “*is whether compensation is: (i) fair market value in an arm’s length transaction for actual and necessary items or services; and, (ii) not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties.*”

The subject arrangement involved a non-profit hospital experiencing a shortage of physicians providing emergency department and follow-up care due to the high volume of indigent patients unable to pay for services. Some hospitals have responded to certain specialists’ refusal to provide services without compensation by paying per diem rates to physicians who entered into a two (2) year contract to provide care in the emergency department.

While the OIG found that the subject arrangement did not fall the safe harbor for personal services and management contracts because the amount of compensation was not set in advance and varied monthly, the compensation arrangement was nevertheless deemed low risk because: (1) the per diem rates were at Fair Market Value without regard to referrals, and the physicians were required to treat any patient who entered the emergency department until discharge with no additional compensation, in addition to providing certain volunteer (uncompensated) services; (2) because the emergency department was understaffed prior to on-call compensation being paid, the likelihood that the arrangement was instituted to provide remuneration to physicians for referrals was minimized; and, (3) because all physicians were required to work the same number of hours each month, majority of payments.



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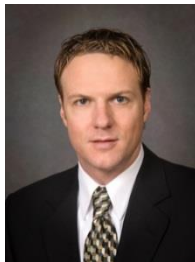
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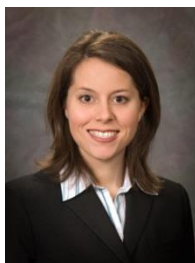
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

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