

*Answering the  
Questions of  
the TAS  
Industry*

# AnswerPlus

[www.AnswerPlusNews.com](http://www.AnswerPlusNews.com)

Summer 2003

**Hospitals that provide answering services to physicians below fair market value may be in violation of federal law (page 13).**

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*If you are a small service, with 100 clients billing \$20,000 or so, you are a boutique. You can't duplicate boutique service at a department store (page 6).*

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**AnswerPlus** is a seasonal newsletter dedicated to answering the questions of the TAS industry.

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# The Three M's for Success

by Sid Mandel and Douglas Duncan



Well, you have to understand that after a long haul in this industry you tend to see many different money making opportunities that never materialize.

You know what I mean, that great "opportunity" your brother-in-law said his company's service offers. Or, when your friend told you about a new idea and suggested that you try it. So you figured, "Well, if they can, I can too."

What's interesting about all this is everyone does the same thing! You see an idea that sells and you want to be in on it. Confidently you tell yourself, "I can do this and I can do it better." So you put your energy into this new project finding, obtaining, and setting up and when you're finally done, you take that quick step back, take a long deep breath, and slowly pat yourself on the back.

Then you call over your salesperson, (usually a family member, or an already overworked supervisor, customer service person, or head operator) and say, "It's all yours, make it work." Then you take a long deserved break before it's time to go back and fix everything that broke while you were pursuing this project.

**Been There, Done That!** It has been said that a person's best friend is his dog. True, but, in business it's you! You are your own best friend (and often, your worst enemy). Your motivation is financial independence (**money**)! You establish a quality product or service and then go out into this harsh competitive world and sell it (**marketing**). You also sell yourself (**me**) to your client/customer.

**Money, Marketing and Me - 3 Keys for Success:** Lets briefly explore these three concepts and how they apply to new products/services while using them to become more profitable.

**Money** –Money is the root of all motivation

in the world of business. The key here is motivation. If you are motivated, things get done and they get done correctly! You still have two M's to go. Remember, if you want to motivate others, don't forget that motivation and money go hand-in-hand.

**Market** – Each step necessary to sell your new service should be laid out in a simple step-by-step plan. Plan everything from concept and staff, to sales tools and marketing. Get help from your vendors and use what they offer to your advantage. Use their sales materials, personnel, and their experience for ideas. Adapt it to fit your marketing plan. Good vendors **do** get involved and are easy to find. All that's needed is a little motivation.

Our company not only supplies ideas and plans born from experience, we have non-branded fliers, brochures, mailers, web sites, power point presentations and email campaigns all provided free to our customers. We even have our sales personnel conduct direct sales campaigns to clients. We believe that our firm is an example of what you should expect from any of your vendors.

**Me** – This is where you can really succeed. Once you've prepared your marketing plan, selling comes much more easily. You can now delegate responsibility and know that it will get done based on your plan. Further, you now have an outline of what has to be done, how it should be done, and in what order. It allows you to evaluate results and adjust if necessary. No matter how good your sales staff, programs loose momentum and it's your job to give it that "push."

**Money, Marketing, and Me** is a simple formula for success:

- Be motivated
- Always be prepared
- Be hands on

And remember it is OK to ask for assistance when you need it. After all, knowing what you can and cannot do is a strength that helps you stay focused and successful.

*Sid and Doug are principals in Almond Hill Enterprise, and provide TurboSchedule, an operator-assisted Web-based scheduling solution to the telephone answering service industry.*

## Profitable Businesses Bill Wisely

by Peter DeHaan, PhD



Peter DeHaan, PhD

There are likely as many billing plans as there are telephone answering services. It seems that everyone has his or her own idea of the right way to bill. Publicly, each answering service views its billing methodology as being superior, yet privately, they are gener-

ally quick to admit its shortcomings. The truth is that there is no ideal billing philosophy and no right way to charge clients. Successful billing requires that business owners understand the intricacies of their selected rate structure, operating their business to capitalize on these characteristics.

Though each plan is different, there are similarities; here are seven general categories:

**Flat Rate:** Every client is billed the same fixed rate every month. Though it is not used too much any more, it was more common when client expectations were uniform and call-processing systems were manual.

*Advantages:* The benefits of flat rate billing are many. Bills are easy to generate, explain, and understand. All revenue is fixed (as opposed to varying from month to month) and clients know exactly what to expect and can budget accordingly.

*Disadvantages:* The drawbacks are also many. Flat rate billing is inequitable to clients. Essentially half of the client base is profitable, subsidizing the other half, which is not profitable. It also attracts high-volume, and thereby unprofitable clients, while discouraging low-volume, profitable ones.

*Possible abuses:* Revenue will be the same whether or not any work is done. Therefore there is no direct financial incentive to answer calls.

*Strategy:* To make flat rate billing work, seek low volume accounts, while streamlining and aggressively automating high volume accounts.

**Modified Flat Rate:** In this instance, each client still pays a flat rate, but that rate differs from client to client. A particular client's rate is (theoretically) based on their historical usage.

*Advantages:* There are the same benefits as with flat rate billing, while the disparity between profitable and unprofitable clients will be largely eliminated.

*Disadvantages:* Knowing what to bill a new client is hard; you can easily end up losing money if they are high volume. Also, it does not take into account seasonal fluctuations. Lastly, you must continually review client traffic and adjust rates when usage changes.

*Possible abuses:* Over zealous managers, in an effort to guard against unprofitable clients, can set the rate too high. Failure to lower the rate if usage drops significantly may also result in over billing.

*Strategy:* Analyze client profitability each billing cycle by calculating their revenue per minute. Clients with a pattern of low revenue per minute may need to have their rate increased or have their account streamlined and automated.

**Message Billing:** Clients who are billed by the number of messages taken each month. Typically, they pay a base rate, which includes a certain number of messages; excess messages are billed additionally.

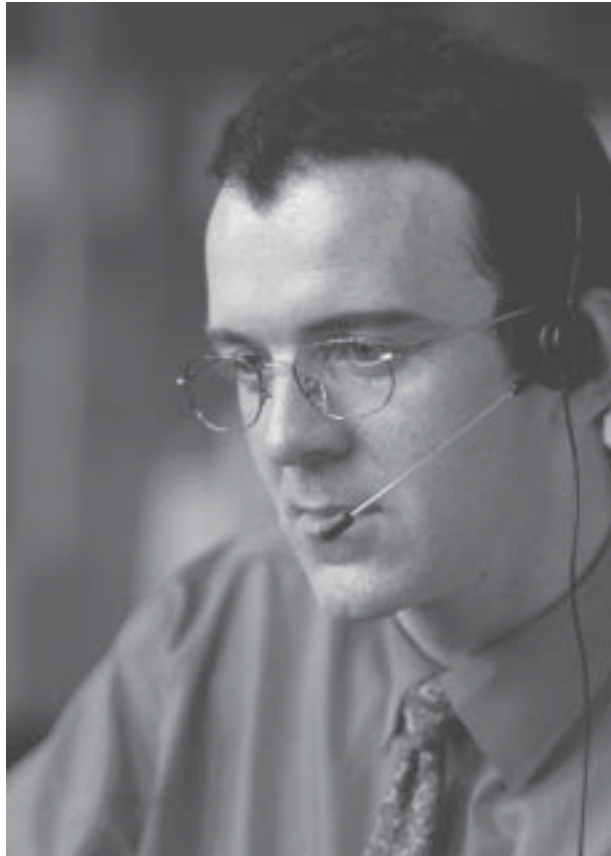
*Advantages:* High volume accounts pay more.

*Disadvantages:* Often work is done which is not reflected in the message count. This may be minimized when charging for the number of calls answered, but this still overlooks dispatching.

*Possible abuses:* Expanding the definition of a message beyond what a client might expect, such as to include hang-ups, wrong numbers, or clients forwarding their line.

*Strategy:* Focus on taking a message (or answering) on every call. Streamline, limit, or automate all other work, such as dispatching, patching, and relaying messages.

**Unit Billing:** Unit billing is an extension of message billing, whereby units of work are tracked, with the intention of being able



to bill for work that is overlooked with message billing. One example might be to define units as calls answered, plus dialouts, plus patches. Some services count a long or detailed message as two units.

*Advantages:* All work that can be tracked can be billed.

*Disadvantages:* Not all units of work require an equal amount of time and effort. For example, sending a digital page is quite different than calling a client at home and reading a message several times while he or she slowly writes down the complete message.

*Possible abuses:* Performing unnecessary units of work under the guise of being thorough, such as double dispatching (leaving a message on a home answering machine and then on cell phone voice mail) or re-paging without waiting a reasonable amount of time.

*Strategy:* Count every measurable unit of work. Automate time-consuming processes.

**Time Billing:** The time operators spend working for the client is tracked and billed. As with the message billing, there is generally a monthly rate, which includes a block of time; excess usage is billed separately.

*Advantages:* All work can be billed. Billing will directly reflect the amount of time spent for that client. It is much more fair for both the client and the answering service.

*Disadvantages:* You need to have a computerized system that will automatically track time; it takes longer to process bills; and billing complaints are harder to resolve.

*Possible abuses:* Operators who prolong calls doing more than what is required or engaging in needless conversation cause bills to be inflated.

*Strategy:* Provide the client with the services they need; coach operators to be thorough yet efficient; make sure that all time is tracked and billed.

**Combo Billing:** This is the result of applying both unit billing and minute billing to the same account. Typically clients are charged a base rate, which includes a preset number of units. If the number of units is exceeded, they are charged for the excess. Clients are also billed for time, either completely or only when it exceeds a threshold.

*Advantages:* The answering service bills a fixed amount for quick units of work, yet is somewhat protected on time-consuming activities.

*Disadvantages:* This is the hardest plan to explain, justify, calculate, and bill.

*Possible abuses:* The same as for both unit and time billing.

*Strategy:* Be sure to track and bill for all units and all time.

**Tiered Time Billing:** This is time billing with an added element. Agent time is billed the same as before, plus any system time or automated usage is also billed, but at a lower rate. For example, agent time might be billed at 75 cents to a dollar a minute while system time might be billed at 10 cents a minute. System time could include the non-operator portions of alpha paging, fax, email, voice mail, system greetings, and patches. (Interestingly, the

profit per minute could be about the same for agent time and system time.)

*Advantages:* All of the benefits of time billing. In addition, when efforts are made to automate an account, revenue – and hence profit – can still be generated.

*Disadvantages:* There are more items to track and not all systems provide adequate statistics.

*Possible abuses:* This is the same as for time billing.

*Strategy:* Be sure to track and bill all appropriate time elements.

There are many other items to consider when it comes to billing, such as ancillary charges (fax delivery, email delivery, on-call schedules, and so forth), pass-through charges (the cost of making a local call, long distance, or toll-free usage), or surcharges (holiday billing). Other issues are the length of the billing cycle (monthly versus 28 days), late fees, and discounts for early payment. The most contentious consideration seems to be determining the formulas to use in calculating the bills; this is often contingent on the statistics that your call-processing system provides.

Regardless of which method you implement, be sure to know its strengths and weaknesses, pursue it strategically, follow it ethically, and above all else, evaluate your rates.

*In addition to publishing Connections Magazine, Peter is also a consultant and business advisor to the Teleservices and Call Center industry. He may be reached at 866-668-6695, peter@connections magazine.com or www.PeterDeHaan.com.*

## Do You Want to Improve Client Satisfaction and Reduce Cancellations?

Let Connections Magazine provide you with a

professional client newsletter tailored specifically for the teleservice industry, which you can personalize and send to your clients. This newsletter is similar in concept to what you might have seen from your accountant, financial planner, or realtor.

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- A **feature article**. This could be a generic article about teleservices, an informational piece about customer service or telecommunications (subjects on which you are viewed as an expert), or an interesting or inspirational piece about an industry success story.

- A **case-study** segment, highlighting a situation in which a client's communication problem was solved.

- A **Q & A** section. This is an effective, yet subtle way to communicate facts and information about your business.

- A **profile on a particular service**.

**Public service pieces**, such as fraud alerts or telecommunications advice.

Plus **optional inserts** on items of specific interest (area code change, office relocation, acquisition news, introducing a new owner or manager, award of excellence announcement, and much more.)

Here is how it works:

- Every four weeks you will get a master copy of the current issue sent to you via email.

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- Print it out on a laser printer or take it to your printer.

- Send the newsletters with your billing or mail them separately.

You can also pass them out at trade shows or share with prospects. The newsletter cost less than \$50 an issue. A one-year supply (13 issues - one for each billing cycle) is only \$649. This is a small fraction of what it would cost for a professional writer and graphic designer.

**Contact Connections today to order your newsletter: 866-668-6695 or Peter@ConnectionsMagazine.com**

## Do You Have a Hobby or a Business?

- by Paula Ford

### You might just have a hobby if you:

1. Give preferential rates to “friends.”
2. “Carry” people indefinitely when they can’t pay for service.
3. Don’t track customer accounts to know who is current and who is past due.
4. Don’t evaluate rate increases.
5. Personally aren’t making a living income. An experienced restaurant manager makes \$50,000 or more per year – that’s what you should be worth.
6. Never analyzed your income.
7. Work as a full-time agent in addition to managing your business.
8. Charge every client the same amount.
9. Don’t routinely evaluate a client’s fees when a change of work is requested.
10. There is no measurable way to know whether a given client is profitable.
11. You don’t charge for all the work you do for a client.

## Smart Money

# Preparing Your Business For Sale Now Improves Long-Term Value

by Paula Ford

My company, Answer Center, actively seeks to acquire other telemessaging services whose owners are ready to move on to other things. We have three or four purchases pending and will be fortunate if we close one deal. Every business should be prepared to sell – because that is the strategy which

- Puts you, the business owner, in control
- Lets you say “no” or hold out while waiting for a better offer
- Higher profitability

This plan helps your business every day whether you want to sell or not. Having your business ready to sell is comparable to having it running at its maximum potential.

**Keep good books:** Don’t do anything under the table, legally it can come back to haunt you. No buyer will pay for income you can’t prove you make. And if your labor cost is low because you are paying someone under the table it makes everything else about the deal look skeptical.

### Get your client information

**updated:** Compare your services to what you are billing. It sounds obvious, but unbelievably one seller claimed they had more than 150 clients, but their billing didn’t reflect even 100. It appeared that accounts had not been closed even after they lost clients! How can the business be bought if no one knows what’s for sale?

### Do you have a business or a hobby?

Conduct a brutally honest appraisal of whether you are running a business or have a full-time hobby that (sort of) pays for itself [see sidebar].

**Charge appropriately:** Do you give excellent service but charge “competitive” prices? This is just another variety of

undercharging. Whoever buys your service will do one of two things:

- Provide lower quality service than you do now, making your clients unhappy.
- Give world-class service at world-class prices, making your clients unhappy.

If you are a small service, with 100 clients billing \$20,000 or so, you are a boutique. You can’t duplicate boutique service at Wal-Mart.

**Raise rates:** If you want to sell your business and think your accounts might be underpriced, adjust your rates! Cash in your loyalty to make the accounts more attractive to a buyer.

**He was too greedy to drop his 50 pound sack of gold, which would have enabled him to escape.**

Failure to do routine price reevaluations is the biggest reason why your business might be not as profitable as it should be. One of our prospects hasn’t raised its rates in four years. Over those four years the cost of doing business has risen, so they cut profits every year. It’s painful when a company has to hit its clients with a 20 percent increase. But often times that business has also grown to

need more services, warranting the price adjustment.

**The 50-pound sack of gold theory:** Recently, I was flipping channels and glimpsed a scene from one of those costume flicks – probably *The Mummy* – which featured a guy caught by a pyramid’s booby trap because he was too greedy to drop his 50-pound sack of gold, which would have enabled him to escape. Almost every telemessaging company we’ve ever talked to has “sack of gold” clients – ones that pay \$800, \$1,000 or more per month. The trouble is, the accounts cost more than the income they bring in. Often the owner is working as an unpaid agent on the account, working over 50 hours per week in order to

handle the calls instead of doing work that is profitable. Often, the owner doesn't realize how much labor the account is actually absorbing.

Here are some solutions to the problem of the "sack of gold" client:

- Figure out what they should be paying for you to be profitable.
- Hire people to answer your lines and get out of the agent business for two weeks.
- Go out and recruit five to 10 new customers who will make money.
- Adjust the rate on every "sack of gold" customer.
- If the "sack of gold client" quits your services, you already have replacement income and the free time to go recruit five to 10 more clients.

**You need a track record and long-term accounts:** If your service has only been in business for a year or two, you'll probably be very disappointed by the offers that you receive. Typically, the first 50 accounts you sign up will be clients who have been asked to leave other services because of poor payment history, questionable or illegal business practices, personality clashes, or all of the above. Many of these accounts tend to be small operations that switch services two or three times a year or that go out of business and then start another business under a different name. A buyer will look at the quality of your client list as well as your income. Short-term clients don't inspire high offers.

**Things that can hurt your sale price are:**

- The likelihood that 10 to 15 percent of your clients will immediately quit, regardless of how smoothly the sale of your business goes.
- The fact that there are always a few clients who only continue to use your service because they are friends or you are also their customer.
- The reality that every service also has a few customers who've stopped using the service months or years ago, but the billing department has not made the adjustment. Something as simple as changing the billing address causes an alert and we get the "we have no further need for your services" letter.
- The possibility that if some customers are considering dropping out, the sale of your business might make the decision for them.

Even if you don't sell your business after taking all these steps, it should still make your business more profitable. It's worth the effort!

*Paula Ford is the owner of Answer Center in Virginia Beach, Virginia.*



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## An Interview with Allen Kalik

**AnswerPlus: Allen, you have a long and successful history in the industry in both the operations side and the vendor side. Will you give our readers an overview?**

In 1984, my wife Pat and I purchased Executive Exchange, an established cordboard service in Manchester, New Hampshire. On our first day in the TAS business, we knew absolutely nothing about it, except to bring donuts for the operators who anticipated meeting us. Like so many owners of small services, we wore every hat and headset for a quite a few years to make ends meet. Yes, I am telling you that Pat and I worked on-line regularly and I am proud of it. I believe that my experience on-line has given me much of the insight and inspiration for the technology developments such as PI-2000 and PInnacle.

As both a programmer and a mathematician, I have always pushed for more efficient solutions in the business. In 1985 I installed voice mail and I worked with Telescan to develop the first voice recording interface. In 1989 I installed my first T-1 and a digital switch to route my phone traffic. In 1992, I started taking orders, and in 1993 I developed PI so that my answering service could compete in the expanding order taking market. Two years later, I opened a separate 100 seat call center for just the PI accounts. When we sold the TAS and call center business in 1998, we employed over 400 employees!

In the meantime, the PI-2000 product that rocketed us forward had itself become the cornerstone of a separate technology company, Professional Inbound, Inc. With over 150 PI systems installed in North America, PI joined forces with the Teledata Systems Company in 1998, whose successful BCS, FMDS, and TBS products were in over 600 answering services.

Our most recent venture, PInnacle, which combines TAS capabilities, a digital switch, and PI order taking is, yes, the pun intended, the height of my career.

**AP: What do you see as future developments for telephone answering services?**

I believe that the TAS is a tough, resilient business that will endure successfully for decades. At every technology development from the answering machine to the Internet, I have heard the pessimists erroneously predict the demise of TAS. The fact is, there is nothing like a live person at the other end of the telephone.

***“I believe that the TAS is a tough, resilient business that will endure successfully for decades”***

**AP: What should be the focus for the typical answering service, with say, 6 to 12 seats? Do they maintain the status quo, seek growth via sales and marketing, growth via acquisition, pursue niches, or position themselves to be acquired?**

Despite national shrinking trends, I have talked with a number of owners of this size, who have seen internal growth without acquisition in the past few years. Certainly, this doesn't happen by itself. The growing services are focused on quality as well as pro-active marketing. As for niches, I could tell one success story after another. But, the development

of a niche requires an investment of time, energy, and technology. Unfortunately, some TAS owners are not mentally or financially prepared to make such an investment.

**AP: What led you to develop order-taking software?**

When I got my first order-entry client, I failed miserably using my TAS messaging system. I tried everything – colored asterisks on the screen, special training, post-it notes, and operator incentives. Then I got this great idea about scripting the operator through every possibility of the call. I locked myself in a room for a week and I programmed a proto-type script for this one account. When my supervisor tested it, I could see from the big smile on her face that I was onto something.

**AP: Initially you intended it only for internal use, when did you realize you had a marketable product?**

Skip Quinn and Dave Dearborn of Protocol Message Center stopped by as friendly competitors in early 1993. When I was giving them a quick tour of our answering service, they noticed a single beta position of our order taking software. They were captivated by the software and the ease at which my operator was handling a complex call. Two months later we installed 24 positions of PI in their office.

**AP: The Professional Inbound Network (PIN) is a users group formed by services that use PI 2000. How has that helped in the development of PI 2000?**

Our user group, PIN, has been very active for almost 10 years, and has always been a hugely positive experience for us and for our users. Many of our development ideas have come from wish list sessions and feedback at these



meetings. Our users provide each other with new ideas, new applications, new markets, and technical tips on how to maximize their "PI" businesses.

**AP: Then there was the merger of Professional Inbound and Teledata to form Professional Teledata. Your two flagship products are PI 2000 and TBS billing software. What other products do you offer?**

We offer the FMDS (fax, email, alpha, 2-way paging delivery system), which set the bar in the industry for a communications server, and is still used in hundreds of offices today. Forget-Me-Not is an ASP service for automating appointment reminders. Our Pro-Dial 2000 (outbound module for PI-2000) is currently installed in over 20 call centers, and of course, the Pinnacle messaging system.

**AP: Last year you announced the development of Pinnacle. Tell us about Pinnacle?**

Pinnacle is a big step forward in making the TAS operator's job easier to

learn, more efficient, and more error-free. Initially we saw Pinnacle as a natural advantage for call centers doing both inbound and TAS. However, I have been elated by the reactions of non-PI users who have had the opportunity to preview Pinnacle, some of whom are definitely going to the make a move in our direction.

**AP: From the early days of PI, there was interest in a product like Pinnacle. What caused you to pursue it at this time?**

For several years, a few users were asking us to add "a little dispatch" to our PI system, so that they could move their more complex TAS accounts to PI. Knowing that dispatch and message management are not "little" undertakings, we repeatedly turned down the request. Then, at our PIN meeting in March 2002, a few users turned into a roomful of enthusiasts, including a number of brave souls willing to commit financially to the project before we even started. Pinnacle was born that day.

**AP: I understand that Pinnacle is currently in beta test. How many systems are being tested and how is it going?**

As of right now, Pinnacle is installed in three offices, with five more installations planned before the end of June. So far, our users are raving about what Pinnacle can do, and how its power to simplify the agent's job is going to make a big difference.

**AP: When do you anticipate the general release of Pinnacle?**

If our "pilot" installations go as planned, we expect Pinnacle to be in full swing by the end of the summer.

**AP: Thank you for your time, Allen. Do you have any closing remarks for our readers?**

Actually, I want to thank our many users for their support and ideas over the years. And for those of you who want to know more about us and our products, I'd love to hear from you.

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### Pacific Northwest

This lucrative business is a benchmark for the industry serving 450 TAS accounts with an additional 750 VM and paging accounts billing \$130K per month. With the latest equipment, this 30%+ profit margin business serves the entire U.S. from a beautiful facility with scenic views. This turn key operation has mgt-in-place and is ready for the right buyer at \$2.1M. Terms available.

### Massachusetts

Priced to sell. This 18 year old service has 170 accounts billing \$19,000 per month. Serving mostly DID accounts with some hardwire clients. This service is asking only \$120,000 with terms or 6.3 times monthly with 50% medical.

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**Spectrum**  
by Telescan



## Extending the Possibilities

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Take part in this survey on our website at [www.AnswerPlusNews.com](http://www.AnswerPlusNews.com). Analytical techniques will be employed to help our readers use this information to make important human resource management decisions. Without your contribution, we may not have enough data to produce a valid survey, or we may have to limit survey result access to only those who contribute - so *log on today!*

Contribute your unique industry knowledge; our industry will benefit. All responses are confidential, and the aggregated data will be shared with the readers of AnswerPlus.

You will be able to use this information to recruit, retain, and develop a high quality workforce. You can also work to ensure that valued employees are not "shopping" for other opportunities.

## Compensation Survey

### 1. Hourly Rate

- A. Operator starting hourly rate: \_\_\_\_\_  
B. Operator trained hourly rate: \_\_\_\_\_  
C. Highest operator hourly rate: \_\_\_\_\_

### 2. Paid Time Off

- Vacation Days per Year: \_\_\_\_\_  
 Sick Leave Days per Year: \_\_\_\_\_  
 Personal Days per Year: \_\_\_\_\_  
 Military Leave  
 Jury Duty  
 Funeral/Bereavement Leave

### 3. Holidays

- New Year's Day  
 Memorial Day  
 Fourth of July  
 Labor Day  
 Thanksgiving Day  
 Christmas  
 Other: \_\_\_\_\_

### 3a. Holiday Compensation Rate

- Straight time  
 Time and a half  
 Double time  
 Triple time  
 Varies  
 Notes: \_\_\_\_\_

### 4. Insurance

- Health Portion Paid by Operator: \_\_\_\_\_  
 Life Portion Paid by Operator: \_\_\_\_\_  
 Dental Portion Paid by Operator: \_\_\_\_\_  
 Vision Portion Paid by Operator: \_\_\_\_\_  
 Legal Expense Portion Paid by Operator: \_\_\_\_\_  
 Cancer Portion Paid by Operator: \_\_\_\_\_  
 Long Term Care Portion Paid by Operator: \_\_\_\_\_  
 Accidental Portion Paid by Operator: \_\_\_\_\_  
 Disability Portion Paid by Operator: \_\_\_\_\_

### 5. Does your company offer tuition assistance?

- Yes  No If yes, portion paid by operator: \_\_\_\_\_

### 6. Other Compensation

- Incentive program Notes: \_\_\_\_\_  
 Profit Sharing Notes: \_\_\_\_\_  
 Deferred Compensation Notes: \_\_\_\_\_

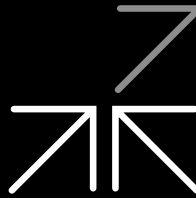
### 7. Retirement

- a. Type  
 401K  
 SIMPLE IRA  
 Keogh  
b. Portion Paid by Operator: \_\_\_\_\_

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## Hospital Answering Services Could Be Risky

by Mike Wilson, JD



Hospitals that provide answering services to physicians at below fair market value (FMV) may risk violating federal or state law – with serious consequences. “Stark II” is a federal law to discourage doctors from referring Medicare and Medicaid patients to entities with which they have a financial relationship, which can include indirect compensation in the form of benefits. For example, hospitals that rent office space to physicians below FMV may violate Stark. Possible penalties include denial of Medicare and Medicaid payments, reimbursement of past payments, and exclusion from Medicare or Medicaid in the future, as well as civil penalties of up to \$100,000.

The federal Anti-Kickback Statute prohibits physicians from receiving compensation for referral of patients covered under Medicare, Medicaid, and other federal health programs. Again, compensation could include indirect benefits such as below FMV office leases. Unlike Stark, Anti-Kickback also requires proof of intent to induce referrals. The Anti-Kickback Statute has potential criminal penalties, civil penalties of up to \$50,000, treble damages, and exclusion from federal

health programs. Some states also have laws similar to Stark or Anti-Kickback.

Language in the Stark regulations suggests that free meals for doctors in the hospital cafeteria, for example, are subject to Stark. Concerns then may be, are free or heavily discounted answering services for doctors a kind of “compensation” subject to Stark? If so, the arrangement would fall under one of the exceptions in the regulation or it would be a violation. For example, if the “compensation” does not exceed \$300 per year (and meets other requirements) or is provided at fair market value (and meets other requirements), there is no Stark violation. However, the exception most likely to apply to answering services is the “medical staff incidental benefits” exception.

**Medical Staff Incidental Benefits:** This exception has eight requirements, ALL of which must be met (when reading the quotes from the regulation below, substitute “answering service” for “compensation”):

- 1) “The compensation is offered to all members of the medical staff without regard to the volume or value of referrals or other business generated between the parties.”
- 2) “The compensation is offered *only* (emphasis added) during periods when the medical staff members are making rounds or performing other duties that benefit the hospital or its patients.”
- 3) “The compensation is provided by the hospital and used by the medical staff members *only on the hospital’s campus* (emphasis added).”
- 4) “The compensation is *reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the hospital* (emphasis added).”
- 5) “The compensation is consistent with the types of benefits offered to medical staff members by other hospitals.”
- 6) “The compensation is worth less than \$25 per occurrence of the benefit.”
- 7) “The compensation doesn’t take into account the value or volume of referrals or business generated.”
- 8) “The compensation arrangement does not violate the Federal anti-kickback statute.”

**Third Party Enforcement:** Many courts have held that third parties can bring an action against violators of Stark or the Anti-Kickback Statute under the False Claims Act. This act allows “whistleblowers” to sue violators and be compensated with a percentage of the recovery. The False Claims Act has its own set of penalties, including treble damages and attorney fees.

This article is not intended to give legal advice. This is a highly specialized area of law and litigation over Stark has yet to generate much case law for guidance. In addition, further regulations are to be issued in the near future. Given the potential exposure, prudent hospitals will seek sound legal advice before offering professional answering services to physicians.

*Mike Wilson is an attorney and author. He teaches at Sullivan University in Lexington, Kentucky.*

# 2003 Calendar

## September 2003

### 23-24 • GLTSA Annual Convention

Madison, WI • Contact Dan Hogan, 888-712-9396

### 27-30 • Western States Telemessaging Assn Annual Meeting

Contact [Dan@CallConsult.net](mailto:Dan@CallConsult.net) [www.wstaonline.org](http://www.wstaonline.org)

## October 2003

### 9-10 • TASbiller Education Seminar

Atlanta, GA • Contact Randy Ripkey at 706-860-0868

### 11-12 • STA Fall Workshop

Atlanta, GA • Dan L'Heureux at 800-475-0857

### 15-18 • CAM-X 39th Annual Convention & Trade Show

Halifax, Nova Scotia • Contact Linda Osip at 800-896-1054

### 21-23 • ASTAA Annual Convention

Annapolis, MD • Contact Nell Norris at 800-718-1712

### 22-24 • CEO Combination Regional Meeting

Farmington, CT • Contact Vicki Montgomery 702-380-2122

## November 2003

### 6 • TASbiller Education Seminar

St. Louis, MO • Contact Randy Ripkey at 706-860-0868

### 6-7 • TUG Annual Meeting

New Orleans, LA • Call 603-362-9489

### 7-8 • TUNe Annual Meeting

Contact David Peck at [dpeck@proanswering.com](mailto:dpeck@proanswering.com)

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# AnswerPlus

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