

Space Rental Safe Harbor (42 C.F.R. § 1001.952(b))

(b) As used in section 1128B of the Act, “remuneration” does not include any payment made by a lessee to a lessor for the use of premises, as long as all of the following six standards are met—

- (1) The lease agreement is set out in writing and signed by the parties.
- (2) The lease covers all of the premises leased between the parties for the term of the lease and specifies the premises covered by the lease.
- (3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.
- (4) The term of the lease is for not less than one year.
- (5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.
- (6) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental. Note that for purposes of paragraph (b) of this section, the term 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 prospective lessee or lessor) 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 and all other Federal health care programs.