



Integrated Healthcare Strategies
ARTHUR J. GALLAGHER & CO.

BEST COMPENSATION ADMINISTRATION PRACTICES

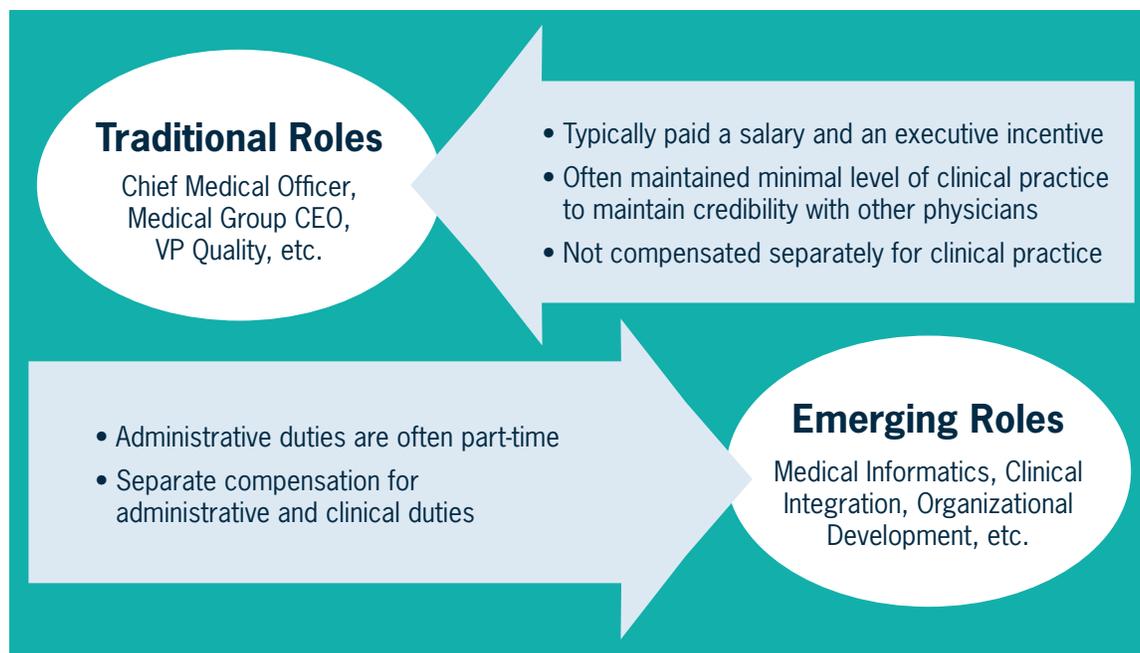
REDUCE RISK FOR PHYSICIAN EXECUTIVE ROLES



At first glance, the current healthcare trend, where systems place successful, productive, practicing physicians into part-time executive leadership roles, makes a lot of sense. These physicians are well-regarded strong performers and have the expertise and authority to influence change, in a time where change is widespread and ongoing. We commonly observe that many systems have physicians who are combining a very productive clinical practice with leadership for strategic initiatives that affect the long-term goals of the system.

With new approaches—even those targeting specific strategic and operational opportunities—come new administrative challenges. This document is an aggregate of best compliance practices found across the industry that will mitigate the risk inherent in the pay structure for these roles.

THE EMERGING ROLE OF PHYSICIAN EXECUTIVES

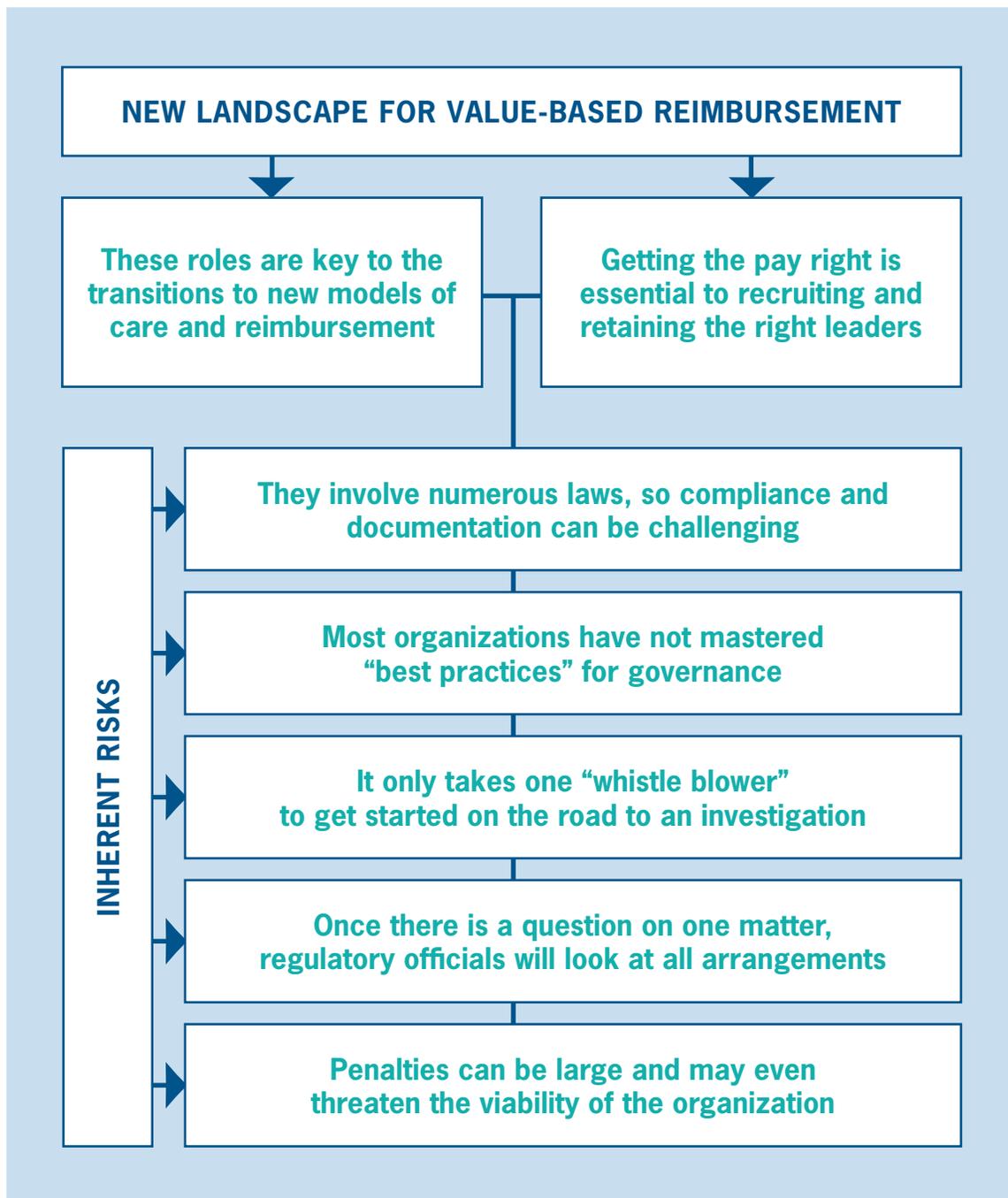


Ten years ago, many health systems had only a handful of physicians in executive roles—the Chief Medical Officer and perhaps the head of quality or the head of the medical group. Most of the time, these physician leaders worked as full-time executives, or perhaps only worked a few days in clinic each month to maintain skills and credibility among their physician peers. Typically, they were paid as executives in a very straightforward manner—base salary with executive incentives and benefits.

In line with the current trend, Integrated Healthcare Strategies (Gallagher Integrated), a division of Gallagher Benefit Services, Inc., has worked with clients that have physicians serving in not just the traditional roles, but also in other functions like diverse population and accountable care health ventures, medical informatics, patient experience initiatives, clinical integration, organizational development, and community relations, to name just a few.

These emerging roles are high profile both within the organization and to external regulatory agents and they warrant careful governance practices.

WHY GOVERNANCE FOR NEW EMERGING ROLES WARRANTS CLOSE ATTENTION



One aspect of the regulatory risk involved with these types of roles stems from the fact that to fulfill both a demanding clinical schedule and the duties involved with a high-level executive role, these physician executives often will work upwards of 60 to 80 hours—or more!—per week. The clinical aspect of their duties is very well documented, as it must be through the EMR and billing submissions.

Very often, however, **the administrative aspect is documented poorly or not at all.** In a recent Gallagher Integrated survey of physician executive roles, only 11% of organizations that employ physicians as part-time executives reported requiring the submission of timesheets to document the administrative time.

These positions are subject to the full set of regulations applicable to both executives and physicians, so the risks involved are complex and have serious implications for the entire organization. Some organizations have been found to create these types of roles as a means to deliver compensation to physicians without requiring the administrative aspect be fulfilled, and so these roles often receive attention from regulatory agents. With strong documentation of clinical time and little or no documentation of administrative time, external reviewers may come to ask **how the administrative duties could be possible in the context of the heavy clinical schedule documented.**

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The risks involved with these roles are varied due to the several laws regulating pay for physicians and executives:

- There may be threats to **tax-exempt status.** Usually this occurs on a local level, where distressed municipalities are seeking to increase property tax revenues. In their efforts, these municipalities have focused on issues related to private inurement.
- There may be risk of **Intermediate Sanctions.** Intermediate Sanctions are triggered by any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. If founded, Section 4958 of the Internal Revenue Code imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization. Though not common, the loss of the Federal tax-exempt status is possible.
- **Stark Law, Anti-Kickback Statute, and False Claims Act** violations stemming from physician compensation issues can lead to lengthy investigations and very large penalties. **In some cases, the penalties have been so large as to threaten the viability of the organization.** In June 2015, the Office of the Inspector General (OIG) issued a “Fraud Alert” demonstrating its ongoing interest in pursuing cases where arrangements fail to reflect fair market value for bona fide services the physicians actually provide.

To manage the variety of risks involved, many organizations are working to develop best practices and frameworks for governing the complex rules for paying leaders doing both clinical and executive work. These frameworks help the organization appropriately compensate key leaders while minimizing the risk of Intermediate Sanctions, Stark and Anti-Kickback penalties, and other compliance issues.

BEST PRACTICE FRAMEWORKS HELP ANSWER QUESTIONS LIKE:

When does a physician executive's pay need to be reviewed and approved by the compensation committee?

What type of administrative duties makes the physician an executive as opposed to a medical director?

What documentation is required?

How often should job descriptions for these roles be evaluated and updated?

Should these physician executives participate in executive incentive plans and benefit programs?

Should the arrangement be documented in a contract that is reviewed and renewed annually?

These evolving roles are critical to meeting the challenges of healthcare reform and population health. Getting pay right is important to recruiting and retaining the best physician leaders. **Getting governance wrong can expose the organization to significant risk.** Implementing a best practice framework is a first step towards managing **the risk that extends to the individual physicians, their managers, the Board of Trustees, and to the organization as a whole.** As OIG attention to these issues is on the increase, good stewardship requires that these important compliance matters be addressed.

To assist in creating and maintaining the governance and compliance processes so crucial to minimizing this risk, Gallagher Integrated is prepared and available to aid in creating the best practice framework that's right for your organization. **As an example, some of the best practice processes for governing these types of roles are listed at the end of this article.** This list may serve as a starting point for discussions regarding the current administrative practices and opportunities for improvement at your organization.

Getting governance wrong can expose the organization to significant risk

Another step organizations can take to reduce the risk inherent in compensation for these roles is the use of appropriate peer group compensation benchmark data when establishing payment arrangements. In addition to providing customized analyses, Gallagher Integrated publishes several surveys each year that provide compensation data for these types of roles:

- The Medical Director and Physician Executive Survey
- The National Healthcare Leadership Compensation Survey Report

Responsible stewardship requires a holistic strategy that includes a comprehensive system for peer group benchmarking, contemporaneous documentation, ongoing review, and regular audits. **That can be difficult both administratively and culturally to implement and maintain.** Gallagher Integrated knows how to guide your organization as it works to create and fine-tune these processes to be aligned with the best practice models.

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BEST ADMINISTRATIVE PRACTICES THAT MITIGATE RISK FOR PHYSICIAN EXECUTIVE ROLES

A Checklist for Your Organization

- The organization clearly documents the expected administrative duties and expected outcomes
- Management documents an objective evaluation of the performance of these duties and the outcomes, as would be conducted for any executive
- There is an annual assessment of the continuing commercial need for the specific administrative structure and documentation of the assessment and findings
- There is documentation of administrative time by the physician demonstrating the date and time of the administrative activity and the specific nature of it (evidence that the substance of activities are appropriate when compared to the expected duties as defined by the organization and by the external benchmarking)
- There is a regular management review of the physician's documentation which assures that the substance of the activities and the time spent completing them meets the expectations for the specific role and is consistent with stated policies for these types of roles
- Management provides regular instruction to Physician Executives on how to improve documentation
- There is documented corrective action by management when warranted after management review
- There is documentation of correction(s) to pay for not meeting requirements of time or substance
- There is a regular audit for these types of roles to assure that billing for clinical activities did not occur at the same time administrative work was documented to occur
- The organization caps clinical pay so as to not incent excessive production which would impede the ability to perform the administrative duties