



2022
ANNUAL
CONFERENCE
KANSAS CITY, MISSOURI | JUNE 8-10

The background of the top half of the image is a nighttime aerial view of Kansas City, Missouri. A river flows through the center, with a bridge crossing it. The city lights are visible in the background, and the overall scene is illuminated by warm, golden light from the city and streetlights.

Healthcare Regulatory Updates: Mid-Year Review and Implications for 2022 and Beyond

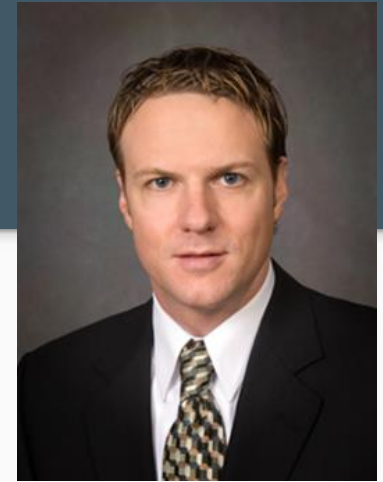
Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA & Jessica L. Bailey-Wheaton, Esq.



Presenter Bio

Todd A. Zigrang

MBA, MHA, FACHE, CVA, ASA

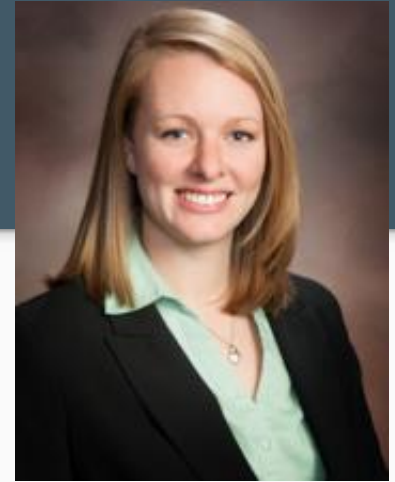


Todd A. Zigrang is the President of Health Capital Consultants (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 27 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures involving acute care hospitals and health systems; physician practices; ambulatory surgery centers; diagnostic imaging centers; accountable care organizations, managed care organizations, and other third-party payors; dialysis centers; home health agencies; long-term care facilities; and, numerous other ancillary healthcare service businesses. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of the “Adviser’s Guide to Healthcare – 2nd Edition” (AICPA, 2015), numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: The Guide to Valuing Physician Compensation and Healthcare Service Arrangements (BVR/AHLA); The Accountant’s Business Manual (AICPA); and, Valuing Professional Practices and Licenses (Aspen Publishers). Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the ABA; NACVA; the American Society of Appraisers (ASA); Medical Group Management Association (MGMA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Presenter Bio

Jessica L. Bailey-Wheaton, Esq.



Jessica L. Bailey-Wheaton serves as Senior Vice President & General Counsel of Health Capital Consultants (HCC), where she focuses on the areas of project management and consulting services related to the impact of federal and state regulations on healthcare transactions. In that role, she provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Additionally, Ms. Bailey-Wheaton heads HCC's Certificate of Need (CON) and regulatory consulting service line.

Ms. Bailey-Wheaton is the co-author of numerous peer-reviewed and industry articles in publications such as: *The Health Lawyer* (ABA); *Physician Leadership Journal* (AAPL); *The Journal of Vascular Surgery*; *The Value Examiner* (NACVA); and *QuickRead* (NACVA). She has previously presented before NACVA, the ABA, the American Health Law Association (AHLA), and the National Society of Certified Healthcare Business Consultants (NSCHBC).

She serves on the editorial boards of NACVA's *QuickRead* and AHLA's *Journal of Health & Life Sciences Law*. Additionally, she serves as Vice Chair for Educational Programming with AHLA's Fair Market Value Affinity Group; Liaison for the Young Lawyers Division (YLD) Health Law Committee; and, Vice Chair for the ABA Health Law Section Membership Committee. Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a Juris Doctorate, with a concentration in Health Law, from Saint Louis University School of Law.

Session Agenda

- The state of the national public health emergency (PHE)
- Recent executive and agency action related to healthcare
- Recent healthcare legislation introduced in Congress
- Recent healthcare-related court cases
- Implications for 2022 & beyond

State of the PHE

Current State of the PHE

- Extended to mid-July
- Expected to be extended again in July (can extend in 90 day increments)
- Significance of the PHE

Current State of the PHE

- PHE relaxations and other provisions
- Pandemic-Related Enforcement and Oversight
 - An increasing focus of the Office of Inspector General (OIG) and the Department of Justice (DOJ)
 - Use of PRF monies
 - Use of regulatory waivers and relaxations

Current State of the PHE

- The Pandemic, as well as other factors, has created a problem for users of industry physician compensation and productivity survey data



COVID-19

- Reduced Volume during pandemic may lead to artificially high compensation/production rates

Changes to the MPFS

- Changes to wRVU value to procedures may lead to higher wRVU production for similar or even reduced procedure volume (or “work”)
- Changes to reimbursement may impact available funds for physician compensation from that surveys reported

Shift to Value-Based Care

- Compensation is increasingly becoming based on value of care rather than volume of care

Impact
on
Industry (Market)
Physician
Compensation
and Productivity
Survey
Data

Current State of the PHE

- Physician compensation has generally increased year-over-year
- While physician productivity, as measured by work RVUs (wRVUs), has had varying year-over-year trends, but not to extent experienced in 2020 !
- wRVU productivity appears to have rebounded by the end of 2020 and continued into 2021
- A spike in the compensation-to-wRVU ratios as reported in 2021 market surveys (based on 2020 data) resulted from the steady compensation (numerator) and the reduced wRVU productivity (denominator)
- Prior to 2020, compensation-to-wRVU ratios for most specialties have risen year-over-year

Current State of the PHE

- One step toward (new) normalcy?

Family Medicine (without OB)

Chart 1: Total Compensation

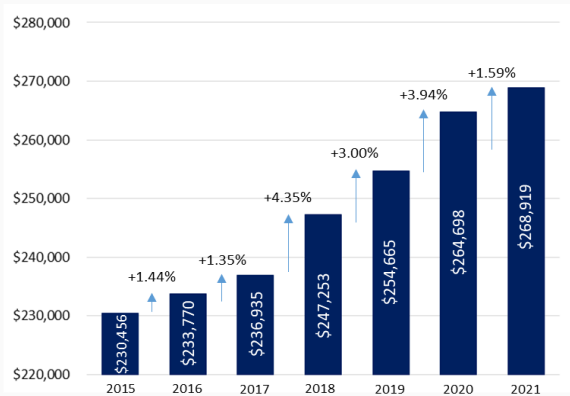


Chart 2: wRVU Production

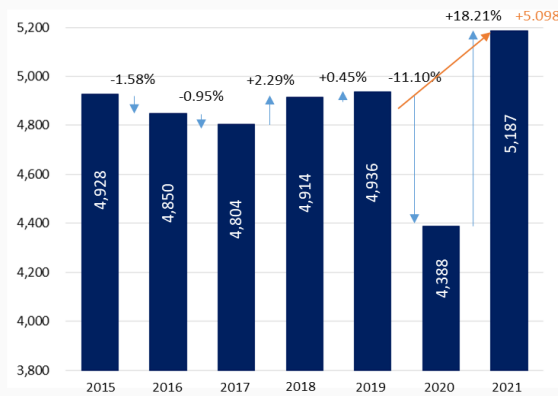
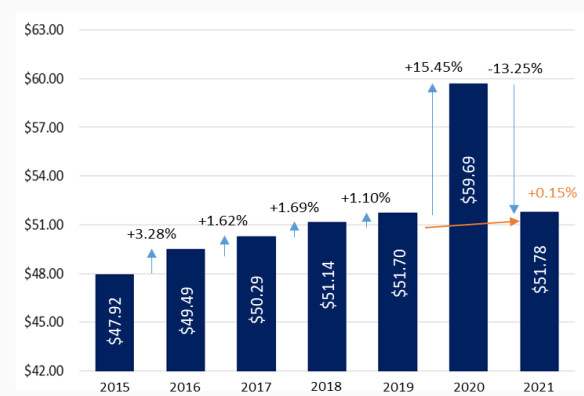


Chart 3: Compensation/wRVU Ratio



Note: Compensation and production data is from survey published by MGMA.

Current State of the PHE

- One step toward (new) normalcy?

Specialty	2019-2020		2019-2021	
	Change in median total compensation	Change in median wRVUs	Change in median total compensation	Change in median wRVUs
Cardiology: Invasive	2.61%	-5.45%	2.82%	3.57%
Family medicine (without OB)	3.94%	-11.10%	5.60%	5.09%
Gastroenterology	0.67%	-13.70%	4.66%	1.81%
Hospitalist: Internal medicine	0.14%	-6.79%	2.55%	0.37%
Internal medicine: General	2.73%	-10.93%	4.57%	2.44%
Neurology	1.44%	-11.68%	3.48%	-0.85%
Obstetrics/Gynecology: General	0.35%	-7.24%	3.64%	0.69%
Orthopedic surgery: General	1.67%	-11.65%	6.88%	7.31%
Pediatrics: General	6.00%	-11.76%	1.77%	-3.50%
Surgery: General	0.40%	-11.19%	3.15%	-0.53%

Executive & Agency Action

Introduction of the ACO REACH Model

- New CMS guidelines for developing new ACO models
- Will replace Global and Professional Direct Contracting (GPDC) model and terminate the current Geographic Direct Contracting (Geo Model) model
- ACO REACH Structure
 - Risk-sharing options
 - Beneficiary benefits

ACA's Family Glitch Fix

- Announced April 5, 2022
- Most extensive change to the U.S. healthcare system since the ACA
- Internal Revenue Service (IRS) Proposed Rule
 - Update to definition of “affordability”
 - Would result in 200,000 currently-uninsured Americans being able to gain coverage and in an additional 5 million Americans seeing a reduction in the costs of coverage for plans purchased through the ACA’s marketplaces

Increased Antitrust Scrutiny?

- Rise in vertical integration transactions
- Federal Trade Commission's (FTC's) withdrawal of approval to changes made to the vertical merger guidelines in 2020
- Revised merger guidelines coming – what will they address?
- Impact on Commercial Reasonableness of healthcare transactions

2023 IPPS Proposed Rule

- Estimated 3.2% total increase in payments
- A return to using the most recent data for price-setting (FY 2021 for claims and FY 2020 for cost reports), but with modifications to account for the COVID-19 pandemic
- Putting the Hospital Readmissions Reduction Program on hold until 2024
- What's expected for the other payment systems?
 - MedPAC recommendations for 2023:
 - Update Medicare payments to hospitals
 - Keep physician payment rates the same

New Nursing Home Quality & Safety Initiatives

- Announced during the State of the Union address (February 28, 2022)
- 4 new initiatives:
 - Requiring minimum staffing loads
 - Reducing room crowding
 - Strengthening *skilled nursing facilities'* (SNFs') value-based purchasing programs
 - Reinforcing safeguards against providing unnecessary medications & treatments

Indications of Future Regulatory Scrutiny from the Executive Branch

- **MedPAC Reports**
 - Stagnating reimbursement
 - More scrutiny of PE firms' healthcare involvement
- **Recent Advisory Opinions**
 - Clinical lab arrangement
 - Loaner smartphones to patients
 - Payment to & tuition for home health aides

Indications of Future Regulatory Scrutiny from the Executive Branch

- Private Equity (PE) Investment in Healthcare
 - 2021 was a record year for the global healthcare private equity market, with brisk activity across sectors and regions
 - Deal count was up 35% from last year while deal value was up more than 225%
 - Private equity deal returns from healthcare have outperformed other industries
 - 2010 – 2021 Healthcare Returns: 26.9%
 - 2010 – 2021 Other Industry Returns: 21.3%
 - PE investment accounted for approximately 63% of the transactions in the physician practice management sector. Most of the deals were add-on acquisitions that helped existing platforms expand their regional or national footprint.*

Indications of Future Regulatory Scrutiny from the Executive Branch

- Nearly 3 of 4 physicians (73.9%) are now employed by hospitals, health systems, and corporate entities

Hospital/Health System Perspective

- **Compensation** (stability, market-level amount, work-based)
- Ability to **focus on patient care** vs. practice administrative functions
- Work-life **balance**
- **Protection** from economic factors:
 - Declining reimbursements
 - Increasing operating costs
 - Uncertainty of future reimbursement models and IT investment
- Increased ability to participate in **compensated administrative functions** of interest

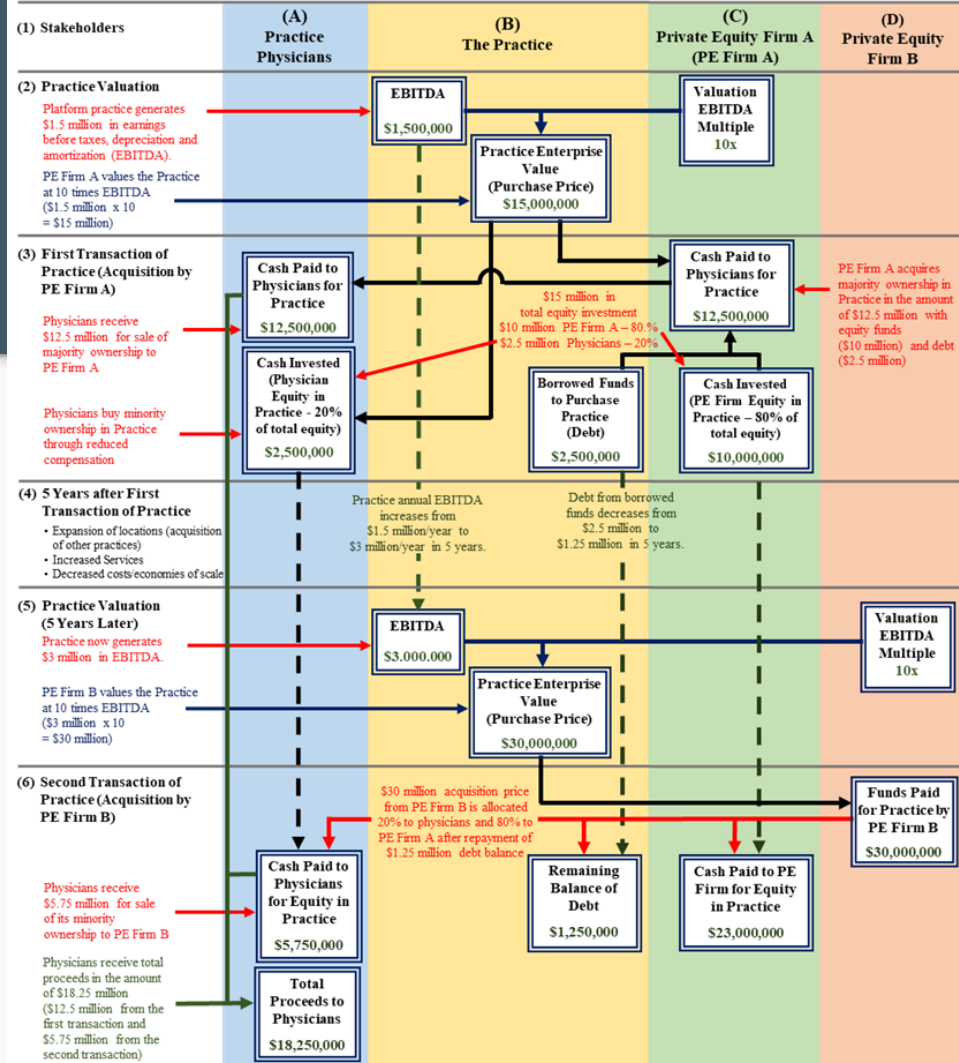
Private Equity Firm Perspective

- **Monetizing earnings** (up-front payment for partner physicians)
- Ability to become an owner (employed physicians)
- Less bureaucracy
- Maintain **independence**
- **Size/scale** that may improve:
 - Reimbursement
 - Expense management
- Focused **operational management**
- Participation in **equity upside**

Illustrative PE Transaction

To the right is an illustrative example of how, potentially, a PE transaction may transpire.

In exchange for less cash than the Fair Market Value, and reduced annual compensation, the physicians remain an equity participant and are eligible for a second bite of the apple with a 2nd transaction 5+ years after the initial transaction.



Indications of Future Regulatory Scrutiny from the Executive Branch

- Private Equity Investment in Healthcare
 - Possible crackdown on private equity transactions in healthcare
 - Emphasis on competition

Legislative Action

Recent Healthcare Legislation

- Over 50 bills have been introduced this congressional session that include significant telehealth or remote patient monitoring provisions
 - All but 15 have bipartisan support in both houses
- Extension of PHE waivers
 - Hospital Inpatient Services Modernization Act (H.R. 7053/S. 3792)
- COVID funding bills (or lack thereof)

Recent Court Cases

Healthcare in the Courts

- Criminal case against RaDonda Vaught (Vanderbilt nurse)
- Non-Compete case between Change Healthcare and former executive
- False Claims Act case against Methodist Le Bonheur

Indications for 2022 & Beyond

Indications for 2022 & Beyond

- PHE relaxations here to stay?
- COVID will be an enforcement focus
- Competition is the name of the game
- Payment system indications

Any Questions?

Thanks!

Contact us:

Health Capital Consultants
1807 Park 270 Drive, Ste 110
St. Louis, MO 63146

tzigrang@healthcapital.com
jbailey@healthcapital.com
www.healthcapital.com

