



Stark Issues in Healthcare Real Estate

Under Stark Law,
a lease agreement
constitutes a
“**financial
relationship**”



Stark Law **prohibits a physician from making patient referrals to a health care provider** (i.e., hospital) for certain designated health services that are reimbursable by Medicare if the physician has a **financial relationship** with the health care provider.

Office Rental Exception

What Is Acceptable?

The Office Rental Exception allows a physician to lease space to / from a provider, so long as the following conditions are met:

- Lease term of at least one (1) year;
- The space does not exceed that which is reasonable and necessary for the intended business purpose (key when hospital is leasing from private physician);
- Rent is set in advance and is consistent with Fair Market Value;
- Rent does not take into account the volume or value of referrals between the two parties;
- The lease agreement must be Commercially Reasonable even if no referrals existed between the two parties; and
- The space must be used exclusively when used by the provider (common areas such as lobbies, waiting rooms, break rooms can be shared; exam and procedure rooms or specialty equipment may not be shared).

What Is Not Acceptable?

Physicians and providers often fail the Office Rental Exception in one of the following ways:

- No written lease has been executed or the written lease has lapsed;
- The actual square footage being used by the lessee differs from the square footage noted in lease, which could result in physicians getting more space than they pay for or hospitals paying for more space than they are actually using;
- Rent is not adjusted over the term of the lease or at the renewal of the lease to reflect changes in economic conditions that would have an impact on FMV and Commercial Reasonableness;
- Hospitals lease medical office space from physicians but do not have a viable reason for leasing the space. Therefore, the lease would not be considered Commercially Reasonable; and
- Physicians abuse time-share arrangements by using more than the allocated time agreed upon in the lease or by paying less than their fully-allocated share of expenses associated with the leased premises.

Realty Trust Group's expert team of Healthcare Real Estate professionals can help you navigate issues like Stark Law and other complicated topics. Call Greg Gheen: (865) 521-0630



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