

**DOCUMENT INFORMATION**

Policy Title:	Fair Market Valuation
Department/Manual:	Ethics and Compliance
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Approved By:	Danette Slevinski, Chief Compliance Officer
Final Approval:	Danette Slevinski, Chief Compliance Officer
Attachments:	None

**I. POLICY**

Any arrangement or transaction with an Actual Referral Source and/or a Potential Referral Source, as defined herein, is to be at Fair Market Value. Whenever the Hospital requires a Fair Market Valuation in order to comply with federal and/or state laws and regulations and/or with its own policies and procedures, no set of facts and circumstances, such as the potential or actual ability of one party to refer patients or other health care business or referrals to the other, may affect the terms of the arrangement or transaction or the valuation.

**II. PURPOSE**

To provide for University Hospital's process of determining whether an Arrangement with an Actual Referral Source and/or a Potential Referral Source (as defined herein) is made at Fair Market Value (FMV) in order to comply with the Stark Law (42 U.S.C. § 1395nn ), the Anti-kickback Statute (42 U.S.C. § 1320a-7b, and/or all applicable federal and state statutes, rules, regulations and orders.

**III. ACCOUNTABILITY**

Under the direction of the President/CEO, Chief Legal Officer and the Chief Compliance and Privacy Officer shall ensure compliance with this policy. Senior Leadership staff responsible for contract oversight are also responsible for ensuring that FMV reviews are completed timely.

**IV. APPLICABILITY**

This policy applies to all University Hospital (UH) Departments.

**V. DEFINITIONS**

**FAIR MARKET VALUATION**

**July 2020**

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- A. **Actual Referral Source:** an actual source of health care business or referrals to UH, or between UH and a Physician (or a Physician's Immediate Family Member (as defined herein and at 42 C.F.R. 411.351) - including, but are not limited to, another Physician, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence or make referrals.
- B. **Arrangement:** Arrangements shall mean every arrangement or transaction that:
- (a) involves, directly or indirectly, the offer, payment, solicitation or receipt of anything of value and is between University Hospital and any Actual Referral Source and/or Potential Referral Source of health care business or referrals to University Hospital or any actual or potential recipient of health care business or referrals from University Hospital. The term "source" shall mean any Physician, contractor, vendor or agent and the term "health care business or referrals" shall be read to include referring, recommending, arranging for, ordering, leasing or purchasing of any good, facility, item or service for which payment may be made in whole or in part by a federal health care program, or
  - (b) is between University Hospital and a Physician (or a Physician's Immediate Family Member, as defined herein and at 42 C.F.R. 411.351) who makes a referral (as defined at 42 U.S.C. 1395nn(h)(5)) to University Hospital for designated health services (as defined at 42 U.S.C. 1395nn(h)(6)).
- C. **Focus Arrangement:** "Focus Arrangement" shall mean every Arrangement that:
- (a) involves, directly or indirectly, the offer or payment of anything of value and is between UH and any actual source of health care business or referrals to UH, or
  - (b) is between UH and a Physician (or a Physician's Immediate Family Member as defined herein and at 42 CFR 411.351) who makes a referral (as defined at 42 CFR. 1395nn(h)(5)) to UH for designated health services (as defined at 42 U.S.C. 1395nn(h)(6)).
- Provided, however, that any Arrangement that satisfies the requirements of a specific list, not applicable hereto, or any exception to the prohibitions of 42 U.S.C. 1395nn.
- D. **Immediate Family Member:** husband or wife; birth or adoptive parent, child or sibling; stepparent, stepchild, stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law; grandparent or grandchild; spouse of grandparent or grandchild.
- E. **Physician:** a doctor of medicine or osteopathy, a doctor of dental medicine or dental surgery, a doctor of podiatric medicine, a doctor of optometry and/or a chiropractor.
- F. **Potential Referral Sources:** a potential source of health care business or referrals to UH, or between UH and a Physician (or a Physician's Immediate Family Member as defined herein and at 42 C.F.R. 411.351) including, but not limited to, another Physician, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence or make referrals.

**VI. PROCEDURE**

Prior to executing any Arrangement with an Actual Referral Source and/or Potential Referral Source, the relevant Department must determine and secure appropriate supporting documentation that any remuneration including, but not limited to, compensation given or received in the arrangement or transaction is Fair Market Value. At a minimum, the following considerations must be included in any Fair Market Value analysis prepared by the relevant Department or a third party.

A. Fair Market Value Defined.

1. **For rental property purposes**, fair market value means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the lessor or lessee) would attribute to the property as a result of its proximity or convenience to sources of health care business or referrals otherwise generated, for which payment may be made in whole or in part under Medicare, Medicaid or other federal health care programs.
2. **For personal services and employment purposes**, fair market value means the value in arms-length transactions, consistent with the remuneration that would be included in a services agreement, as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate health care business or referrals for the other party at the time of the personal services arrangement.
3. Determination of the remuneration including compensation under fair market principles will begin with a range of benchmark payments, as described below. The appropriate value to select from within the range for a given arrangement or transaction depends on individual factors on a case-by-case basis. For example, a Physician with a considerable experience in a substantive field or within a historically documented high level of personal productivity might be determined to receive compensation on the high end of the range. Similarly, where office space to be leased is in below standard condition for the market, the lease rate charged might be determined to be in the low end of the range.
  - a. 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 arrangement or transaction and must also match those items and services actually provided to or by the referral source as set forth in the agreement.
  - b. Consideration of Facts and Circumstances. All valuations should provide a thorough analysis of the facts and circumstances of the underlying arrangement or transaction in comparison to industry benchmark data (i.e., MGMA, AAMC, Sullivan Cotter). In certain circumstances, comparing payments against objective benchmark measures or industry practices does not guarantee that a payment meets the standard of fair market value.

B. Rental or Lease of Space or Equipment

1. Limitations. Any rental arrangements between a hospital and Physician or otherwise between Actual Referral Sources and/or Potential Referral Sources may be used as data points in calculating fair market rent, but should not be the sole factors considered. 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.

2. 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. The leased space should include space to be exclusively used, plus allocated shared space, plus allocated building common space, adjusted for the time the space will be utilized if used less than full time. Fair market value comparisons should further consider such factors as the condition of the space, amenities and services, including whether the space has been outfitted with cabinetry and lighting, furniture, utilities of the occupied and common space, housekeeping, maintenance and hazardous waste disposal, property and liability insurance, telecommunication and internet accessibility, to name only some factors. In addition, a specific landlord's overhead and margin are also factors that may be considered.
3. Calculating FMV for a Lease of Equipment. Generally, many of the above considerations regarding a lease of space apply also 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 an arrangement or a transaction involve entities in a position to refer or generate health care business to one other. In such cases, one method of calculating fair market value would be to add factors for equipment maintenance and repair, overhead and margin of comparable medical equipment.

C. Personal Service Agreements and Employment Agreements

- In calculating Fair Market Value, the nature of the services to be provided must be considered. If an hourly rate is used to determine a Physician's or staff's annual salary, the rate should be multiplied by a number of hours that accurately reflects the time actually worked by the Physician or staff each year.
- D. If any arrangement or transaction with an Actual Referral Source or a Potential Referral Source is a Focus Arrangement (as defined herein), then the Hospital's Legal Commitment Authority policy (approved July 1, 2013) and policy on General Statement on Agreements with Referral Sources (Policy# 831-200-977) applies and must be followed.
  - E. The Office of Ethics and Compliance will educate responsible parties on the laws, regulations and policies regarding the need for Fair Market Value determinations, will monitor and review agreements, will review the Fair Market Value documentation attached to agreements and attest to the appropriateness and reasonableness of the methodology used by the Departments as reflected in the documentation provided by the Departments for the services rendered under such agreements and will assist the responsible Department head with remediating such agreements when potential violations of this policy are detected.
  - F. The Office of General Counsel will educate responsible parties on the laws, regulations, and policies regarding the need for Fair Market Value determinations, will monitor and review agreements and the Fair Market Value documentation attached thereto, and will assist, when requested, in remediating such agreements when potential violations of this policy are detected.

1. University Hospital Policies including, but not limited to, Legal Commitment Authority policy (approved July 1, 2013) and policy on General Statement on Agreements with Referral Sources (Policy # Policy# 831-200-977).
2. UH Standard Operating Procedure: Includes resources for determination (e.g., MGMA Academic Practice Compensation and Production Survey Report, MGMA Physician Compensation and Production Report, AAMC Survey of Resident/Fellow Stipends and Benefits, and Sullivan Cotter Compensation and Productivity Surveys).
3. 42 U.S.C. § 1395nn et seq.; 69 Fed. Reg. 16107 (March 26, 2004); 42 C. F. R. § 411.350 et seq.