

GENERAL STATEMENT ON AGREEMENTS WITH REFERRAL SOURCES

DOCUMENT INFORMATION

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Final Approval:	Danette Slevinski, Chief Compliance Officer
Attachments:	None

I. PURPOSE

To provide guidance to University Hospital's (UH) policy on the entering into financial arrangements with Physicians and other Potential Referral Sources, as defined below, and to ensure compliance with the Stark Law, the federal Anti-kickback statute and with the regulations, directives and guidance related thereto.

II. ACCOUNTABILITY

Under the direction of the President/CEO, the General Counsel, Chief Medical Officer, Chief Nursing Officer, Chief Financial Officer, Chief Operations Officer and Chief Compliance and Privacy Officer are to ensure compliance with this policy. The Department Heads shall implement this policy.

III. APPLICABILITY

This policy applies to all UH Departments. The policy applies to any agreement or financial relationship involving, i) a Physician or, as set forth below, a non-Physician Potential Referral Source, or ii) a Physician's Immediate Family Members (herein and in this policy, all may be referred to as "Referral Sources").

IV. DEFINITIONS

- A. **Approving Authority:** For purposes of this policy, the approving authority is the President/CEO, Chief Counsel, and Chief Compliance and Privacy Officer.
- B. **Immediate Family Members:** Is defined by law as spouse; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and the spouse of a grandparent or grandchild.

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- C. **Physician:** A doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.
- D. **Potential Referral Sources:** Physicians, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence referrals.
- E. **Subject Agreements and Financial Relationships:** Subject Agreements and Financial Relationships include, but are not limited to, physician recruiting agreements, management services agreements, professional service agreements, employment agreements, other agreements for the provision of services or supplies (whether medically related or not), and medical office building leases, leases of equipment and staff.

V. REFERENCES

- A. 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn; 42 C. F. R. § 411.350 et. seq.;
- B. 60 Fed. Reg. 41914 (Aug. 14, 1995); 63 Fed. Reg. 1659 (Jan. 9, 1998);
- C. 66 Fed. Reg. 856 (Jan. 4 2001); 69 Fed. Reg. 16054 (March 26, 2004)

VI. POLICY

UH will from time to time promulgate various policies as to financial relationships between UH and (i) Physicians and (ii) other potential Referral Sources. Compliance with the policies is required in all contracts with Physicians and other Referral Sources.

Requirements:

- A. In general, in compliance with 42 U.S.C. § 1395nn, commonly known as “the Stark Law,” and 42 U.S.C. §1320(a)-7b(b), commonly known as the Anti-kickback Statute, and with statutory exceptions and safe harbors, an agreement with a Referral Source must:
 - 1. be in writing, signed by the parties and must specify the services covered;
 - 2. specify the timeframe for the arrangement, the term of which must not be for less than one year;
 - 3. specify the consideration (i.e., rent, purchase price, compensation) and set the consideration in advance (with the exception of employment agreements), consistent with fair market value (refer to policy on Fair Market Valuations) for services or items actually provided without taking into account the value or volume of referrals or other business generated by the Referral Source; and
 - 4. be intended to obtain or provide an item or service that is reasonable and necessary for a legitimate business purpose.

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Depending on the nature of the Subject Agreement (i.e., lease of space, professional services agreement, affiliation agreement), additional regulatory requirements may apply in order to fulfill the provisions of applicable legal exceptions or safe harbors. To the extent the Subject Agreement is a Focus Arrangement, the Focus Arrangements Database policy and Focus Arrangements Approval Procedure apply and must be followed.

Other forms of agreements, such as "letters of intent," "letter agreements," or "memoranda of understanding" are subject to this policy. Individuals working within UH, including but not limited to, its clinical units and departments, *must not enter* into side agreements or arrangements whether written or oral with Physicians and/or Referral Sources without the explicit approval of the President/CEO Chief Counsel, and Chief Compliance and Privacy Officer. This policy also applies to all amendments and extensions/renewals of Subject Agreements with Physicians and/or Referral Sources. If at any time it appears that there have been discussions or memoranda indicating intent to induce referrals by way of a Subject Agreement, such Subject Agreement will not be approved and will be addressed appropriately.

All Subject Agreements with potential referral sources must be reviewed and approved by the President/CEO, Office of Legal Counsel and Chief Compliance and Privacy Officer. In most cases, the approval is evidenced by signatures on the applicable term sheet or approval form. Legal review and approvals must be obtained even if the Subject Agreement is believed to comply in all respects with UH policies. Legal review and approvals also must be obtained for amendments to existing Subject Agreements that revise terms and conditions including, but not limited to, the payment terms or the effective dates of the existing Subject Agreement. It is not acceptable to obtain the appropriate approvals after making payments in accordance with the Subject Agreement. Commitments to Physicians and/or other third parties to agreements and/or arrangements *may not be made* until and unless written reviews and approvals have been obtained from the President/CEO, Office of Legal Counsel, and the Chief Compliance and Privacy Officer. Signature authority for all Subject Agreements is subject to UH policy, including but not limited to, the Legal Commitment Authority Policy (Policy #TBD, adopted as part of UH Board Resolution No. 11, dated July 1, 2013).

- B. The Office of Ethics and Compliance will educate responsible parties on the laws, regulations and policies applicable to Subject Agreements with Potential Referral Sources, will monitor and review such Subject Agreements, will ensure that fair market value documentation is attached to Subject Agreements and reflects fair market value for the goods provided and/or the services rendered, and remediate such Subject Agreements when potential violations of Section VI of this policy are detected.
- C. The Office of General Counsel will educate responsible parties on the laws, regulations and policies applicable to Subject Agreements with Referral Sources, will monitor and review Subject Agreements with Referral Sources and the fair market value documentation attached thereto and, when requested, will assist in remediating Subject Agreements when potential violations of Section VI of this policy are detected.
- D. Execution Timing: Subject Agreement must be fully executed before any goods are provided and/or any services are rendered and before payment is made or received.
- E. Compliance with Subject Agreement terms: In all arrangements with Potential Referral Sources, payments must be consistent with the terms of the Subject Agreement and performance of all of



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the terms of the Subject Agreement is required. For example, monies owed by a Physician under a lease agreement must be paid in accordance with the terms of the agreement. Accurate and complete records of all time and effort must be maintained by the department. The department must accurately track remuneration paid or received pursuant to an agreement. The Office of Ethics and Compliance is responsible for conducting appropriately periodic probe samples of time and effort reporting and remuneration tracking including, but limited to, annual samples.