



Fair market value for rental of office space is defined as " the value in an arms-length transaction of rental property for general commercial purposes (not taking into account its intended use), without adjustment to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee, and consistent with the general market value of the subject transaction."

CMS additionally noted that a determination of fair market value is usually the fair market price for completed bona fide sales of " assets of like type, quality and quantity in a particular market at the time of the acquisition" or compensation in bona fide service agreements with comparable terms at the time of the agreement," without taking into account any actual or anticipated volume or value of referrals.

PRACTICE NOTE: When evaluating a potential relationship in which the Stark Law is a factor, the dollar amount of the fair market value is one of two components that must be reviewed. The compensation to be paid must be at fair market value and must also not take into account the volume or value of referrals (or volume or value of other business generated by the physician, if applicable). If either of those two components cannot be met, then the relationship would not be permissible under the Stark Law.

General Market Value. Prior to the Final Rule, the term " general market value" was included in the definition of " fair market value" of the Stark Law and was not separately defined. Instead, the definition of " general market value" was equated to " market value," a term utilized in valuation principles. However, based on industry concern, CMS acknowledged that the use of the term " market value" did not achieve the objective in defining " general market value." Similar to the revised definitions of " fair market value," the Final Rule provides a general definition of " general market value," as well as general market value definitions applicable to specific types of arrangements.

PRACTICE NOTE: While the term " market value" is not included in the Final Rule, it is important to remember that parties are still obligated to consider the general market value of the transaction entered into by the parties without taking into account any other business arrangements between the parties.

The new definitions of general market value are:

For Assets: With respect to the purchase of an asset, the price that an asset would bring on the date of acquisition of the asset as the result of bona fide bargaining between a well-informed buyer and seller that are not otherwise in a position to generate business for each other.

For Compensation: With respect to compensation for services, the compensation that would be paid at the time the parties enter into the service arrangement as the result of bona fide bargaining between well-informed parties that are not otherwise in a position to generate business for each other.

DISCLAIMER: The information presented is not meant to constitute legal advice. Please consult your attorney for advice on a specific situation. Of particular importance, many states have similar Stark and/or AKS laws that prohibit kickbacks and/or restrict physician self-referrals. The information presented is current as of the initial date of publication. Readers are encouraged to check government and other relevant websites for the most up to date information.



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