



# Stark Law and Anti-Kickback Statute

**Valuation services to the healthcare industry**



The healthcare industry continues to be one of the most highly regulated industries in the United States. The Federal Anti-Kickback Statute and the Stark Law in particular were established to prevent fraud and abuse amongst healthcare organizations, providers, payers, manufacturers and other entities receiving federal reimbursement through Medicare and Medicaid.

Enforcement activity is increasingly focused on holding organizations and providers responsible for the legitimacy of their financial relationships and transactions. Healthcare organizations and providers can face significant financial penalties, sanctions and, in some cases, criminal charges for non-compliance.

These regulations have identified fair market value (FMV) as the standard of value when assessing compliance with Stark and Anti-Kickback. Accordingly, FMV has become the subject of greater scrutiny as organizations strive to comply with these regulations. Organizations should therefore consider reviewing their FMV rates, policies and practices to ensure compliance.



## Who do these regulations affect?

- Healthcare providers and payers
- Medical suppliers
- Pharmaceutical manufacturers
- Private practices
- Urgent care centers
- Retail pharmacies
- Distributors
- Not-for-profit healthcare organizations



## What types of transactions are subject to these regulations and FMV?

Any financial transaction or arrangement where healthcare providers receive payments under federal programs and/or between non-profit healthcare organizations, including, but not limited to:

- Mergers and acquisitions
- Business divestitures
- Payments to providers for clinical or administrative services
- Space & real estate rental agreements
- Equipment leases
- Physician sessional arrangements
- Management service agreements
- Practice support payments
- Joint ventures
- Payments to physicians for leading continuing professional education



## Our services

KPMG has an established team of healthcare valuation professionals with significant experience providing FMV analyses focused on the transactions mentioned above. Some of the largest healthcare organizations frequently look to us for objective advice regarding FMV valuations to fulfill their regulatory compliance responsibilities.



## Our Approach

While every analysis is unique, KPMG employs a balanced approach to FMV grounded in long standing valuation principles and guided by the relevant regulatory guidance and experience performing FMV studies for our clients. Our services are aimed at compliance with the relevant regulatory guidance that define FMV as a standard of value. Per 42 CFR § 411.351 *Financial Relationships Between Physicians and Entities Furnishing Designated Health Services*, the term “fair market value” means the value in arm’s-length transactions, consistent with the general market value. “General market value” means the price that an asset would bring, as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service 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, on the date of acquisition of the asset or at the time of the service agreement. Usually the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition, or the compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement.

The applicable standards and guidance surrounding FMV and the unique nature of the services subject to FMV require practitioners to employ careful consideration when applying the three generally accepted valuation approaches:

1. The **income approach** recognizes that the value of an asset is premised on the receipt of future economic benefits. These benefits can include earnings, cost savings, tax deductions, and the proceeds from disposition. While the income approach may show that the service is economically viable, the uniqueness of the service or the contribution of additional services to the economic benefits may make it difficult to satisfy the requirements noted in the regulations under this approach.

2. The **market approach** involves gathering data on sales and offerings of comparable assets. The market approach measures the loss in value from all forms of physical, functional, and economic factors inherent in the individual asset. The market approach is most reliable when there are sufficient sales of comparable assets that can be independently verified. While the market approach may not guard against others who may be pricing based on the volume or value of referrals as set forth in the regulations, when used properly, it may provide useful supporting information relative to FMV.
3. The **cost approach** considers the concept of reproduction or replacement cost as an indicator of value. The cost approach is based on the assumption that a prudent investor would pay no more for an asset than the amount for which he could replace or re-create it with an asset of similar utility. Historical costs are often used to estimate the current cost of replacing the asset valued. The cost-plus method involves an analysis of the specific services to be provided and the requisite costs, including the consideration of market based rates to reproduce the service. The method then involves an analysis of similar entities to generate an appropriate mark-up relative to the costs. A subjective analysis is then conducted to arrive at an appropriate mark-up for the asset being valued.



## Why KPMG

KPMG LLP, and its network of independent member firms, is one of the largest providers of Tax, Audit, and Advisory services to healthcare and life sciences organizations globally. With more than 2,700 industry-dedicated professionals in the U.S., supported by a global network across 152 countries, we offer a market-leading portfolio of methodologies, tools, and services to help our clients grow their business, enhance performance, and manage risk. We turn broad industry experience into insights and forward-thinking practical solutions for managing the complexities of today, while preparing for the challenges of tomorrow.

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