



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

CONTRACT OVERSIGHT NOTIFICATION (2013-N-0002)

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Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Health Care District Trauma Surgical Contracts

ISSUES

An OIG review of the Health Care District's fiscal year 2011 contracts for trauma surgery groups revealed that aggregate compensation (including per diem¹ rates), exceeded fair market value by \$1.36 million, or 42%.

The Health Care District ("District") subsidizes the trauma centers and the physicians who provide trauma services to the Palm Beach County trauma system. The District's Trauma Agency ("Trauma Agency") is responsible for overseeing the operations of the trauma system, and specifically issuing payment to contracted entities. Beginning in 1991, two hospitals were designated as trauma centers, St. Mary's Medical Center (SMMC) and Delray Medical Center (DMC). Subsequently, Tenet Healthcare, a private, for-profit health system, began operating both trauma centers. The District enters into agreements for the provision of trauma surgical specialties as required by the Florida Department of Health Trauma Standards to provide trauma care at the trauma centers.

The OIG reviewed agreements with two trauma surgical groups that were in effect during the period of October 1, 2010 through September 30, 2011 (FY 2011) to evaluate how the District "Trauma Physician" agreements' contracted per diem rates compared to fair market value (FMV). The District has a Policy & Procedure titled *Physician Arrangements* ("Policy") that requires the use of a FMV survey, or other documentation, to support per diem rates when developing physician employment arrangements².

Health Care District Policy

On February 24, 2010, the District enacted the Policy which states that it "applies to the Health Care District of Palm Beach County ("District"), specifically, Lakeside Medical Center, E. J. Healey Center, School Health, Aeromedical, **Trauma**³ (*emphasis added*), and Managed Care." The purpose of the Policy is to "establish procedures for requesting, drafting, reviewing and approving physician arrangements..." Moreover, the Policy states, "physician employment arrangements are undertaken only when the District has a legitimate need for a physician to provide the type and quantity of services contemplated by the employment arrangement to promote quality, cost-effective care or

¹ Per diem is an amount paid by the day (24 hours) for call coverage.

² The District's Policy defines Physician Arrangement as including "new and renewed contracts with a physician or a group practice. Arrangements shall mean every arrangement or transaction that: (1) Involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value; and is between the District and any actual or potential source of health care business or referrals to the District. The term "source" shall mean any physician, contractor, vendor, or agent ...or (2) Is between the District and a physician (or a physician's immediate family member who makes a referral to the District for designated health care services."

³ Although "Trauma" is identified in the Policy, it is noted that in an electronic correspondence to the OIG, District staff stated that Policy did not apply when developing physician per diem contract rates for the Trauma Agency.

to fulfill other legitimate needs of the District;" and, "the remuneration⁴ paid pursuant to all physician employment arrangements is commercially reasonable and consistent with **fair market value**⁵ (*emphasis added*) for the services furnished."

The Policy section titled, "Procedure" contains elements to guide District staff when requesting, drafting, reviewing and approving, new, or existing, physician arrangements (*i.e. contracts*). One element, "Implementation", incorporates four distinct steps:

1. Identify the Need for the Service
2. Project the Number of Hours Required (Part Time Employment)
3. Demonstrate the Professional Qualifications of the Physician
4. Calculate Fair Market Value

Step number 4, Calculate Fair Market Value, states the "District entity may not enter into a physician employment arrangement unless the District entity has objectively determined and documented that the compensation being offered to the physician for the services is consistent with fair market value." Step number 4 provides guidance to District staff when establishing the FMV compensation for physician arrangements whether the services are rendered on a full time, or hourly, basis. For services rendered on an hourly basis, the District is required to "derive an hourly ratefor the physician's specialty of the most recent publications of two national salary surveys and dividing the resulting figures by 2,000 hours." For services rendered as full time employment, "the District entity shall derive an annual compensation salaryfor the physician's specialty of the most recent publications of two national surveys...." Under both scenarios, the following national surveys are to be considered:

1. Sullivan, Cotter & Associates, Inc. - Physician Compensation & Productivity Survey
2. Hay Group – Physician Compensation Survey
3. Hospital and Healthcare Compensation Services – Physician Salary Survey Report
4. Medical Group Management Association – Physician Compensation & Productivity Survey
5. ECS Watson Wyatt – Hospital and Healthcare Management Compensation Report

Trauma Surgeons – Per Diem Rate

For FY 2011, the District contracted for "trauma surgery services" with the two trauma surgical groups, Palm Beach Trauma Associates at SMMC and Delray Trauma Associates at DMC. Section 2.4, of the agreements, titled "Physician Coverage", requires a "Trauma Surgeon" to be "on the premises of the Trauma Center twenty-four (24) hours a day seven (7) days per week..." Additionally, "when the first call trauma surgeon ... is engaged in surgery on a trauma patient, the on-call trauma surgeonshall immediately report to the Trauma Center..." For these services, the District established per diem rates for Palm Beach Trauma Associates and Delray Trauma Associates of \$4,911.43 and \$4,910.94, respectively. OIG staff was informed by District staff that these rates had been in effect since 2009 and that no documentation was available to support the development of the per diem rates.

To determine if the District compensated the two trauma surgical groups in excess of

⁴ The District's Policy defines remuneration as "anything of value including but not limited to, cash, items or services."

⁵ The District's Policy defines Fair Market Value as "the value of an arm's length transactions, consistent with the compensation that would be included in a services agreement, as the result of a bona fide bargaining between well informed parties to the agreement who are not otherwise in a position to generate business for the other party at the time of the agreement."

FMV, the OIG compared the District contracted rates with the Sullivan Cotter and Associates, Inc.⁶ (“Sullivan Cotter”) 2012 Physician On-Call Pay Survey (“Survey”). The Survey reflects information pertaining to physician on-call per diem rates for an array of surgical specialties. For the trauma surgeon surgical specialty, the Survey categorizes per diem rates as either “1st” call or “2nd” call. A trauma surgeon on “1st” call is the primary physician responsible for attending to trauma patients, while a trauma surgeon on “2nd” call is considered secondary to the “1st” call physician. The “2nd” call trauma surgeon provides additional support when the “1st” call trauma surgeon is engaged in treating a trauma patient and therefore unavailable to provide service for incoming trauma patients. Moreover, within the “1st” call and “2nd” call categories are subcategories. These subcategories are categorized as either a “Restricted” call or an “Unrestricted” call. According to Sullivan Cotter, a “Restricted” call is one that requires the physician to remain at the facility while an “Unrestricted” call does not require the physician to remain at the facility rather, they need to be available at the facility within a specified amount of time.

The OIG took a conservative approach in its comparison by using the Survey’s most liberal per diem rates, the 90th percentile⁷. Moreover, in order to conform to the language in the Physician Coverage section of the agreement, the OIG based its calculations on the “1st” call, restricted, and “2nd” call, unrestricted, per diem rates. According to the Survey, for the trauma surgery surgical specialty, the “1st” call, restricted, and the “2nd” call, unrestricted, per diem rates are \$3,648 and \$750, respectively. Therefore, the District’s contracted per diem rates exceeded the 90th percentile rate of \$4,398⁸ by \$513, or approximately 12% (Attachment A: Table 1). On the basis of this comparison, for FY 2011, the District paid \$374,625.05 in excess of FMV, without documentation to support the contracted per diem rates (Attachment A: Table 2).

Trauma Surgeons – Additional Compensation

According to Sullivan Cotter staff, the FMV rates contained in the Survey do not contemplate other types of compensation; for example reimbursement from third party payer sources or reimbursement for medical malpractice insurance. The OIG review revealed that, in addition to the per diem rate the District paid to the trauma surgeons, the trauma physician agreements allow the physicians to pursue any responsible third party for covered physician services. Therefore, trauma surgeons could increase their compensation by billing third party payer sources (i.e. insurance companies).

In addition, the District entered into separate agreements with each trauma center to reimburse for the cost of maintaining professional liability insurance coverage for the trauma surgeons. For Palm Beach Trauma Associates and Delray Trauma Associates this constitutes additional compensation.

United States Department of Health & Human Services, OIG Advisory Opinions⁹, provides examples of problematic compensation structures. Specific examples include

⁶ According to website of Sullivan, Cotter and Associates, Inc. (www.sullivancotter.com) is recognized as a leader in health care compensation benchmarking, trends and analysis.

⁷ The 90th percentile value for a set of data states that at least 90% of the values in a data set are less than or equal to this value. In other words, at least 90% of per diem rates were below, or equal to, \$4,398.00. The Survey reports FMV at the 25th percentile, Average, Median, 75th percentile and 90th percentile. According to the District’s proposed Professional Services Agreement Policy, “a written fair market appraisal by an approved, independent, third party is required for professional or administrative agreements with physicians, if the compensation amount exceeds the fair market rate determined by two of the three national surveys... (regional data at 50th percentile)”.

⁸ “1st” call, restricted per diem compensation rate plus the “2nd” call, unrestricted, per diem compensation rate: (\$3,648 + \$750 = \$4,398)

⁹ United States Department of Health and Human Services, OIG Advisory Opinion No. 07-10 and No. 09-05.

payment structures compensating physicians for professional services when they also receive separate reimbursement from insurers; and, aggregate on-call payments that are disproportionately high compared to the physicians regular medical practice income. Therefore, according to the Health & Human Services OIG, physician on-call compensation structures may need to be established in advance and include all remuneration including malpractice reimbursement and compensation from third party payer sources.

To quantify the aggregate compensation received by Palm Beach Trauma Associates and Delray Trauma Associates, the OIG obtained documentation of the cost of the medical malpractice insurance paid for by the District; and, reviewed the State of Florida's Trauma Registry Data¹⁰ for FY 2011 to determine the percentage of insured patients who received trauma services at SMMC and DMC. For FY 2011, the cost of the trauma surgeons medical malpractice insurance at SMMC and DMC was \$269,103.62 and \$715,092.28, respectively. Moreover, the Trauma Registry Data indicates that approximately 70% of the District's trauma patients had some form of medical insurance. Therefore, since the Trauma Physician Agreements allowed the physicians to receive additional compensation through third party billing, the physicians had the capacity to increase their compensation beyond the contracted per diem rate. The aggregate compensation for the two trauma surgery groups for FY 2011 is illustrated as follows:

**Trauma Surgical Providers
Aggregate Compensation Analysis
October 1, 2010 through September 30, 2011**

Compensation	Delray Trauma Associates	Palm Beach Trauma Associates
Per Diem	\$1,792,493.10	\$1,792,671.95
Malpractice Insurance	715,092.28	269,103.62
TOTAL	\$2,507,585.38	\$2,061,775.57
Reimbursement from 70% of trauma patients ¹¹	Undetermined	Undetermined

When considering both the cost of malpractice insurance paid by the District and the per diem reimbursement rate, the aggregate per diem compensation for Delray Trauma Associates and Palm Beach Trauma Associates is \$6,870 ($\$2,507,585 \div 365$ days) and \$5,649 ($\$2,061,775 \div 365$ days), respectively. A comparison of these aggregated per diem rates to rates contained in the Survey demonstrates that the District compensated Delray Trauma Associates \$2,472 per day, or approximately 56%, in excess of FMV; and, Palm Beach Trauma Associates \$1,251 per day, or approximately 28%, in excess of FMV (Attachment B: Table 1). Annually, this equates to compensation of \$1.36 million (approximately 42%) in excess of FMV (Attachment B: Table 2). The District did not produce a FMV survey, or other documentation, in support of the established per diem rates.

It should be noted that these calculations do not include any reimbursements from third party payers.

¹⁰ The Florida Trauma Registry collects patient-level data from the state's verified trauma centers, as authorized by section 395.404(1), *Florida Statutes*. As a state verified facility, a trauma center must maintain a comprehensive database of those injured patients treated within the hospital. The trauma registry supports the trauma centers' required activities, including performance improvement, outcomes research, and resource utilization as well as providing the state public health system with the necessary data for statewide planning and injury prevention initiatives.

¹¹ The reimbursement amounts can only be obtained by analyzing the physicians' business records.

During the course of this review, the District developed a separate policy for “Professional Services Agreement” that specifically addresses agreements with groups of physicians. The policy requires the District to obtain a formal Fair Market Value appraisal by an approved, independent, third party if the proposed physician compensation exceeds the 50th percentile of regional data on two of three national market surveys.

RECOMMENDATION

To ensure the District is maximizing the economic benefit of contracts, the determination of per diem reimbursement rates should be based on established procedures which require the use of available data (FMV surveys) when developing new, or renewed contracts.

RESPONSE FROM MANAGEMENT

On December 14, 2012, Ronald J. Wiewora, MD, Chief Executive Officer, Heath Care District of Palm Beach County, provided a response to this Notification (Attachment C). Doctor Wiewora contends that the first call and second call per diem rates for trauma surgical groups cover “ongoing physician care, both inpatient and outpatient.” He stated that the FMV used by the OIG does not contemplate this added benefit.

OIG COMMENTS

The District has already taken action by constructing a “Professional Services Agreement Policy” that provides guidance in the development of per diem compensation rates for the Trauma Surgical Contracts.

The Questioned Costs totaling \$1,358,822 were determined by comparing the District’s costs to Sullivan Cotter’s highest per diem compensation rates, the 90th percentile. It is noted that similar calculations using per diem compensation rates at the 50th percentile (“Median”), as contemplated in the District’s proposed Policy and the 75th percentile result in aggregate Questioned Costs of \$2,324,612 and \$1,868,362, respectively.

Moreover, a similar calculation using 50th percentile FMV rates and including cost for a third trauma surgeon (Trauma Surgeon/Intensivist), as indicated in Dr. Wiewora’s response, result in aggregate Questioned Costs of \$1,372,838 (50th percentile), \$590,891 (75th percentile) and \$0 (90th percentile). However, neither of the District’s contracts with the two trauma surgical groups specify a third surgeon beyond the first call and second call surgeons.

QUESTIONED / AVOIDABLE COSTS¹²

Questioned Costs: \$1,358,822

Avoidable Costs: \$3,676,738

ACKNOWLEDGEMENT

The Inspector General’s Contract Oversight staff would like to extend our appreciation to the District’s management for the cooperation and courtesies extended to us during the contract oversight process.

¹² Please see www.pbcgov.com/OIG for description

Attachment A

Table 1

Trauma Surgical Specialty Per Diem Compensation October 1, 2010 through September 30, 2011 (Daily Per Diem Rate Only) ¹		
	Delray Trauma Associates	Palm Beach Trauma Associates
District Contracted Per Diem Rate	\$ 4,910.94	\$ 4,911.43
Survey Per Diem Rate – First Call Restricted (90 th Percentile)	\$ 3,648.00	\$ 3,648.00
Survey Per Diem Rate – Second Call Unrestricted (90 th Percentile)	<u>750.00</u>	<u>750.00</u>
Total – Survey Per Diem Rates (First Call + Second Call at the 90 th Percentile)	<u>(4,398.00)</u>	<u>(4,398.00)</u>
Total Per Diem Rates in Excess of FMV (District Contract Rate – Survey Per Diem Rate)	<u>\$ 512.94</u>	<u>\$ 513.43</u>
Annual Compensation in Excess of FMV ²	<u>\$ 187,223.10</u>	<u>\$ 187,401.95</u>
Percentage in excess of FMV	12%	12%

Table 2

Trauma Surgical Specialty Aggregate Compensation in excess of FMV October 1, 2010 through September 30, 2011		
	Annual Compensation in excess of FMV	Percentage in excess of FMV
Delray Trauma Associates	\$ 187,223.10	12%
Palm Beach Trauma Associates	187,401.95	12%
Total	<u>\$ 374,625.05</u>	<u>12%</u>

¹ The OIG calculations contained in this report utilize the best available information from the Sullivan Cotter survey issued in 2012, based on 2011 data. The Sullivan Cotter survey's on-call compensation rates were higher and more relevant to trauma physician surgical specialties. Moreover, although the 90th percentile rates contained in the survey can serve as a basis for market compensation, their sole use may not fully represent FMV.

² The excess of fair market value compensation calculations were performed utilizing the Sullivan Cotter & Associates, Inc., Physician On-Call Pay Survey issued in January 2012. Specifically, OIG calculations used the 90th percentile per diem rates. At the 90th percentile, the District paid compensation in excess of FMV of approximately \$374,625. Not Included: (1) the cost to the District of reimbursing medical malpractice insurance premiums; and (2) physician third party collections.

Attachment B

Table 1

Trauma Surgical Specialty Aggregate Compensation Comparison October 1, 2010 through September 30, 2011 (Considering Daily Per Diem Rate and Medical Malpractice Insurance, EXCLUDES third party collections)		
	Delray Trauma Associates	Palm Beach Trauma Associates
District Contract Per Diem Rate	\$ 4,910.94	\$ 4,911.43
Daily Malpractice Premium Rate (Annual Premium ÷ 365 days)	<u>1,959.16</u>	<u>737.27</u>
Daily Aggregate Compensation ³ (Aggregate Compensation ÷ 365 days)	\$6,870.10	\$5,648.70
Total – Survey Per Diem Rates (First Call + Second Call at the 90 th Percentile)	<u>(4,398.00)</u>	<u>(4,398.00)</u>
Daily Aggregate Compensation in Excess of FMV (Daily Aggregate Compensation – Total Survey Per Diem)	<u>\$ 2,472.10</u>	<u>\$ 1,250.70</u>
Annual Aggregate Compensation in Excess of FMV ⁴	<u>\$ 902,316.50</u>	<u>\$ 456,505.50</u>
Percentage in excess of FMV ⁵	56%	28%

Table 2

Trauma Surgical Specialty Aggregate Compensation Comparison October 1, 2010 through September 30, 2011		
	Annual Compensation in excess of FMV	Percentage in excess of FMV
Delray Trauma Associates	\$ 902,316.50	56%
Palm Beach Trauma Associates	456,505.50	28%
Total	<u>\$ 1,358,822.00</u>	<u>42%</u>

³ The Daily Aggregate Compensation does not include physician third party collections.

⁴ The Aggregate Compensation in Excess of FMV compensation calculation does not include physician third party collections.

⁵ The Percentage in Excess of FMV compensation calculation does not include physician third party collections.



December 14, 2012

Joe Doucette
Chief of Operations
Office of the Inspector General
PO Box 16568
West Palm Beach, FL 33416

Dear Mr. Doucette,

On behalf of the Health Care District, I would like to present our response to the Contract Oversight Notification from the Office of the Inspector General dated December 10, 2012.

The Oversight Document calculates a rate for the Fair Market Value that combines two per diem rates: On-call for Trauma Physician, Restricted First Call and On-call for Trauma Physicians, Unrestricted for Second Call. These rates are based on services that are provided in an on-call setting. However, in Section 2.1 of the contract, the Trauma Physician Agreement spells out a much wider range of services. Specifically, the Physician Services noted are to "have the primary responsibility for coordinating all aspects of trauma care delivered to the Trauma Patient admitted to the Trauma Services during the patient's entire hospital stay including outpatient care and treatment until such time as the patient is released from the Trauma service." This service not only includes the on-call coverage but also includes ongoing physician care, both inpatient and outpatient. These services are not included in the per diem rate for on-call coverage. This service would need to be provided by an additional position, a Trauma Surgeon/Intensivist. This additional service/position must be added to the per diem rate in order to provide the comprehensive coverage needed at the Trauma Center. Utilizing the Sullivan and Cotter tables for the specialty of Trauma Surgeon in the Southeast region, the hourly rate at the 90th percentile is \$243.00/hour. This service/position would need to be available a minimum of 12 hours a day, for an add on to the per diem rate of \$2,916. When this figure is combined with the first and second call per diems (\$3,648 and \$750) this would result in a total per diem rate of \$7,314 for the services outlined. This per diem rate does not exceed the aggregate compensation rates paid to Delray Trauma Associates (\$6,870.10) or Palm Beach Trauma Associated (\$5648.70) for their combined contracts and malpractice. The amounts listed for questioned and avoided costs over three years would then be \$0.

The Health Care District has committed to obtaining a formal Fair Market Value assessment for this service. In addition, the District recently developed a separate policy for a "Professional Services Agreement" that more specifically addresses agreements with groups of physicians. This new policy requires a formal Fair Market



Value appraisal by an approved, independent, third party if the proposed compensation exceeds the 50th percentile of regional data on two of three national market surveys.

Thank you for your consideration.

Sincerely,

A handwritten signature in purple ink that reads "R. J. Wiewora MD".

Ronald J. Wiewora, MD, MPH, FACP, FACPM
Chief Executive Officer