

Fair Market Valuation

ROWAN UNIVERSITY POLICY

Title: Fair Market Valuation

Subject: Office of Compliance & Corporate Integrity (OCCI)

Policy No: OCCI:2013:C10

Applies: RowanSOM

Issuing Authority: Rowan President & RowanSOM Dean

Responsible Officer: Chief Audit, Compliance & Privacy Officer

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I. PURPOSE

To provide guidance as to Rowan University School of Osteopathic Medicine's (RowanSOM) process of determining whether a transaction with a Potential Referral Source (as defined below) is made at fair market value in order to comply with Stark Law ([42 U.S.C. § 1395nn](#)) and the Anti-kickback Statute (42 U.S.C. § 1320(a)-7b(b)).

II. ACCOUNTABILITY

Under the direction of the President, the Dean, General Counsel, and Chief Audit, Compliance & Privacy Officer are to ensure compliance with this policy. The deans and chief executive officers shall implement this policy.

III. APPLICABILITY

This policy applies to all RowanSOM operating units, including but not limited to hospitals, physician practices and outpatient centers.

IV. DEFINITIONS

1. *Referral Source* - an actual source of health care business or referrals to RowanSOM, or between RowanSOM and a physician (or a physician's immediate family member (as defined at [42 CFR. 411.351](#)) - include, 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.
2. *Focus Arrangement* - every arrangement that involves, directly or indirectly, the offer or payment of anything of value and is between RowanSOM and any actual source of health care business or referrals to RowanSOM, or is between RowanSOM and a physician (or a physician's immediate family member (as defined at 42 CFR 411.351) who makes a referral (as defined at [42 CFR. 1395nn\(h\)\(5\)](#)) to RowanSOM for designated health services (as defined at 42 U.S.C. 1395nn(h)(6)).
3. *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.
4. *Physician* - a doctor of medicine or osteopathy, a doctor of dental medicine or dental surgery, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.
5. *Potential Referral Sources* - physicians, 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 referrals.

V. REFERENCES

1. Professional Services Agreements
2. [42 U.S.C. § 1395nn](#); 69 Fed. Reg. 16107 (March 26, 2004); [42 C. F. R. § 411.350](#) et. seq.
3. MGMA Academic Practice Compensation and Production Survey Report
4. MGMA Physician Compensation and Production Report
5. AAMC Survey of Resident/Fellow Stipends and Benefits
6. Sullivan Cotter Compensation and Productivity Surveys
7. Voluntary Compliance Plan Effective September 26, 2014

VI. POLICY

Any transaction with an Actual or Potential Referral Source is to be at fair market value. Whenever RowanSOM 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.

VII. PROCEDURE

1. Prior to executing any transaction with an Actual or Potential Referral Source, the relevant business unit must determine and secure appropriate supporting documentation that any compensation given or received in the transaction is at fair market value. At a minimum, the following considerations must be included in any fair market value analysis.
2. Fair Market Value Defined.
 - a. **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 referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid or other federal health care programs..
 - b. **For personal services and employment purposes**, fair market value means the value in arms-length transactions, consistent with the compensation 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 business for the other party at the time of the service arrangement.
3. Determination of the 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 transaction depends on individual factors. For example, a physician with a considerable experience in an area or a historically documented high level of personal productivity could 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 may 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 agreement and must also match those items and services actually provided to the referral source.
 - b. 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 (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.
4. Rental or Lease of Space or Equipment
 - a. Limitations. Any rental arrangements between a hospital and physician or otherwise between referral sources may be used as data points in calculating fair market rent, but should not be used exclusively. 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.
 - 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. The leased space should include exclusive use space, plus allocated shared space, plus allocated building common space, adjusted for time utilized if used

less than full time. Fair market value comparisons should further consider the condition of the space, amenities and services, including 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. In addition, landlord's overhead and margin factors may be considered.

- c. Calculating FMV for a Lease of Equipment. Generally, many of the above considerations 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 factors for equipment maintenance and repair, overhead and margin of comparable medical equipment.

5. Personal Service Agreements and Employment Agreements

In calculating fair market value, the nature of the services to be provided must be considered. Fair market value of administrative and teaching services may or may not be similar to the fair market value of clinical services. Cost factors for professional liability insurance at fair market value should be considered and added to professional services agreements for clinical services.

If an hourly rate is used to determine a physician 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.

6. If any transaction with a Potential Referral Source is a Focus Arrangement (as defined above), the Focus Arrangements Database Policy and Focus Arrangements Approval Procedure apply and must be followed.
7. The Office of Compliance and Corporate Integrity 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 business units as reflected in the documentation provided by the business units for the services rendered under such agreement and will assist the responsible dean or vice president with remediating such agreements when potential violations of this policy are detected.

VIII. NON-COMPLIANCE AND SANCTIONS

Any individual who violates this policy shall be subject to discipline up to and including dismissal from the University in accordance with their union and University rules. Civil and criminal penalties may be applied accordingly. Violations of this policy may require retraining and be reviewed with employee during the annual appraisal process. The Deans of each College, Vice Presidents, and University President, with the assistance of the Department of Human Resources, will enforce the sanctions appropriately and consistently to all violators regardless of job titles or level within the University and in accordance with bargaining agreements for represented employees. Any sanction costs or fines will be borne by the Department and the Department Chair or VP will determine how these funds will be assigned.

By Direction of the President:

Signature on file

Chief Audit, Compliance and Privacy Officer