



**HAWAII HEALTH SYSTEMS**  
C O R P O R A T I O N

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## ***COMPLIANCE ALERT 10-43***

### ***CMS Revises Stark Exception for Determination of Fair Market Value for Rental of Office Space***

In the September 15, 2010 *Federal Register*, CMS announced a correction to the Stark exception to the rental of office space. As stated in the Federal Register, the correction is as follows: "In Title 42 of the Code of Federal Regulations, Parts 400 to 413, revised as of October 1, 2009, on page 475, in Sec. 411.357, paragraph (a)(5)(ii) is revised and the second paragraph (a)(6) is removed. "

The revised text now reads:

#### **§ 411.357 Exceptions to the referral prohibition related to compensation arrangements.**

For purposes of §411.353, the following compensation arrangements do not constitute a financial relationship:

(a) *Rental of office space.* Payments for the use of office space made by a lessee to a lessor if there is a rental or lease agreement that meets the following requirements:

(i) The rental charges over the term of the agreement are not determined—

(i) In a manner that takes into account the volume or value of any referrals or other business generated between the parties; or

(ii) Using a formula based on—

(A) A percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space; or

(B) Per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.

\* \* \* \* \*

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What this correction does is to remove (paragraph (a)(6)) the criteria of "commercial reasonableness" from consideration for the rental of office space exception. The correction does not affect the rental of equipment

arrangements which can, at this time, continue to consider commercial reasonableness. No explanation was given for the correction.

Source: Federal Register, September 15, 2010, Volume 75, Number 178, Page 56015