

<b>DEPARTMENT:</b> Legal	<b>POLICY DESCRIPTION:</b> Fair Market Valuations
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<b>EFFECTIVE DATE:</b> June 1, 2018	<b>REFERENCE NUMBER:</b> LL.025
<b>APPROVED BY:</b> Ethics and Compliance Policy Committee	

**SCOPE:** All Company-affiliated facilities including, but not limited to, hospitals, ambulatory surgery centers, outpatient imaging centers, home health agencies, physician practices, service centers, outpatient imaging centers, and all Corporate departments, Groups, Divisions and Markets.

**PURPOSE:** To provide direction as to the Company's process of determining whether a transaction with a potential referral source is made at fair market value in order to comply with Stark Law and the Anti-kickback Statute.

**POLICY:** Any transaction with a potential referral source is to be at fair market value. Whenever the Company requires a fair market valuation in order to comply with Federal or state laws and regulations or with its own policies and procedures, no conflict of interest, such as the ability of one party to refer patients or other business to the other, may affect the terms of the transaction or the valuation. Appraisal reports must clearly indicate that the definition of fair market value used for such appraisals is the regulatory definition of fair market value provided by Stark.

**PROCEDURE:** Prior to executing any transaction with a potential referral source, the Company-affiliated facility must determine that any compensation given or received in the transaction is fair market value. At a minimum, the following considerations must be included in any fair market value analysis.

1. General

- a. Defined. So long as the price or compensation does not take into account the volume or value of anticipated or actual referrals from or to a party, fair market value of a transaction is
  - i. the market price at which bona fide sales have been consummated for assets of like type, quality and quantity in a given market, or
  - ii. the compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement.

Determination of the market price or compensation above will begin with a range of benchmark payments, as described below. The appropriate value to select from within the range for a given transaction depends on individual factors. For example, a physician with a considerable experience in an area could receive compensation on the high end of the range of medical directorship compensation in that location for the service. Similarly, where office space to be leased is in below standard condition for the market, the lease rate charged may be in the low end of the range.

- b. Term Covered. A fair market valuation will have that useful life stated in it by the valuator. If a fair market valuation does not specify its useful life, the facility should request that the appraiser reissue the report specifying the period for which the valuation opinion is valid. In the event that no term is noted, it will be assumed that the valuation remains accurate for a term equal to the term of the subject agreement, as well as for the first 12 months of any subsequent agreement entered within six months of the termination of the underlying contract, so long as there has been no material change to the agreement terms or supporting facts and circumstances. If the term of a fair market valuation has passed on a current contract, a new valuation should be obtained.

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- c. Comprehensive. Any fair market valuation must specifically list what is included in the valuation. Items and services included in the valuation must match those provided for in the agreement and must also match those items and services actually provided to the referral source.
- d. Consideration of Facts and Circumstances. All valuations should provide a thorough analysis of the facts and circumstances of the underlying transaction in comparison to industry benchmark data; merely comparing payments against objective benchmark measure or industry practices does not guarantee that a payment meets the standard of fair market value.
- e. Selection of Benchmark Data. Benchmark data includes information on transactions comparable in character, nature and value to the one in issue for which fair market value is to be determined. Generally, only data from the location of the proposed transaction should be considered, unless the transaction is so unique as to necessitate a national or global search. Benchmark data generally should not include transactions between health care facilities and their referral sources. Under no circumstances may facilities use non-public pricing information of other entities in a manner that would limit the choice or price of items or services provided to patients.

2. Rental or Lease of Space or Equipment

- a. Limitations. For rental or lease agreements, the fair market value is the value of rental property for general commercial purposes, not taking into account the subject of the agreement's intended use. When HCA facilities are the landlord, they should factor in the value to tenants of proximity or convenience to them when charging rent in leases with referral sources. In contrast, when HCA facilities rent from referral sources, convenience or proximity shall not be a factor in the rental payment amount paid by the facility. Rental payments may reflect the value of any similar commercial property with improvements or amenities of a similar value, regardless of why the property was improved.

Example: Hospital wishes to lease to Physical Therapist 2,000 square feet in its Medical Office Building for business use. All other tenants in the building pay a rent equal to \$10 per square foot. Physical Therapist is willing to pay \$12 per square foot only because the building is occupied by several orthopedic practices. Physical Therapist believes this proximity to the orthopedic practices will benefit her own practice. This inflated rental price is inappropriate because the rent was inflated solely to enhance Physical Therapist's medical practice. As a result, the rental payments here would take into account the intended use of the property.

Example: Physical Therapist wishes to rent the same space as in the example directly above for a rate of \$12 per square foot. In this case, however, the reason she is willing to pay a rental price higher than other tenants is because the particular space she would rent, unlike others in the building, has been recently renovated, including installation of certain technical connectivity lines, the use of which will benefit her patients. Assume that the increase of \$2 per square foot is an appropriate reflection of the increase in

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value from these improvements. Because the reason for the inflation of the rental payments in this case is the improvements available in this space, the higher rental payments would be appropriate here.

Example: In setting the initial rental payments for tenants of Medical Office Building, Hospital looks to comparables in the area. Retail space costs \$15 per square foot. Industrial property costs \$8 per square foot. Rent in other commercial office buildings costs \$12 per square foot. Rent in other medical office buildings is \$10 per square foot. The retail space and industrial space may not be of like type or quality as the Medical Office Building, and therefore would not likely be used as comparables. To the extent that they are of like type and quality, the commercial office buildings and the other medical office buildings could be used as comparable information.

- b. Calculating FMV for a Lease of Space. The fair market value in a lease for space will equal the product of the number of square feet in the space leased and the market value of such property for general commercial purposes, with additional rental amounts pro rated for any common areas.

Example: Hospital leases to Physician 2,000 square feet in its Medical Office Building for business use. A survey of the local area reveals an average rate between non-referral sources to the landlord of \$10 per square foot per year. If the space in the Medical Office Building is approximately similar in character and value, the rent charged should be \$20,000, usually paid in monthly installments of \$1,667.

- c. Calculating FMV for a Lease of Equipment. Generally, all of the above statements regarding a lease of space apply to a lease of equipment. However, in the case of equipment, due to the nature of medical equipment, sometimes all of the comparables or market values of a transaction type involve entities in a position to refer or generate business to each other. In such cases, one method of calculating fair market value would be to add to the cost a reasonable rate of return on investment of comparable medical equipment. Hospitals may not lease equipment alone on a per-click basis from any physician who makes referrals to the hospital for the service that uses that equipment.

3. Personal Service Agreements, Recruiting Agreements and Employment Agreements

The fair market value of these agreements is the compensation that would be determined in an arms' length transaction, consistent with the compensation that would be included in such an agreement as the result of bona fide bargaining between well-informed parties who are not otherwise in a position to generate business for the other party, at the time of the agreement

- a. Hourly Rate. Where the compensation is calculated by hourly payments and the services are provided personally by the physician, rather than by the physician's employees or other persons or entities, compensation must be what the facility perceives is fair market value, but in no case shall it exceed the amount calculated by the internal compensation calculator located in the Physician Agreement Workflow System ("PAWS") unless an outside valuation is obtained to support the compensation.

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- b. Independent Third Party Valuation Required. Where a personal services agreement provides for more than the amount calculated by the internal calculator located in PAWS an independent third-party appraiser should determine the fair market value of the agreement pursuant to the Professional Services Agreements Policy, LL.002. If an independent third party valuation is necessary, facilities are encouraged to contract with an expert pre-approved by the Legal Department.
- In calculating fair market value, the nature of the services to be provided must be considered. Please note that the fair market value of administrative services may not be the same as the fair market value of clinical services.
- If an hourly rate is used to determine a physician’s annual salary, the rate should be multiplied by a number of hours that accurately reflects the number of hours actually worked by the physician each year.
- c. Professional and Technical Components. Where a physician provides the equipment (a technical service) pursuant to a personal services agreement, the fair market valuation shall take the rental value of the equipment into consideration in addition to the value of the physician’s professional services. The values of both the professional and technical services should be separately stated in one agreement.
- d. Retaining Physicians for Corporate. When the Corporate office retains a physician for a group speaking event, testimony, or another purpose benefiting the Company, the hourly rate shall be consistent with this policy.
4. Assets. The fair market value is the value that would be assigned to the asset in an arms’ length transaction, consistent with the price the asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset. When acquiring or divesting a medical practice or medical practice assets of a physician, the Medical Practice Asset Acquisitions Policy, LL.007, and the Medical Practice Asset Divestitures Policy, LL.017, require an independent third party valuator to determine the fair market value.
5. Education and Training Hosted by Vendors. Where a vendor or other third party hosts or produces a physician education or training event at the hospital, one method to determine fair market value is to set it equal to the price the vendor would ordinarily charge for each physician’s attendance plus the value of any materials, including the rental value for the time period of the training for any equipment used in the training session.
6. Education and Training Hosted by the Hospital. Where the hospital hosts or produces a physician education or training event, one method of ensuring fair market value is to require the physician to pay the price charged by similar training programs conducted by instructors of similar skill level, regardless of any price charged by the hospital.

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7. Laboratory Services. Laboratory services must be priced in accordance with the Laboratory – Marketing Practices Policy, REGS.LAB.023.

**REFERENCES:**

42 U.S.C. § 1395nn; 69 Fed. Reg. 16107 (March 26, 2004)  
 Professional Services Agreements Policy, [LL.002](#)  
 Physician Recruiting Agreements Policy, [LL.003](#)  
 Physician Equipment or Space Leases Policy, [LL.004](#)  
 Physician Employment Agreements Policy, [LL.006](#)  
 Physician Asset Acquisitions Policy, [LL.007](#)  
 Loans & Loan Guaranties Policy, [LL.009](#)  
 Non-employed Physician Education Expenses Policy, [LL.010](#)  
 Providing Free and/or Discounted Training and Equipment to Referral Sources Policy, [LL.011](#)  
 Medical Practice Asset Divestitures Policy, [LL.017](#)  
 Physician Purchasing Items or Services from the Facility Policy, [LL.021](#)  
 Laboratory – Marketing Practices Policy, [REGS.LAB.023](#)