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# Provider Contracts: A Changing Environment

May 4, 2021

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# Funding Source

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# Today's Agenda

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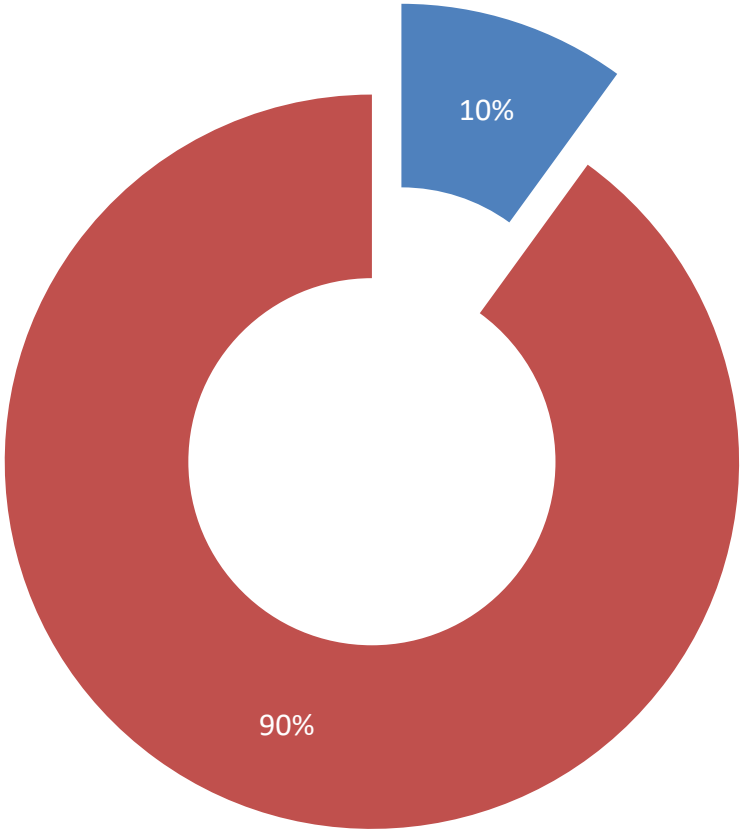
- Physician Contracts: Complex and Heavily Regulated
- CMS Changes and COVID-19 Impacts
- Compensation Strategy for Today and Tomorrow

# Why Do Provider Contracts Matter?

- Physician expenditures equal 5-10% of the average hospital's net patient revenue and projected to grow at 5.4% annually




*Source: National Health Expenditure Projections, 2018–27: Economic And Demographic Trends Drive Spending And Enrollment Growth." Health Affairs, February 20, 2019.*

# Stark Requirements – The Big 3

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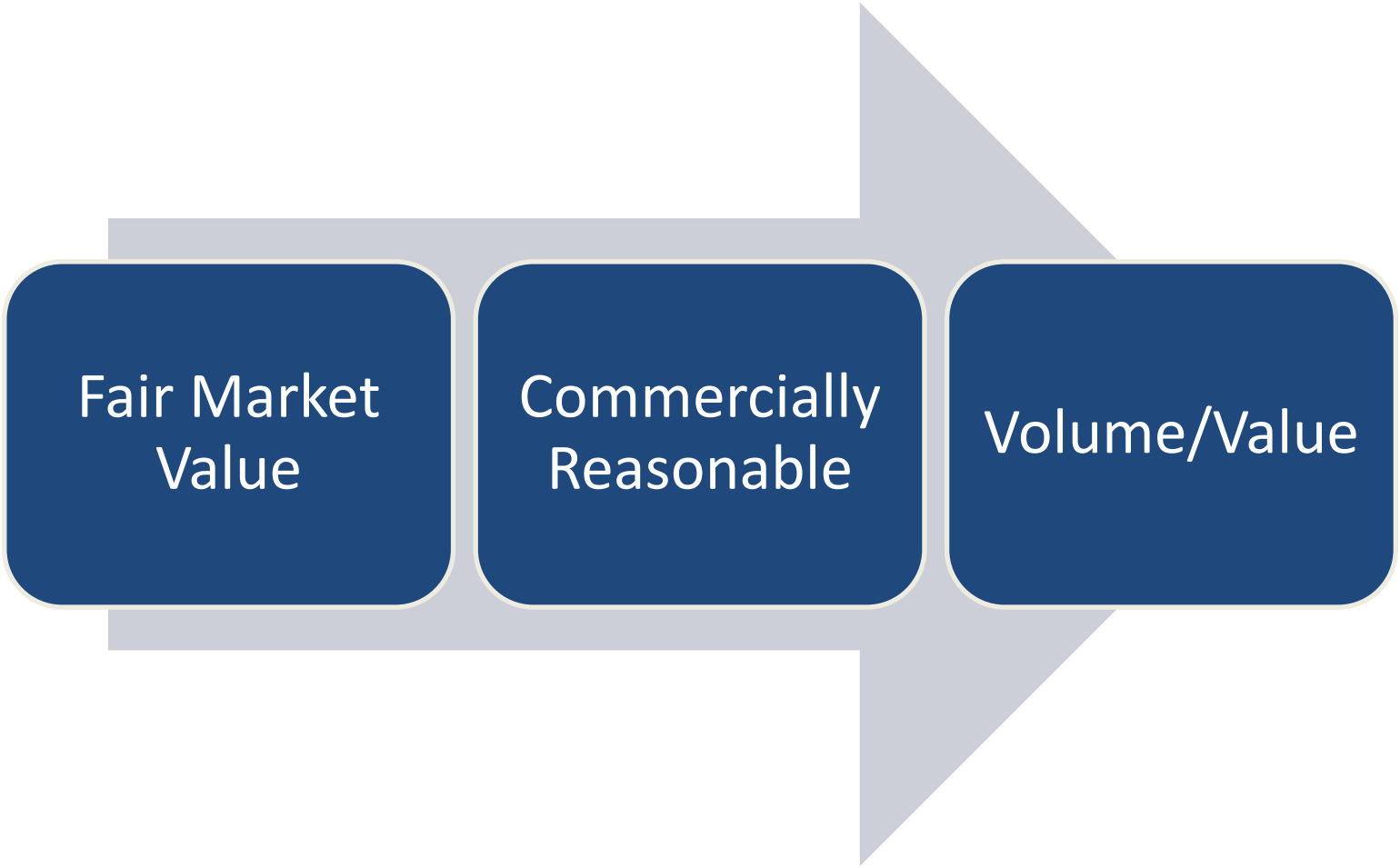

# The Cost of Compensation Compliance

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Home > Anti Kickback > Wheeling Hospital Agrees to Pay $50 Million to Settle Stark Law, AKS Allegations

## Wheeling Hospital Agrees to Pay $50 Million to Settle Stark Law, AKS Allegations

By Thomas Sullivan — Last Updated Nov 1, 2020

## Texas-Based Heart Hospital Agrees To $48 Million Settlement For Alleged Violations Of Anti-Kickback Statutes

by Peter Briccetti — January 7, 2021 in Corporate, False Claims-Qui Tam, News, SEC

Reading Time: 3min read

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**Department of Justice**

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, August 2, 2018

**Detroit Area Hospital System to Pay $84.5 Million to Settle False Claims Act Allegations Arising From Improper Payments to Referring Physicians**

## Fort Myers clinic to pay $1.6 million to settle kickback allegations

by Erin O'Brien — 11:29 AM EST, Tue February 02, 2021 AA

BECKER'S HOSPITAL REVIEW

## Tennessee hospital to pay $4.1M to resolve false claims allegations

February 2020

# Physician Compensation: Factors to Consider

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## Hospital considerations when determining FMV for physician services:

- Physician specialty/subspecialty
- Physician's duties and responsibilities
- Community need (e.g., deficits, wait times, closed specialties, high disease incidence, outmigration, seasonality)
- Community benefit (e.g., new specialty or service)
- Time it takes to fill position
- Physician's training and experience
- Compensation methodology

# Compensation Models

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| | |
|---|---|
| Individual physician compensation | • Guaranteed compensation<br>• Individual performance determines compensation |
| Group or specialty "pool" models | • Group or specialty's performance and/or outcomes determine a pool of revenue. This pool is then distributed based on the individual physician's performance based on set criteria. |
| "Stacking" compensation | • ED call coverage<br>• Medical Directorships<br>• Clinical or service line management agreements<br>• APP supervision<br>• Teaching Agreements |

# 2021: CMS AND COVID-19

# 2021 CMS wRVU CHANGES

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- On December 2, 2020, CMS published the final rule for the 2021 Physician Fee Schedule.
- Changes are made annually to address revised CPT codes and corresponding Work Relative Value Units ("work RVUs").
- Most significantly, CMS overhauled the office and outpatient evaluation and management ("E&M") codes 99201-99205 (new patients) and 99211 – 99215 (established patients).
  - These have not really been changed since 2007.
  - Changes were intended to address the ongoing documentation burden on physicians and the under-valuaton of time and effort involved in these services.
    - Revises the times and medical decision-making process for all of the codes and requires performance of history and exam only as medically appropriate.
    - Allows clinicians to choose the E/M visit level based on either medical decision making or time.
  - The 99201 code was eliminated, which historically has been primarily used for nurse visits.

# Overall Impact: CMS Utilization

- When examined from a utilization perspective, the average weighted impact is an increase of 35.8% of wRVUs for the most utilized new and established patient clinic codes.

CMS-1734-F_Calculation of volume-weighted average of increase to Office Outpatient E/M visits - FR 2021

| HCPCS Code | 2020 Work RVU | 2021 Work RVU | RVU Difference | Utilization (2019) | Weight | Weighted Avg |
|---|---|---|---|---|---|---|
| 99202 | 0.93 | 0.93 | 0.00 | 2,670,872 | 0.011 | 0.000 |
| 99203 | 1.42 | 1.60 | 0.18 | 11,349,523 | 0.046 | 0.008 |
| 99204 | 2.43 | 2.60 | 0.17 | 10,602,766 | 0.043 | 0.007 |
| 99205 | 3.17 | 3.50 | 0.33 | 2,897,019 | 0.012 | 0.004 |
| 99211 | 0.18 | 0.18 | 0.00 | 2,660,415 | 0.011 | 0.000 |
| 99212 | 0.48 | 0.70 | 0.22 | 10,678,725 | 0.043 | 0.009 |
| 99213 | 0.97 | 1.30 | 0.33 | 91,601,723 | 0.369 | 0.122 |
| 99214 | 1.50 | 1.92 | 0.42 | 105,752,974 | 0.426 | 0.179 |
| 99215 | 2.11 | 2.80 | 0.69 | 10,321,248 | 0.042 | 0.029 |
| **Total** | | | | **248,535,265** | **1.000** | **0.358** |

# Impact Across Specialties

- Based on MGMA's DataDive Procedural Profile, the increases in wRVUs due to the increases varies based on specialty.

| Specialty | % Change in Total wRVUs |
|---|---|
| Urgent Care | 24.4% |
| Family Medicine (w/o OB) | 19.3% |
| Hematology/Oncology | 17.4% |
| Internal Medicine: General | 17.4% |
| Pediatrics: General | 13.5% |
| Cardiology: Noninvasive | 8.4% |
| Orthopedic Surgery: General | 6.3% |
| OB/GYN: General | 3.9% |
| Gastroenterology | 3.8% |
| Surgery: General | 3.0% |

Source: Gallagher/Integrated Healthcare Strategies

# 2021 CMS REIMBURSEMENT CHANGES

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- On December 2, 2020, CMS published the final rule for the 2021 Physician Fee Schedule.
- Originally, changes were subject to budget neutrality adjustment to account for changes in RVUs – conversion factor was set at $32.41, a decrease of $3.83 from the CY 2020 PFS conversion factor of $36.09.
    - Significant lobbying and feedback from physicians, Under the Consolidated Appropriations Act, the conversion factor was set to $34.89 for 2021 which provided a 3.75% increase.

| CPT Code | Medicare Reimbursement (2020 FS) | Medicare Reimbursement (2021 FS) | % Change from 2020 |
|---|---|---|---|
| 99201 | $27.07 | n/a | n/a |
| 99202 | $51.61 | $46.02 | -11% |
| 99203 | $77.23 | $78.43 | 2% |
| 99204 | $132.09 | $128.34 | -3% |
| 99205 | $172.51 | $174.36 | 1% |

# Client Example – PSA Arrangement

- Below is an example of a PSA between a hospital system and a highly productive 6 provider internal and family medicine primary care group.
- With expected wRVU changes, the practice would have a 22.1% increase in wRVUs, costing the healthcare system almost $1.3M in increased compensation without any contract changes.

| | 2020 | 2021 Projection | Proposed | Break Even | Amended Contract |
|---|---|---|---|---|---|
| wRVU | 59,798 | 72,994 | 72,994 | 72,994 | 72,994 |
| PSA Rate | $98.35 | $98.35 | $80.00 | $88.89 | $85.00 |
| Total wRVU Payments | 5,881,147 | 7,178,984 | 5,839,540 | 6,488,147 | 6,204,511 |
| Expected Revenue Increase (Hospital) | | 607,000 | 607,000 | 607,000 | 607,000 |
| Impact to Hospital | | (690,837) | 648,607 | 0 | 283,636 |
| | | -11.7% | 11.0% | 0.0% | 4.8% |
| Impact to Practice | | 1,297,837 | (41,607) | 607,000 | 323,364 |
| | | 22.1% | -0.7% | 10.3% | 5.5% |

# "New" Stark Rules

- Most impactful for health systems and hospitals: Direct Referral Safe Harbor
  - Addresses organizations concerned with "leakage"
  - Allows organizations to make compensation contingent upon achieving a percentage of "in-network" referrals
  - However, compensation still has to be within FMV
  - Permits organizations to reduce a provider's fixed salary in future years if not met
- Doesn't apply if:
  - Patient expresses a different preference
  - Patient's insurer determines a different provider, practitioner or supplier
  - Referral is not in the patient's best medical interests
- Facilitates the transition from a fee-for-service ("FFS") dominated payment system to one based on value
  - An important component of physician-alignment is compensation tied to organizational goals
- Organizations must continue to use caution in how the formula is established
  - Recommend creating a bonus pool where the pool is funding is based on the volume/value of referrals
  - Cannot interfere with patient choice

CMS has now EXPRESSLY said you cannot rely on SURVEY SAYS!

# Impact of COVID-19 Compensation

- Stark blanket waivers permitted organizations to:
  - Provide compensation above or below FMV
    - Including office space or equipment rentals
  - Removed incidental payment and non-monetary compensation caps
  - Provide free services (e.g. childcare, clothing, meals, etc.)
  - Adopt arrangements prior to writing and signature
- While the regulatory burden has been lessened, many organizations faced significant financial losses and had to make difficult choices
  - Sampling of outcomes:
    - **72% of physicians experienced a reduction in income[1]**
    - Reductions and suspensions to physician and other employee retirement and CME[2]
    - As of June 2020, 266 hospitals had furloughed employees[3]
  - Some organizations expanded access to low-cost support like mental health services; however, what will our providers remember?

1. 2020-Survey-of-Americas-Physicians_Exec-Summary.pdf (physiciansfoundation.org)
2. PRESS RELEASE | Annual results from SullivanCotter's Physician Compensation and Productivity Survey | SullivanCotter
3. 266 hospitals furloughing workers in response to COVID-19 (beckershospitalreview.com)

# COVID-19's Impact on Physician Wellbeing & Burnout

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**58%**
of physicians often have feelings of burnout, up from 40% in 2018[1]

**18%**
of physicians have increased their use of drugs and alcohol as a result of COVID's impact on their employment situation[1]

**37%**
of physicians would like to retire in the next year[2]

**30%**
of administrators have lost one or more physicians[3]

1. The Physicians Foundation 2020 Physician Survey: Part 2 | The Physicians Foundation
2. 2020-Survey-of-Americas-Physicians_Exec-Summary.pdf (physiciansfoundation.org)
3. COVID-19 is exacerbating physician retention and burnout. Here are some tips to address it | FierceHealthcare

# Physician Engagement & Alignment Is Waning

**69%**
of physicians are actively disengaged[1]

**83%**
of physicians reported their employer had no physician retention program as compared to 30% of administrators[1]

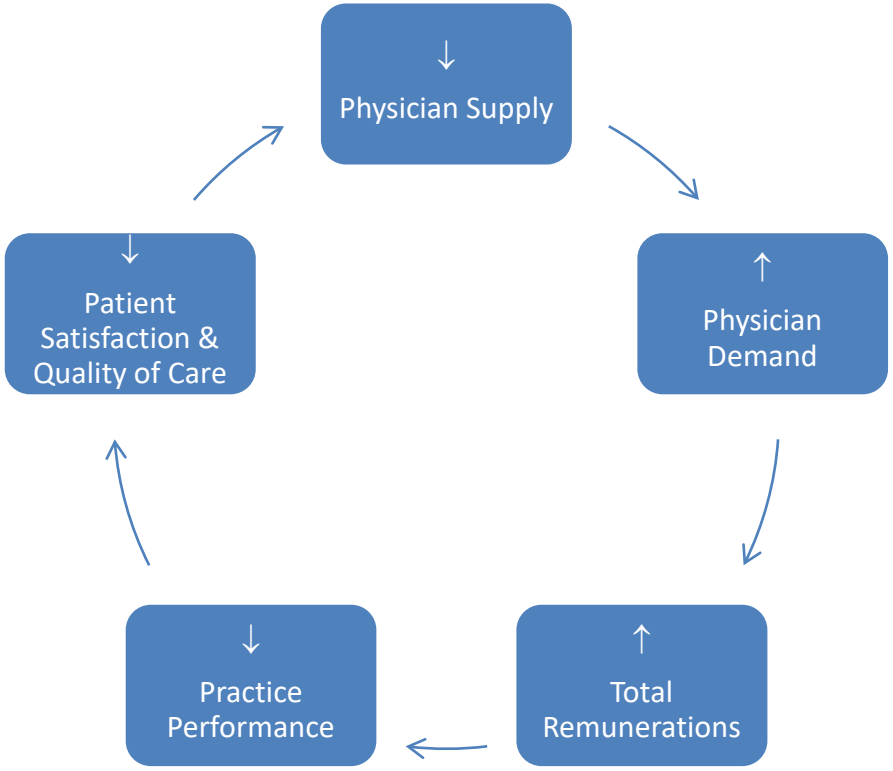
**32% & 29%**
of physicians indicate lack of respect and insufficient compensation/ reimbursement is a primary reason for burnout[2]

**41% & 55%**
of employed physicians do not understand the operational metrics to achieve VBR goals and do not understand the impact to compensation, respectively[3]

1. COVID-19 is exacerbating physician retention and burnout. Here are some tips to address it | FierceHealthcare
2. Medscape National Physician Burnout & Suicide Report 2020: The Generational Divide
3. Physician employment in the COVID-19 era | McKinsey

# Impacts of Disengagement & Burnout

- If burnout and succession planning is not managed, we can expect the following short-term impacts:
  - Reduction in physician supply as physicians exit the workforce
  - Increase in physician demand as organizations compete for a smaller pool of candidates
  - More competitive recruitment environment
  - New (and increased) standard for total remuneration and compensation
  - Reduction to practice financial and operational performance (temporary or sustained)
  - Reduction in patient satisfaction and quality of care



# SO WHAT SHOULD ORGANIZATIONS DO?

# So What Should Organizations Do?

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- Continue under the 2020 Physician Fee Schedule for wRVU calculations.
- Continue under the 2020 PFS for a partial year (most commonly through June 2021)
- Adopt 2021 PFS
  - Adjust productivity incentive thresholds
  - Adjust wRVU compensation conversion factor
  - Adjust both
- Examine in the context of a larger compensation strategy
  - What type of protective language is in your contracts?
  - What will you do regarding future CMS changes?
  - How do you engage with your providers about compensation now?

# How Might Organizations Respond?

## Short-Term

- "Status quo"
  - Continue under the 2020 PFS for wRVU calculations
  - Continue under the 2020 PFS for a partial year (most commonly through June 2021)
- Make changes
  - Adopt 2021 PFS
  - Adjust productivity incentives and/or wRVU thresholds

## Planning for the Future

- Examine CMS PFS and COVID-19 impacts under the context of a larger total remuneration and physician recruitment/development plan
- Key considerations:
  - Does your organization have a:
    - Total remuneration & compensation strategy?
    - Provider retention, recruitment & development plan?
  - What type of protective language is in your contracts?
  - What will do you when faced with future CMS changes?
  - How do you engage providers around compensation now?
  - Are you aligned with your providers?

# Questions to Ask

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- Is the physician impacted by the deferral of elective/non-essential procedures?
- Are the physician's services essential to the treatment of COVID-19 patients?
- Is a physician impacted by a "stay at home" order?
- **Will compensation be impacted by more than 15%?**
- Does telemedicine consults mitigate the change in physician comp?
- Was the physician redeployed to another service line? Could they be?
- Would the loss of the physician create any defaults?
- Could you lease the employed physician to another entity?
- Will the lack of the physician's service substantively disrupt the day-to-day operations of an entity?
- Are there no ways to expand the credentials of the physician to mitigate the loss of his/her compensation?
- **Will there be significant relocation/recruitment costs associated with replacing the physician if he/she were to leave after the ban on elective/non-essential procedures is lifted?**
- Would the intended economic support for the physician be the only payment for the physician's work effort (e.g., there is only one payment for a re-scheduled elective procedure, either now or in the future) during the COVID-19 pandemic?
- **Is it feasible for the physician to be able to leave and replace his/her desired income in the present situation?**

# The Transition to Value-Based

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Value-Based Reimbursement (VBR) will have a direct impact on how we compensation physicians and APPs

Where is your organization on its transition to value?

Where is your organization in its compensation model?

- Base salary only?
- Quality incentives?
- Payment for administrative duties?
- Productivity incentives?

What do physicians in your area expect?

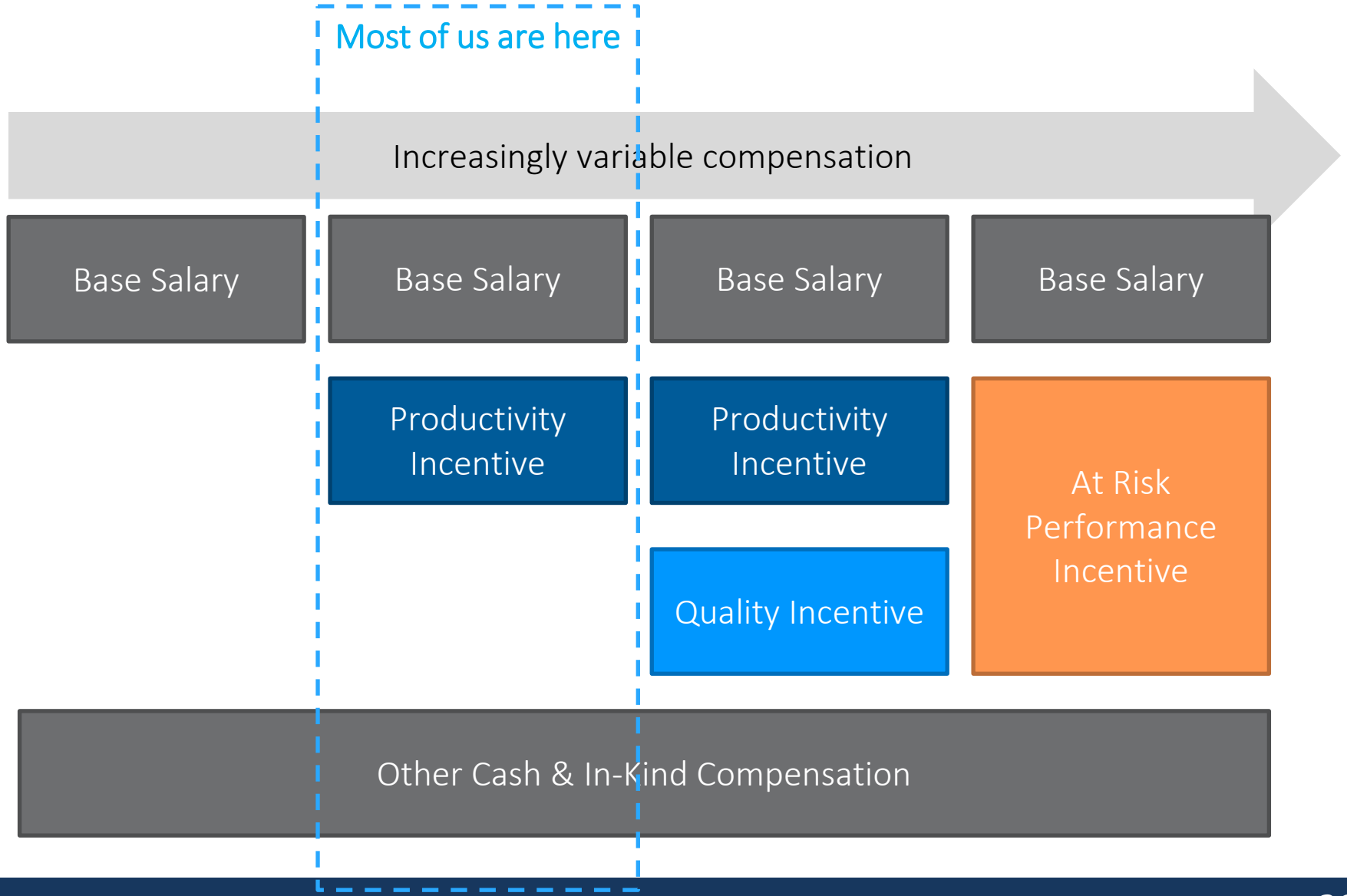
- What is Allina Health doing?
- What is Banner Health doing?
- What is Aurora doing?

# Contract Compliance = Good Hygiene

- Consistent documentation
- Guardrails for the outliers
- Identify your high-risk contracts
- Put in place a contract audit policy

Source: https://www.aanp.org/legislation-regulation/state-legislation/state-practice-environment

# Transition of Compensation Scheme



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