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INNOVATIVE HEALTHCARE SOLUTIONS

Pooled Compensation

Advantages, Legal & FMV Considerations

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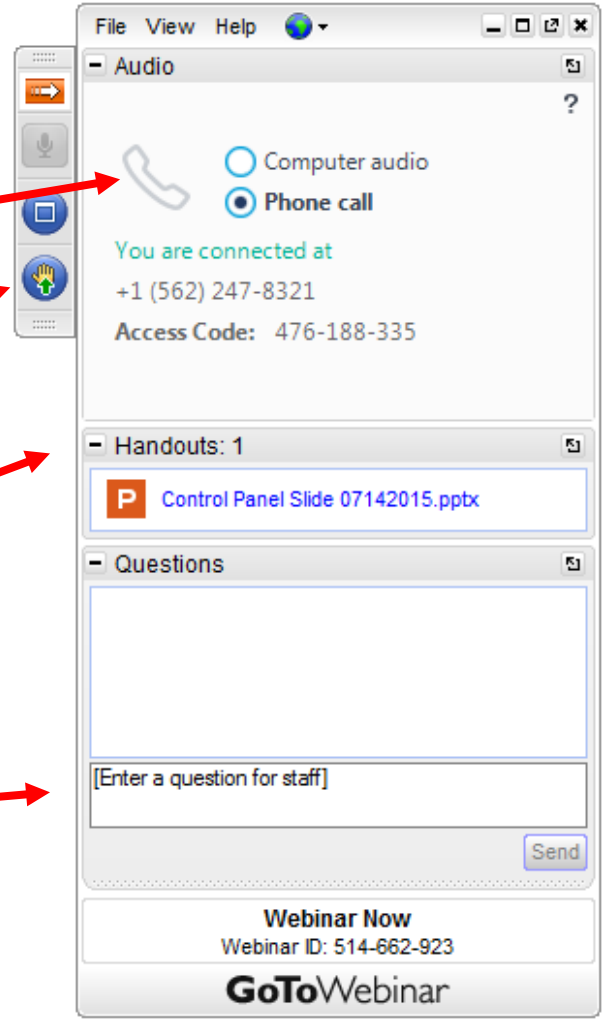

Disclaimers

- This webcast looks generally at the physician compensation legal landscape and cannot predict or presume all unique scenarios and circumstances for provider / hospital relationships
- Content matter necessarily confronts Stark, Anti-Kickback and Fraud & Abuse statutes, along with Fair Market considerations
- Participants should not move into physician compensation arrangements without appropriate legal and FMV consultations

What we'll cover

- Define pooling
- Peer data around pooling
- Benefits & barriers
- Fair market value & risk considerations

What is “pooled compensation"?

Practical definition

- Aggregating the total amount available for physician compensation into a single bucket
- The single bucket is then allocated to individual physicians via a defined Internal Distribution Plan (IDP)
- Can be utilized in private groups or employment models

Pooled comp  Equal split

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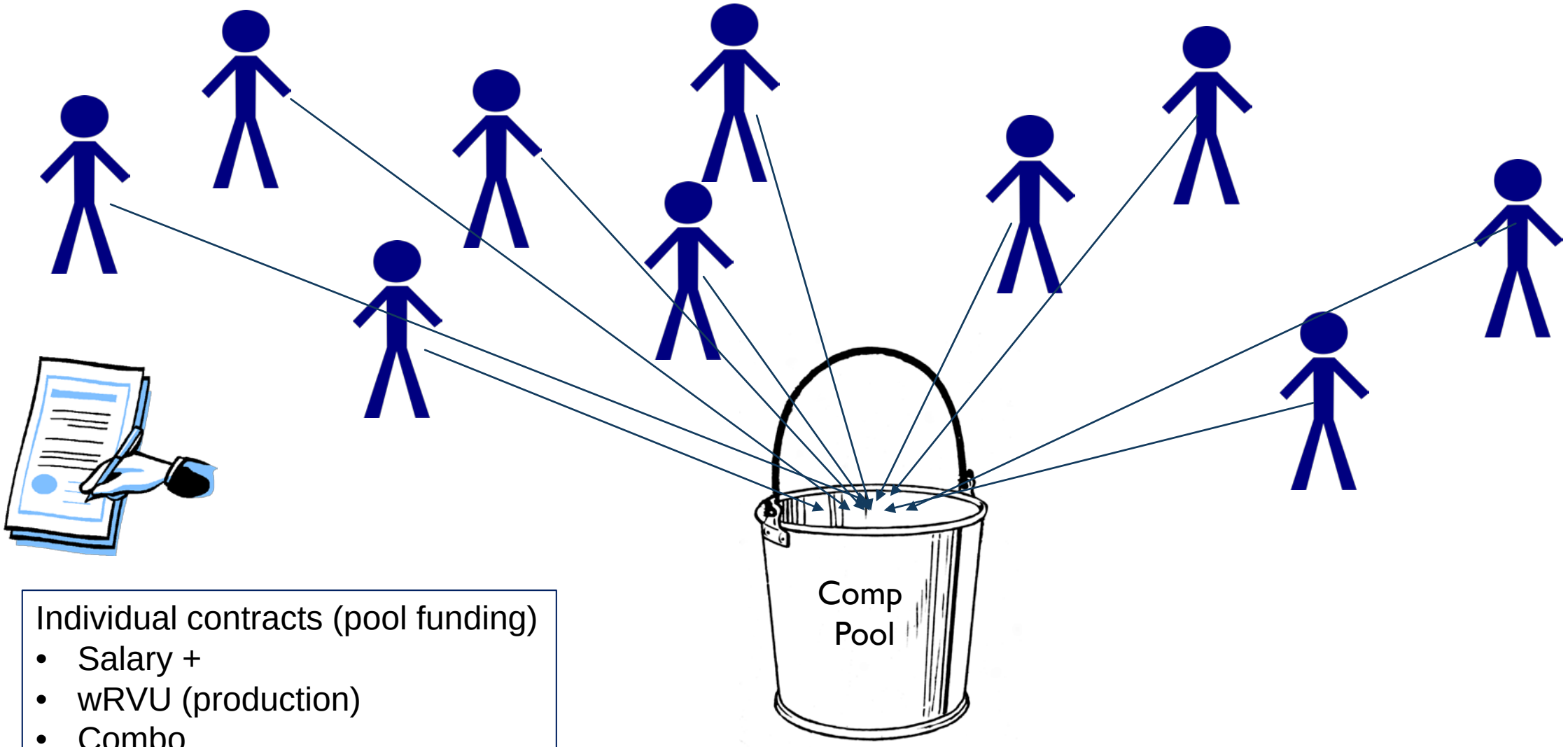
Integrated (employment) model



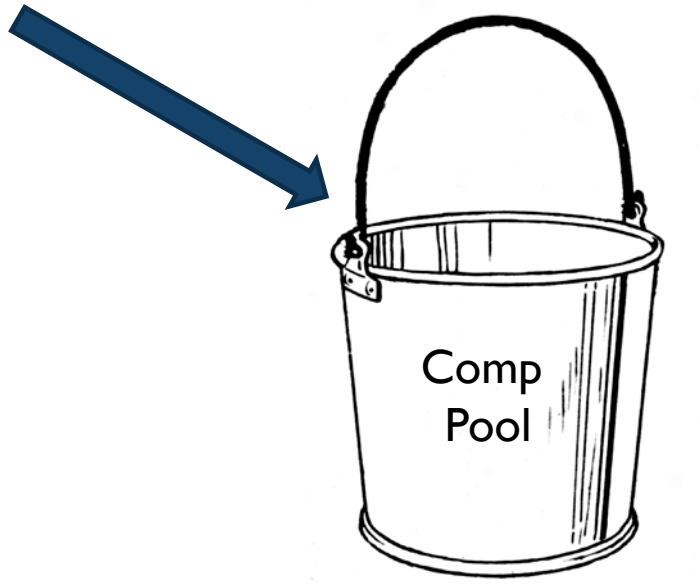
Individual contracts (pool funding)
- Salary +
- wRVU (production)
- Combo

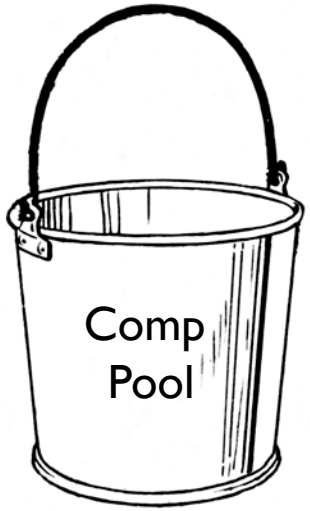
Private group model

Revenue

- Expenses

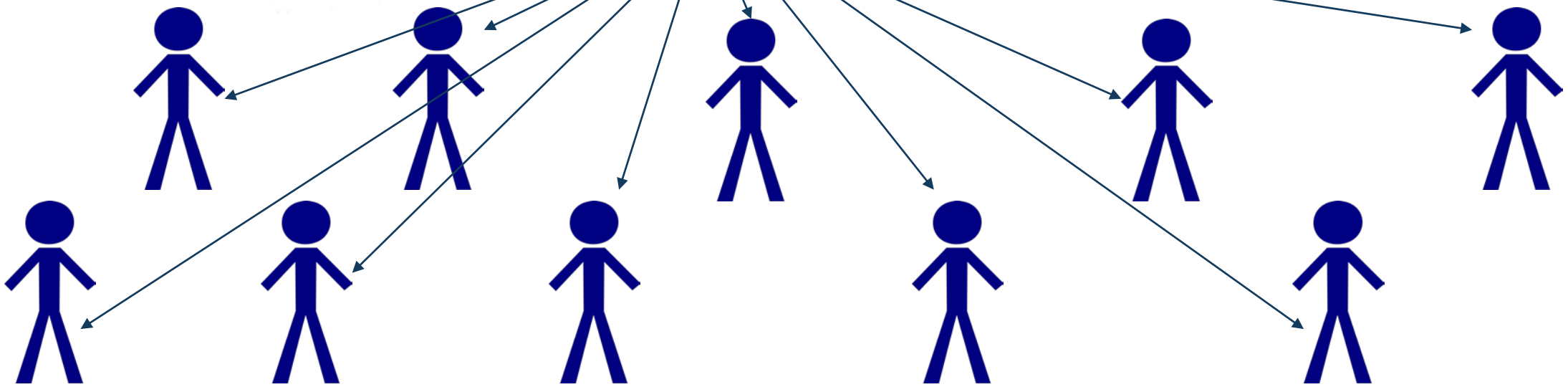
Physician Comp





$$x = \frac{-b \pm \sqrt{b^2 - 4ac}}{2a}$$

IDP



Peer data on IDPs

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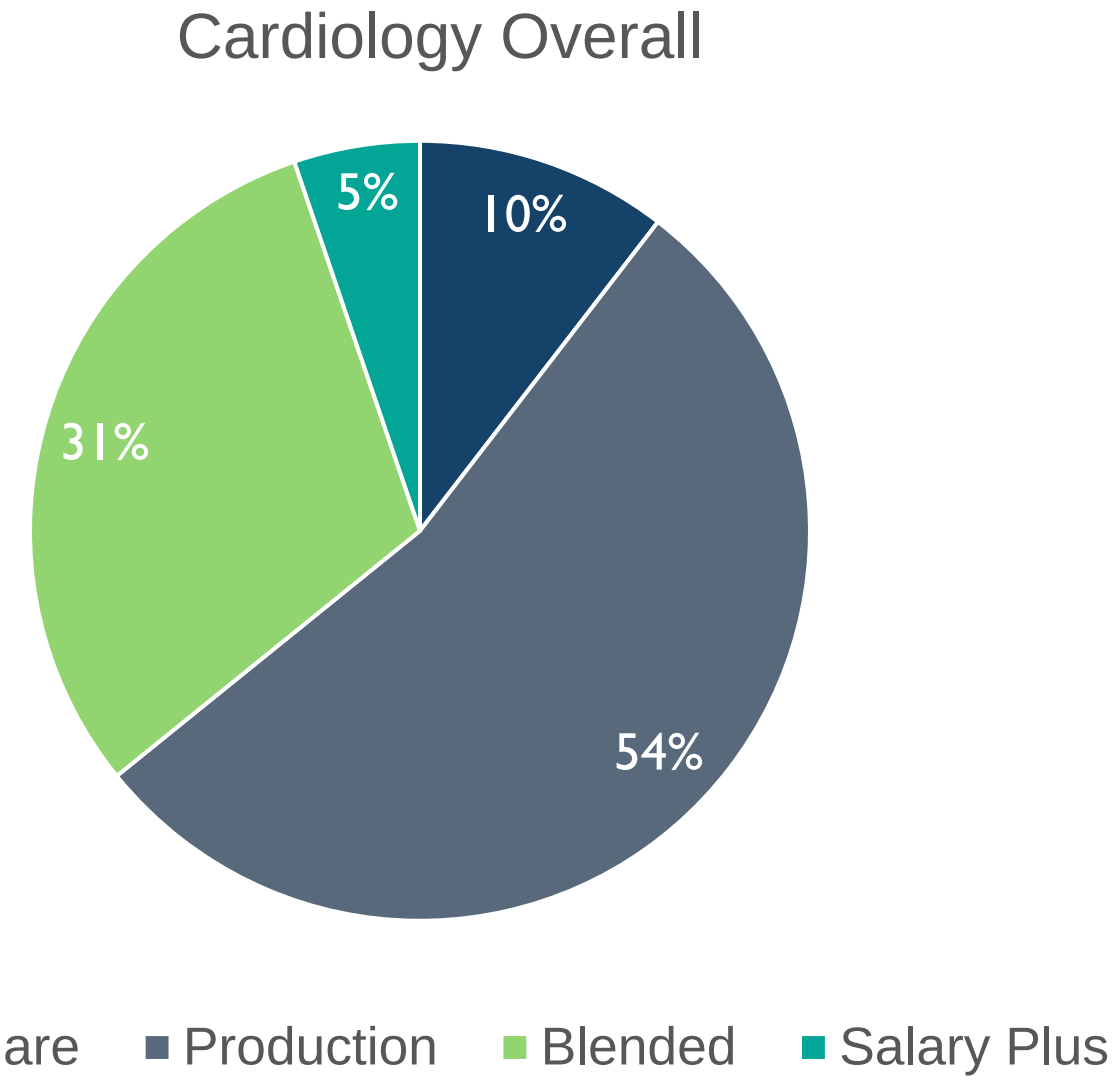
Peer data on distribution



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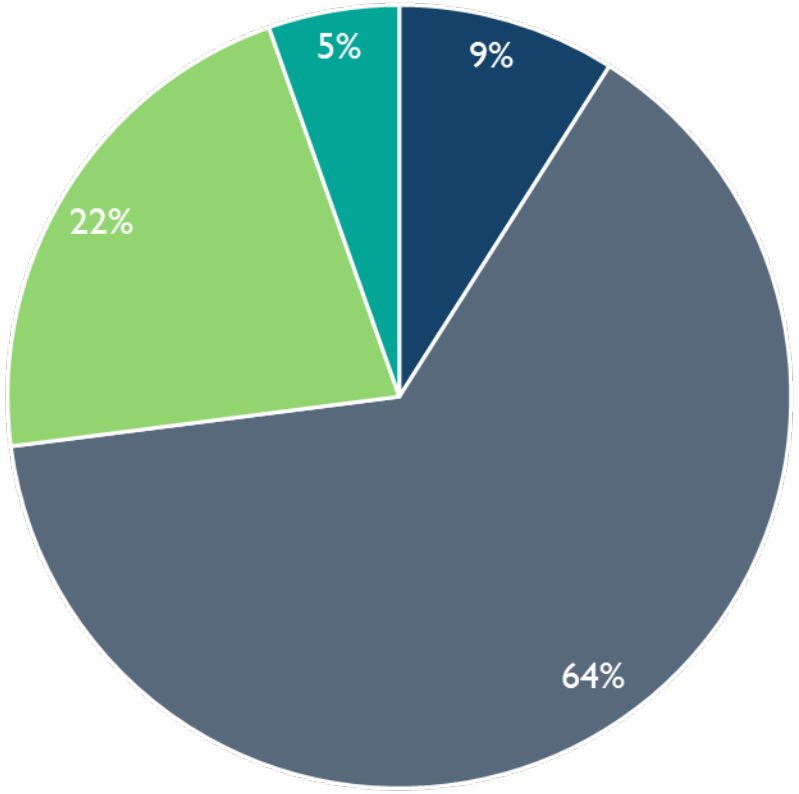
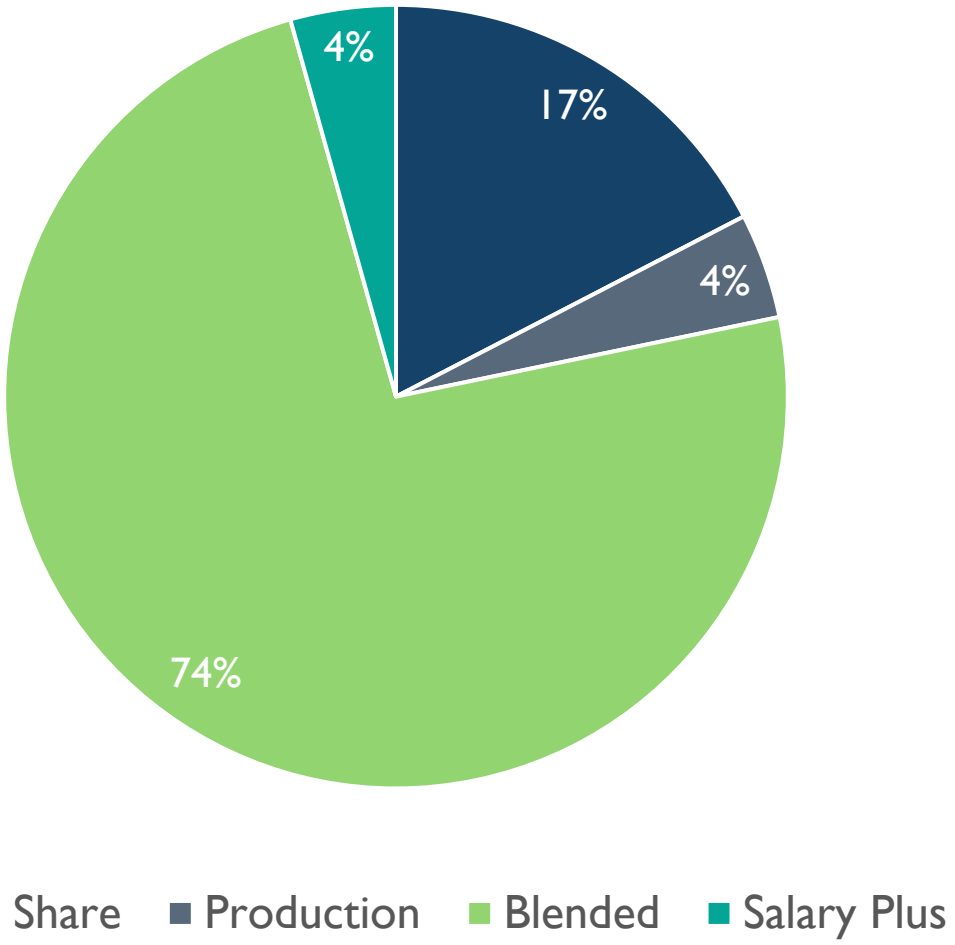
Peer data on distribution

Integrated



Private



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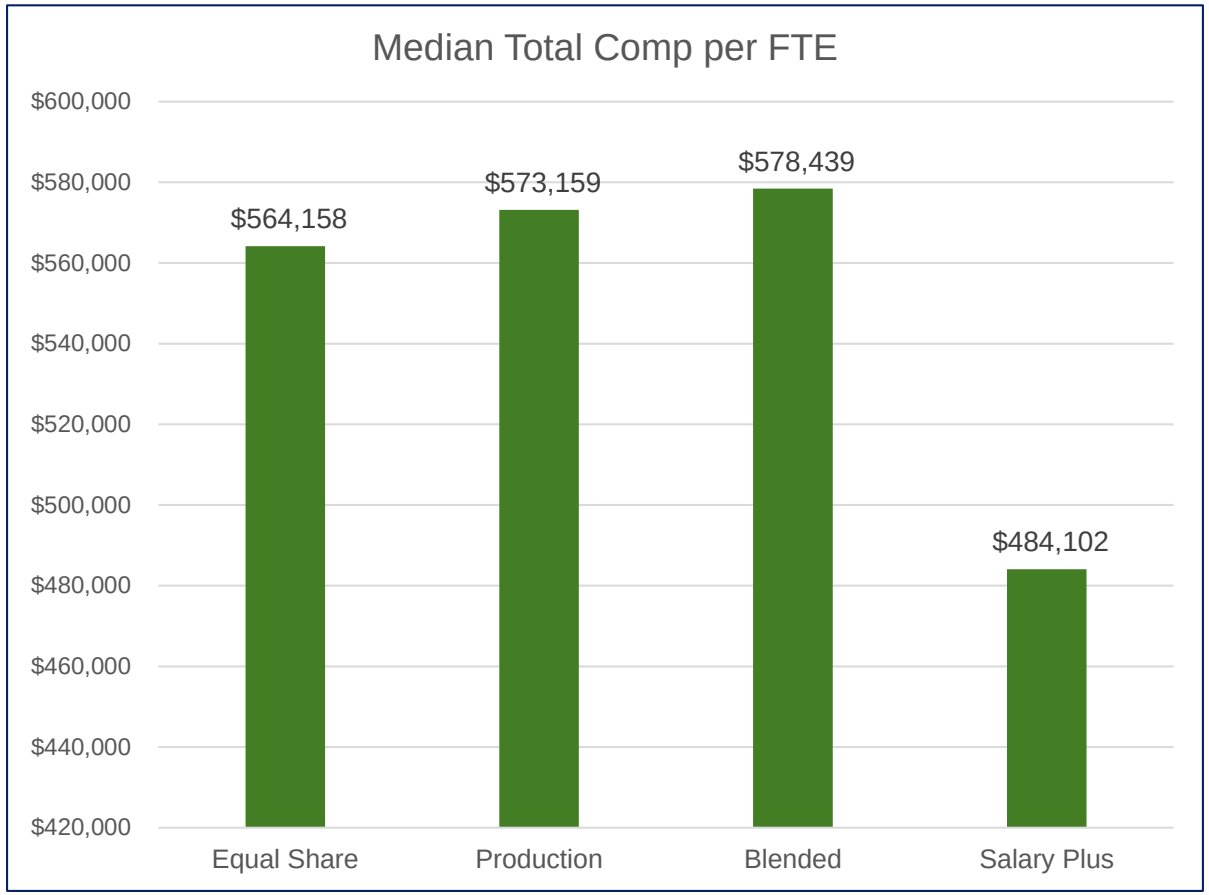
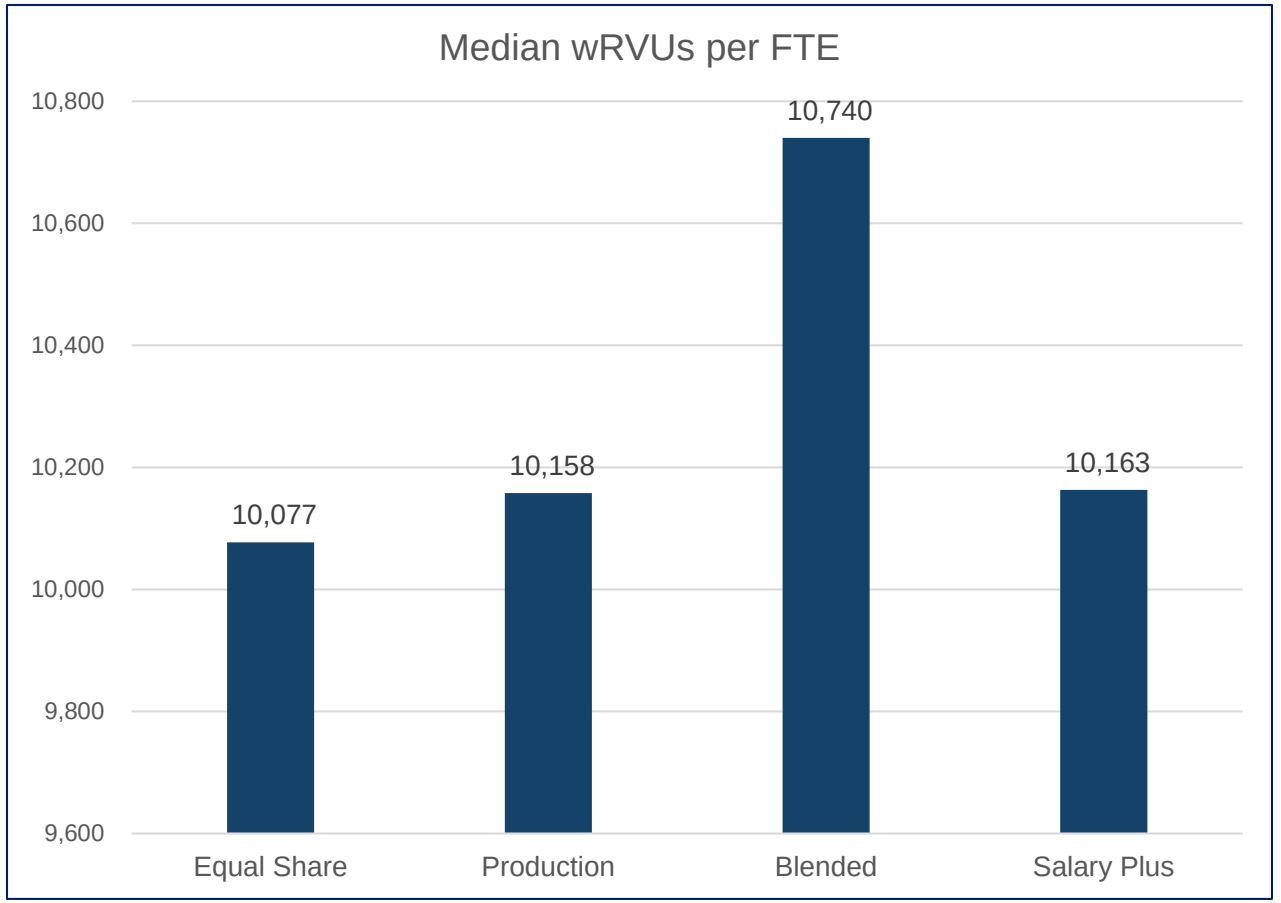
Peer comparisons by IDP





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Peer relationship data

TABLE 4 – Median Values by Quartiles ©MedAxiom

QUARTILE	wRVUs	TOTAL COMP	COMP/ wRVU
Q4	15,130	$726,023	$47.91
Q3	11,040	$594,645	$53.33
Q3	8,647	$528,197	$61.39
Q1	5,385	$350,000	$67.49

QUARTILE	TOTAL COMP	COMP/ wRVU	wRVUs
Q4	$795,257	$60.42	13,507
Q3	$614,963	$58.70	10,408
Q2	$492,099	$54.25	8,931
Q1	$300,000	$47.45	6,097

QUARTILE	COMP/ wRVU	TOTAL COMP	wRVUs
Q4	$79.39	$599,974	7,311
Q3	$61.01	$587,090	9,706
Q2	$50.99	$565,585	11,147
Q1	$36.91	$426,105	12,107

Independent variable shaded in
(Q4 = top 25%, Q3 = 51-75%, Q2 = 26-50%, Q1 = bottom 25%)

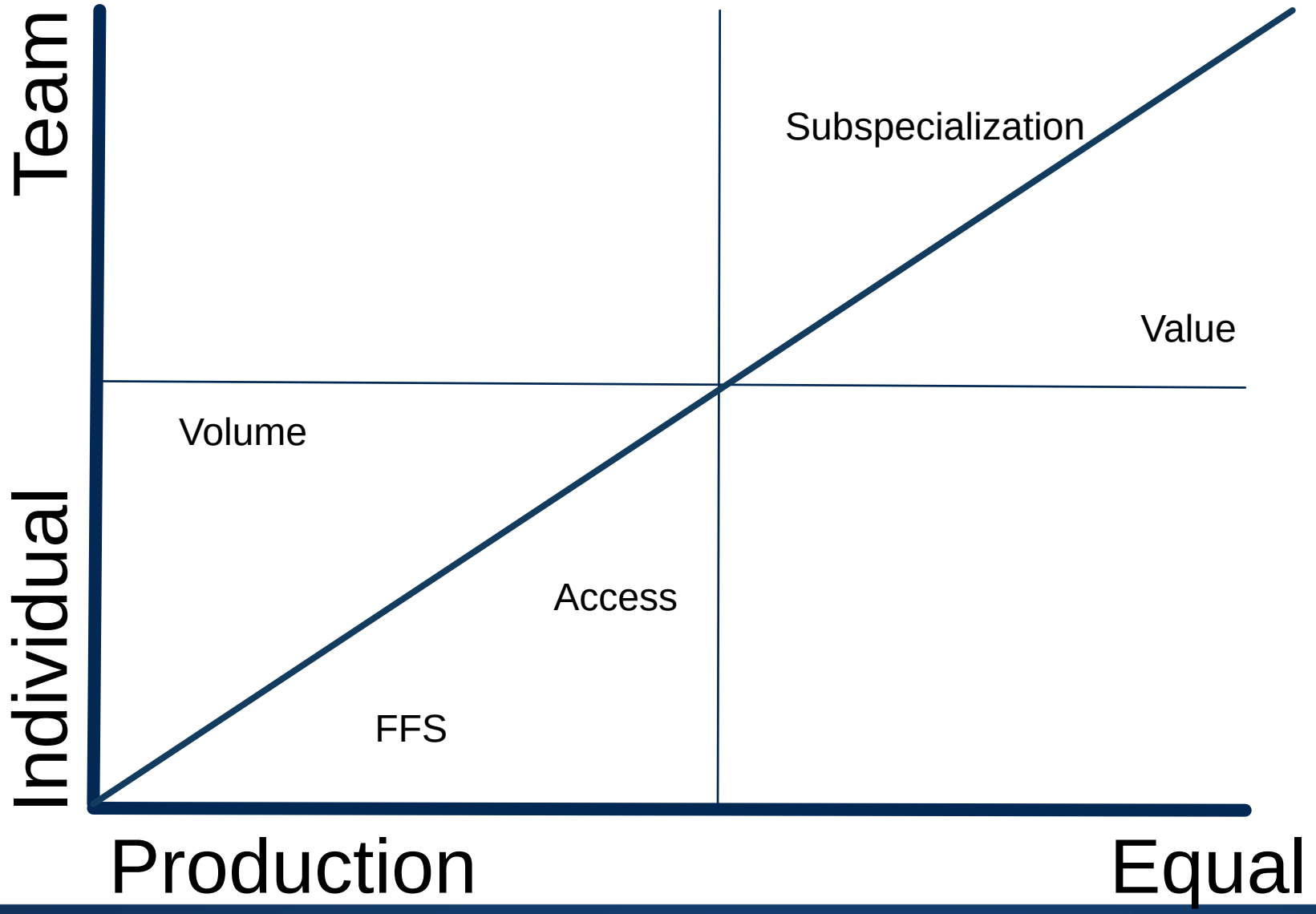
Inverse relationship b/w wRVUs & comp/wRVU

Strong relationship between production & comp

Benefits to pooling

- Allows physicians to determine connection between “work” and comp
  - Myriad aspects to “work”
- Ability to “fix” disconnects in RBRVS (wRVU) system
  - e.g. Heart failure specialists
- Ascribe a value to call
- Infinite options

Matching comp to culture



Barriers to pooling

- Must be “negotiated” internally
  - Enemy comes in the room
- Zero sum game
  - Money can neither be created or destroyed!
- Misunderstandings and/or meddling of employer
- Misunderstandings on resulting comp/wRVU

IDP truths

- There is no perfect formula, or perfect alignment of incentives
- “Fair” is defined by the individual(s)
- No formula will yield the current results EXCEPT the current formula
- There are tradeoffs for nearly every desire

More truths

- Responding to incentives (or the lack of) is not evil; it's human (evolution?)
- Every comp plan can cause self-serving behavior (see above)
- It's nearly impossible to consider every "unintended consequence"
- Comp is not a surrogate for governance & leadership

Review of the legal landscape

The Stark Referral Prohibition

- If a ***physician*** (or his/her immediate family member) has a ***financial relationship*** with an ***entity that provides designated health services ("DHS")***, then:
  - The physician may not **refer** DHS to the entity for which payment may be made by Medicare; and
  - The entity may not bill Medicare for any DHS referred by the physician
  - Unless the financial relationship falls within an exception.

Designated Health Services

- Designated Health Services ("DHS") include:
  - Hospital inpatient and outpatient services
  - Clinical laboratory services
  - Physical therapy, occupational therapy and speech-pathology services
  - Radiology services
  - Radiation therapy services and supplies
  - DME and supplies
  - Parenteral and enteral nutrients/supplies
  - Prosthetics and orthotics devices/supplies
  - Home health services
  - Outpatient prescription drugs

Definition of Referral

- Under Stark, "referral" is defined as "the request by a physician for, or ordering of, or the certifying or recertifying of the need for, any designated health services . . . but not including any designated health services personally performed or provided by the referring physician.
- Definition of "referral" only includes the referral of DHS.

- Frequently Used Exceptions in Cardiology
  - Employment
  - Personal Services Arrangements
  - In-Office Ancillary Services
- Common Elements:
  - FMV
  - CR
  - Volume or value restriction

What is FMV?

- Many services exceptions require that compensation be fair market value ("FMV").
- Stark defines FMV as "the value in arm's length transactions, consistent with the general market value."
- For services agreements, it means "the compensation that would be included in a services agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party."

What is CR?

- Many services exceptions under Stark require that payment be commercially reasonable ("CR") even if no referrals were made between the parties.
- Commercial reasonableness looks to the reasonableness of the business arrangement in general.
- An arrangement is commercially reasonable if the agreement is "a sensible, prudent business agreement, from the perspective of the particular parties involved, even in the absence of referrals."

Employment Exception

- Employment is for identifiable services.
- Amount of remuneration is:
  - (i) consistent with FMV; and
  - (ii) is not determined in a manner that takes into account the volume or value of any referrals by the referring physician.
- Remuneration is provided under an arrangement that would be CR even if no referrals were made to the employer.
- Expressly permits payment of remuneration in the form of a bonus based on services performed personally by the physician.

Pooling and Stark

- Employment Exception
  - Common misconception that employment exception only allows productivity bonuses with respect to services personally performed by employed physicians.
  - The employment exception, however, actually permits the physician's compensation to TIA the volume or value of "other business generated" (e.g., non-DHS ordered by an employed physician performed by others).
  - Limitations:
    - FMV – applied to total physician compensation
    - CR – arrangement would have to be reasonable in the absence of referrals
  - Practice Point:
    - Exclude DHS, or limit to a direct allocation of DHS personally performed

Personal Services Exception

- Arrangement must be set out in writing;
- Arrangement covers all services to be furnished by the physician;
- Aggregate services covered by the arrangement do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement;
- The duration of the arrangement is at least 1 year;
- Compensation is set in advance, FMV, and not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

In-Office Ancillary Services

- Permits physician to provide certain services (e.g., lab tests, X-rays, physical therapy) that are ancillary to the physician's care.
- Must be part of a "group practice."
  - Single legal entity
  - Each physician in GP to furnish "full range of care" that physician routinely furnishes through GP
  - At least 75% of patient care services rendered by GP members furnished through GP and billed by GP
  - GP members must personally perform at least 75% of physician-patient encounters
  - Overhead expenses and income must be distributed according to methods determined before receipt of payment resulting in overhead income

In-Office Ancillary Services

- Must be a group practice (continued)
  - Unified business:
    - Centralized decision making body
    - Body to effect control over GP's assets, liabilities, budgets, compensation
    - Consolidated billing, accounting and financial reporting
  - Overall profits from DHS distributed to members of GP or GP component of at least 5 physicians in manner not directly related to volume or value of referrals. Safe harbors:
    - Per capita;
    - Based on distribution of non-DHS revenues; or
    - Less than 5% of GP revenue and each physician's total compensation

Group Practice

- Profit sharing and productivity bonuses:
  - Overall profits:
    - Physician in GP may be paid share of overall profits, provided that the share is not determined in any manner that is directly related to the volume or value of referrals of DHS by the physician.
  - Productivity bonus:
    - Physician in GP may be paid a productivity bonus based on services he/she personally performs, or services "incident to" such personally performed services, or both, provided that the bonus is not determined in any manner that is directly related to the volume or value of referrals of DHS by the physician.

FMV considerations with IDPs

The "Typical" FMV Approach

- Key metrics reported at the individual level
- FMV evaluated based on each physician's results
- Minimal or no consideration given to how collaboration impacts each individual

Individual Effort May Not Explain Service Value

Time per WRVU

- Certain procedures generate more WRVUs per hour
- WRVUs are only a proxy for value

Collaboration

- Multiple providers means different types of work
- If focused on outcomes, individual "production" is less relevant

Volume to Value

- Value creation not tied to single person or activity
- Outcomes more important than activities

Use of APPs

- APPs can function as both extenders and providers
- Limited ability to differentiate APP impact on physician productivity

Individual

FMV is assessed based on individual effort when that effort is directly related to a) the value received by the employer, and b) the manner in which the market recognizes the service's value.

If individual effort is indirectly related to service value recognized by the market, group effort must also be considered. This principle is most apparent when pursuing individual incentives limits achievement of organizational goals.

Group

Innovation | Quality | Recognition | Collaboration

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FMV in pooled models can be measured at the group level, taking into account the various factors influencing service value

1. Distinguish between funding and distribution, where funding is an aggregate FMV consideration

2. Distribution to individual providers is based on apportionment of total service value

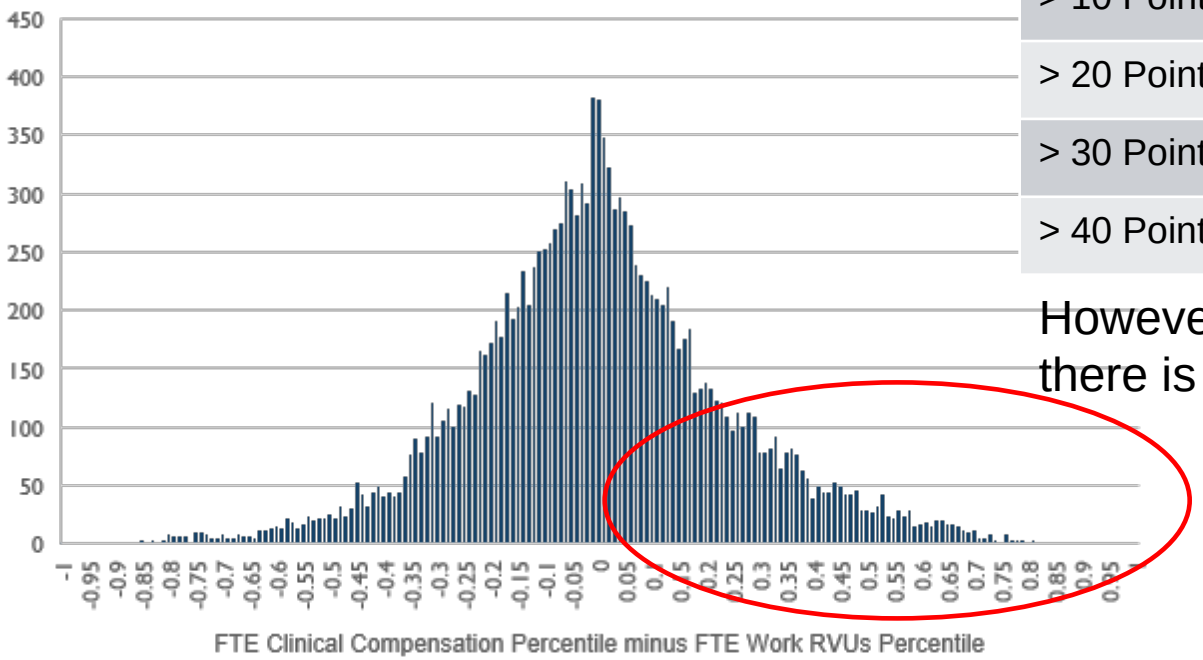
3. The distribution formula measures each individual's performance, based on measures which providers are fully accountable to achieve

4. The intentional and necessary deemphasis on individual performance measures necessitates a more qualitative assessment than traditional FMV analysis

Although WRVUs and compensation are highly correlated, it is common in surveys for individual variation to occur, even or especially among the highest paid cohort

Percentile Difference	Random	All Survey	TCC > 75th %ile
> 10 Points	80%	61%	58%
> 20 Points	64%	36%	33%
> 30 Points	50%	22%	24%
> 40 Points	36%	12%	14%

As a matter of statistical probability, FMV cannot be established based solely on the compensation to WRVU relationship at the individual level.



Percentile Difference	Individual	Group
> 10 Points	61%	39%
> 20 Points	36%	20%
> 30 Points	22%	9%
> 40 Points	12%	6%

However, at the group level, there is a closer relationship.

WRVUs are 6% to 8% higher

Compensation per WRVU is 10% to 14% higher

Pooled Structures Vs. Individual Production

Physicians in pooled models earn a greater percentage of compensation from risk pool distributions

APPs are 20% to 25% more productive

Aggregate FMV generally must take into account compensation from all sources in consideration of all types of work performed.

Each provider's compensation limited to apportionment of the FMV pool, and that any distribution subject to commercially reasonable methods.

Q&A

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