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Checklist for Evaluating Health System Real Estate Compliance

Here is a checklist to help health systems assess the quality of their real estate compliance program ("Lease Creep, Ground Leases: Real Estate Stark Risks May Be Overlooked," *RMC* 28, no. 21). It was developed by Goran Musinovic, vice president of Realty Trust Group. Contact him at gmusinovic@realtytrustgroup.com.

Regulatory Compliance	Yes	No
Are staff who are tasked with the health system's real estate administration regularly trained on the applicable healthcare statutes and regulations, including the Anti-Kickback Statute and the Stark Law?		
Has the health system established a step-by-step leasing process approved by the health system's compliance department and counsel, and is that process followed by the health system's real estate department?		
Does the health system hire qualified third-party valuation experts to opine on the fair market value (FMV) lease rates that should be charged to physician tenants or rates that the health system should pay to physicians from whom the health system is leasing space?*		
Does the health system hire qualified experts, or has the health system established internal processes, to opine on the commercial reasonableness (CR) of lease terms involving physician tenants?		
Has the health system implemented guidelines for the information that should be included in the FMV and CR Opinion Reports, and has the health system established an internal review process for those FMV and CR Opinions?		
Does the health system obtain these same FMV and CR Opinions when purchasing or selling properties to parties that may implicate the Stark Law or other healthcare regulations?		
Do the FMV lease rates charged to physicians consider the terms of the lease, the size of the space, the tenant improvement (TI) allowance provided to a tenant, and other benefits/concessions under the lease?		
Has the health system obtained professional opinions from reputable third-party valuation experts regarding TI caps and rent escalator caps?		
Does the health system hire qualified third-party valuation experts to regularly perform Competitive Market Analysis (CMA) for the markets in which its properties are located?		
Has the health system implemented guidelines for the information that should be included in CMAs, and has the health system established an internal review process of those CMAs?		

Internal Controls	Yes	No
Has the health system established internal controls to ensure that the name/form of the lease (e.g., lease labeled as Triple Net [NNN] lease) used with physician tenants matches the substance of the lease (e.g., substantive content of the lease shows that it is an NNN lease)?		
Has the health system established internal controls regarding TI allowances to ensure they are not excessive under the circumstances?		
Has the health system established internal controls to ensure that leases do not lapse and are timely renewed?		
Does the health system have internal controls to ensure all rents are collected timely?		
Does the health system have internal procedures in place to ensure that leases are timely terminated in the event of default, and eviction procedures are undertaken when necessary?		
Standard Business and Lease Terms	Yes	No
Does the health system use standard business and lease terms for all tenants?		
Have the health system's standard business and lease terms been reviewed and approved by the health system's compliance department and counsel?		
Has the health system established a standard business and lease terms approval process, and is that process regularly followed by the health system's staff?		
Are all leases to which the health system is a party recorded in writing and reduced to a single document?		
Do all lease arrangements contain a term of a year or more?		
Are all lease arrangements signed and dated by the proper parties to ensure that no arrangements are backdated or retroactively signed?		
Does the lease arrangement clearly identify the space, including common area space, used by the physician?		
General Compliance	Yes	No
Are staff who are tasked with the health system's real estate administration regularly trained on the different types of existing leases (e.g., Full Service Gross [FSG], Modified Gross, NNN) and other terms of art regarding leases (Usable Square Feet [USF] v. Rentable Square Feet [RSF], etc.)?		
Does the size of the space that is (a) leased from the health system by physicians or (b) leased by the health system from physicians exceed that which would be needed for a tenant to use it for its intended purpose?		

Is the size of the leased space that is considered in the health system's lease arrangements measured consistently (RSF v. USF), and are all suites measured in accordance with Building Owners and Managers Association (BOMA) industry standards across the health system's real estate portfolio?		
In establishing the terms of its lease arrangements with physicians, does the health system distinguish between referring physicians and nonreferring physicians?		
Does the health system include holdover provisions in its leases, including a provision that addresses a situation in which the tenant remains in the space after the expiration of the lease? Is the holdover clause in compliance with the 2016 Stark Law update?		
If the holdover provisions demand an increase in rent payments, is the health system collecting additional rents in accordance with those holdover provisions?		
Does the health system keep an inventory of its real estate portfolio?		
Has the health system established guidelines for entering into time-share leasing arrangements?		