Position Statement:

Applying Fair Market Value (FMV) to an

Investigator Initiated-Sponsored Research Program

Disclaimer: This document should not be construed as providing legal advice. Each company has its own unique program goals and level of risk tolerance. Ultimately, each company should consult their management staff and legal counsel when designing their IISR program.

Purpose

This position statement is designed to provide companies with guidance on applying Fair Market Value to external requests received under an Investigator Initiated-Sponsored Research Program. This Position Statement provides an introduction to topics more fully explored in IISRA's Best Practices Guideline. Neither document should be construed as providing legal advice.

It is prudent to ensure that all payments to healthcare providers (HCPs) associated with the support of clinical research be related to Fair Market Value ("FMV") and that the criteria used to establish FMV are adequately documented and updated regularly (as appropriate per local laws and guidelines). It is important to understand the standard of value, "Fair Market Value" when determining financial support for clinical research (eg, physician compensation, direct costs, etc.). Budgets requested by the Sponsor-Investigator from the Company for fees and services pertaining to the conduct of an IISR should be assessed for Fair Market Value.

General Considerations for FMV in IISRs

The definition of Fair Market Value (FMV) should be consistent and well understood across the industry. A Glossary of Terms was jointly developed by representatives of the American Institute of CPAs ("AICPA"), the American Society of Appraisers ("ASA"), the Canadian Institute of Business Appraisers ("CIBA"), the Institute of Business Appraisers ("IBA"), and the National Association of Certified Valuation Analysts ("NACVA"). According to that Glossary of Terms, the definition of the term FMV is:

> The price, expressed in terms of cash equivalents, at which a property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms' length in an open

and unrestricted market, when neither is under compulsion to buy nor to sell, and when both have reasonable knowledge of the relevant facts.

The importance of considering Fair Market Value within an IISR program is driven by a number of considerations, both internal and external to the Company. Internally, it is helpful to determine if the financial support meets a fair market value assessment per legal guidelines and if resources are being allocated properly. Externally, there are a number of factors that affect assessment of FMV. In the United States, for example, the following regulations impact IISRs directly:

· **Federal Anti-Kickback Statute:** Prohibits remuneration intended to induce or reward the purchase, prescription, or recommendation of drugs. A violation is punishable as a felony by a fine of up to $25,000 per violation or by imprisonment for up to 5 years, or by both fine and imprisonment. The support for any IISR should not be considered if it leads to a violation of the Anti-Kickback Statute.

· **False Claims Act (FCA):** Prohibits the filing of false claims to the government, and is the basis for most healthcare fraud settlements. IISRs should not be conducted with any Sponsor-Investigator filing false claims to the government over the study costs. Sponsor-Investigators for an IISR should not be involved in any fraudulent activities or under investigation involving these activities. In addition, industry support for IISR requests involving standard of care treatments (ie, reimbursable expenses by a third party insurer) should not be considered as they may lead to violations of the FCA.

Determining which costs are standard of care costs and which costs are required for research activities is often vague and inconsistent. Knowing which services/items are standard of care (routine) versus research (required by the study) is helpful in determining whether a cost should be included in the IISR budget or not. Routine, standard of care costs may include but are not limited to

1. Services required for the provision of the investigational item (ie, administration of a chemotherapeutic agent)
2. Services required for the clinically appropriate monitoring of the effects of the item or service or the prevention of complications
3. Services that are medically necessary for the diagnosis and treatment of complications arising from the provision of an investigational drug

· **Food, Drug and Cosmetic Act (FDCA):** Prohibits promotion of a drug for any use outside FDA labeling. Support for an IISR that may involve using the data resulting from it for off-label promotion should not be allowed.

Outside of the United States, local legal and financial laws and regulations should be followed when assessing FMV for IISRs.

Additional Points to consider

1. Any additional FMV guidelines that relate to healthcare/life sciences within a given country / region
2. Alignment of Company's FMV policy/process documentation with internal policies and external regulations

Defining the Scope for FMV in IISR Programs

In general, IISR programs are comprised of one or more of the following types of research, including preclinical, prospective interventional, observational, retrospective studies in which an HCP(s) is acting as the Sponsor-Investigator and receiving support from a company(s) within the pharmaceutical industry. In addition to the costs for conducting the research, there may be other costs related to the overall success of an IISR study that involve payments to HCPs directly including

1. HCPs leading, moderating, or participating in a meeting that supports the IISR trial, including
    a) Data Safety Monitoring Board(s)
    b) Meeting(s) held by the Sponsor-Investigator in order to provide training or information related to the IISR to co-investigators or sub-investigators working on the IISR
    c) Review Committee(s) in which one or more HCP subject matter experts convene to review and decide competitive IISR programs. These programs are funded by industry but the decisions on awarding IISRs rely on this external panel of experts within a given disease area of research.
2. HCPs authoring an abstract, manuscript, or giving a presentation including
    a) Travel costs to attend conferences and present data related to the IISR including lodging / meals
    b) Fees for submitting abstracts to conferences or for submitting manuscripts to journals for a particular IISR
    c) Costs related to the preparation of the publication (data analysis, printing, etc) for that particular IISR

Compliance Considerations with FMV in IISRs

In order to avoid conflicts of interests and maintain compliance with applicable government laws and regulations the following IISR FMV guidelines should be considered by the industry supporter (ie, the Company):

1. Negotiations of IISR budgets with the Sponsor-Investigator should not be initiated and conducted by Company representatives who directly report into a Marketing or Sales organization. Instead, the decisions to support IISRs should be based on the medical and scientific merit of the request as determined by members of the Company's medical organization (eg, Medical Affairs).

2. Budgets and signing authority for activities associated with the IISR should reside in the Legal, R&D, and/or Medical Affairs organizations.

3. When reviewing the IISR budget requests, the Company should consider

a) Developing a standardized budget template for IISR proposals with general features to assess FMV and define acceptable line-by-line items

b) Utilizing marketed FMV software programs or publicly available, standardized references to fair market valuations (eg, Medicare costs)

c) Assessing appropriateness of indirect expenses related to the IISR including start-up fees for services (eg, IND filing, IRB/IEC fees, pharmacy fees, administrative fees, protocol writing). The Medical colleagues within the Company must work with Legal to determine what is acceptable to support in the IISR request.

4. Compensation for HCP services related to IISRs should be based on the value (eg, time, expertise and/or experience) of the actual services being performed or on study milestones/deliverables such as the number of patients/subjects enrolled. Financial Disclosure (eg, stock ownership) should be obtained from the Sponsor-Investigators participating on the IISR study.

5. Amendments and adjustments to the financial grant request should be reviewed for FMV in reference to HCP time and conduct and change in per patient costs.

6. An Overhead Policy should be defined by the Company according to the institution policy where the IISR will be conducted using a standard software program and should be related to direct costs associated with the IISR.

7. Financial reconciliation at study closure may need to be determined by milestones in the contract or hours worked at the completion or early termination of an IISR.

8. Finally, FMV should comply with the Office of the Inspector General (OIG) guidelines (for US IISRs) and be process oriented, based on sound valuation methodologies, and well documented by the Company. Outside of the United States, local laws and regulations should be followed as appropriate.

Additional considerations

1. Handling of requests for purchase or rental of the equipment relating to the conduct of the IISR

2. Handling of purchased equipment after the completion of the IISR (eg, donation to a charitable organization)

3. Appropriateness of costs related to lab supplies required for the conduct of the IISR

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