

Hospital/Physician Leases Compliance Checklist

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LEGAL REQUIREMENTS: A "no" answer to any of the following questions may mean your lease is out of compliance with applicable laws.

- Is the lease in writing?
- Is the lease signed by both parties?
- Does it specifically identify the leased premises?
- Is the term at least one year?
- Is the space reasonable and necessary for the proposed use?
- Is rent set in advance?
- Is rent at fair market value (FMV)?
 - Tenant Improvement Allowance and other landlord concessions impact FMV.
 - Rent does not take into account the volume or value of referrals.
- Is the tenant entitled to exclusive use, except for common areas?
- Is the lease commercially reasonable, even if there were no referrals between landlord and tenant?
- Are holdovers limited to six months?

COMMON PROBLEMS: Once you have confirmed compliance with Legal Requirements, look for these common problems.

- Signature missing or not timely obtained

- Dates of signature omitted
- Escalators not imposed (when contractually required)
- Missed rent payments
- Holdovers permitted past six months

WARNINGS: Both federal and state laws may be implicated. Some of the federal laws are noted below; check for state law counterparts and related legislation.

- The Stark Law
- Anti-Kickback Statute
- False Claims Act

SOLUTIONS: If you identify any failure to meet legal requirements or other problems with your leases to physicians, determine if any other exception or safe harbor applies. If not, develop a strategy to bring the leases into compliance and determine whether other legal action is necessary or recommended.

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