

DEPARTMENT: Legal	POLICY DESCRIPTION: General Statement on Agreements with Referral Sources; Approval Process
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<p>SCOPE: All Company-affiliated facilities worldwide including, but not limited to, hospitals, ambulatory surgery centers, home health agencies, hospice agencies, physician practices, outpatient imaging centers, service centers, joint ventures and all Corporate departments, Groups, Divisions and Markets</p>
<p>PURPOSE: To provide direction as to the Company’s process on entering into financial arrangements with physicians and other potential referral sources, as defined below.</p>
<p>POLICY:</p> <p>The Company will from time to time promulgate various policies as to financial relationships between Company entities and physicians and other referral sources (the “Policies”). Compliance with the Policies is required in all of the contracts with physicians and other referral sources, although exceptions may be made in certain circumstances where the facts demonstrate that an exception is appropriate. Any proposed exceptions must be discussed with and approved by assigned Operations Counsel and immediate supervisors prior to committing to such non-conforming proposals. Such exceptions are discouraged and only permitted where the applicable legal requirements continue to be met.</p> <p>A. <u>Application:</u> The Policies apply to any agreement or financial relationship involving, i) a physician or, as set forth above, a non-physician referral source, or ii) a physician’s immediate family members (herein and in the Policies, all may be referred to as "Referral Sources"). “Immediate family members” is defined by law as spouse; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother or stepsister; 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. Subject agreements and financial relationships include, but are not limited to, physician recruiting agreements, loans, guarantees of physician loans, management services agreements, professional service agreements, employment agreements, physician expense reimbursement agreements, other agreements for the provision of services or supplies (whether medically related or not), asset purchase and disposition agreements, and medical office building leases.</p> <p>B. <u>Requirements:</u> In general, in compliance with 42 U.S.C. § 1395nn (commonly known as “Stark II”) and the fraud and abuse safe harbors, an agreement with a Referral Source must:</p> <ol style="list-style-type: none"> 1. be in writing, signed by the parties and must specify the services covered (however, for the purchase of items or services by a physician, please refer to the Physician Purchasing Items or Services from the Facility Policy, LL.021); 2. specify the timeframe for the arrangement; 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, for services or items actually provided without taking into account the

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- 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.
 Note: Additional legal requirements may apply. Review all other applicable Company policies before entering into an agreement with a Referral Source. Any agreement with a Referral Source who is a Foreign Official must also comply with the Global Anti-Corruption Policy, LL.AC.001.
- C. Informal documents, such as "letters of intent," "letter agreements," or "memorandums of understanding" are subject to the Policies, as are arrangements with physician-owned entities. Facilities must not enter into side agreements or arrangements (written or oral) with physicians. The Policies apply to all amendments and extensions/renewals of agreements with physicians as well. If at any time it appears that there have been discussions or memoranda indicating an intent to obtain or reward referrals by way of an agreement, such agreement will not be approved.
- D. All agreements with potential referral sources except those mentioned below must receive the written approval of the Approving Authority and be reviewed by the Legal Department. In most cases, this approval is evidenced by signatures on the applicable Certificate. The review and approvals must be obtained even if the agreement complies in all respects with the Policies. The review and approvals must be obtained as well for amendments to existing agreements that revise the payment terms and/or the effective dates of the existing agreement. It is not acceptable to obtain the appropriate approvals after making payments in accordance with the agreement. Further, do not make commitments to physicians until written approvals have been obtained from both the Approving Authority and the Legal Department. The Approving Authority, in his or her discretion, may delegate authority in writing to the appropriate Market Manager to fulfill the Approving Authority's responsibilities pursuant to the Policies. The facility CEO may, with written approval from the Approving Authority, delegate the authority to sign the certificate to the facility CFO or COO for limited time periods.
- E. Referral Source Agreements or financial transactions that are exempt from Legal, Division and Market approval are limited to:
1. One-time Payments that are:
 - a. payment of \$250 or less or aggregate payments of \$500 or less in a 12-month period that are paid in accordance with an executed [Physician Expense Reimbursement Agreement](#),
 - b. payment of \$250 or less or aggregate payments of \$500 or less in a 12-month period that are paid as compensation and/or expense reimbursement in accordance with an executed Physician Speaker Agreement in the unmodified form, pursuant to the Marketing and Advertising Practices Related to Affiliated Physicians Policy, LL.023;
 - c. payment authorized by the Facility's Risk Manager and paid in accordance with an

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<p>executed Risk Management Physician Payment Form;</p> <p>d. payment of \$2,500 or less that is authorized by a Senior Vice President or Vice President of a Corporate Department who is also an officer of the contracting party for participation in an advisory meeting organized by that department and paid in accordance with an executed agreement;</p> <p>e. reimbursement of \$2,500 or less in accordance with an executed agreement that is authorized by a Vice President or Assistant Vice President of HCA Physician Services, for customary and reasonable expenses related to the initial/preliminary visits to the community of a physician that is being recruited to the community; and</p> <p>2. Transfer agreements, without any exchange of compensation;</p> <p>3. Business Associate Agreements and Limited Use Data Agreements required by the Health Insurance Portability and Accountability Act (HIPAA);</p> <p>4. Interim Agreements entered into temporarily with Physician-Owned Vendors, consistent with the Physician-Owned Vendor Policy, LL.027;</p> <p>5. Lab Agreements that use the unmodified form (except for areas such as names and dates) attached to the Laboratory - Marketing Practices Policy, REGS.LAB.023;</p> <p>6. Single patient hospice agreements using an unmodified standard contract template within fair market value range for care provided in a Skilled Nursing Facility or Assisted Living Facility; or for General Inpatient Care or Respite Care; and</p> <p>7. Meeting Space Rental Agreements that use the unmodified form attached to the Use of Facility-Owned Space by Physicians Policy, LL.024.</p> <p>F. <u>Execution Timing</u>: Both the contractor and the facility CEO or other approved delegate must sign the contract before any services are provided and before payment is made. Any services provided before both the contractor and the facility CEO or other approved delegate sign the agreement cannot be compensated by the facility, at the time of service or at any time in the future, unless approved in advance by Operations Counsel.</p> <p>G. <u>Compliance with contract terms</u>: In all arrangements with Referral Sources, payments must be consistent with the terms of the agreement and performance of all of the terms of the agreements is required. For example, monies owed by a physician under a lease agreement or loan documents must be paid in accordance with the terms of the documents. Accurate and complete records of all physician receivable collection activity should be maintained by the facility. The Legal Department should be contacted in the event of a default (in the case of physician receivables, Accounting Policy Guide #2 should be followed) so that remedies may be pursued in a prompt and business-like fashion.</p> <p>H. <u>Forms</u>: The Legal Department has prepared pre-printed form contracts and certifications which will cover most situations. To the extent possible, the form contracts should be utilized without revision. Each provision of the contract has its own purpose, so there should not be many deletions (other than "optional" provisions). Substantially all Referral Source</p>

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agreements should utilize the pre-printed forms. The turn-around time with other agreement forms will be substantially longer. The pre-printed form contracts are available on the Company's intranet and, for those facilities which are trained and have access, on Upside, the Company's contract management system. PLEASE DO NOT RETYPE THE FORM CONTRACTS ONTO A WORD PROCESSING SYSTEM; SUBSTANTIAL DELAYS IN LEGAL DEPARTMENT REVIEW AND APPROVAL WILL RESULT.

- I. Contract Control Log: A Referral Source Contract Control Log documenting contractual relationships with each referral source must be developed and maintained. The Referral Source Contract Control Log should include all current agreements, leases or financial arrangements between that facility (or Corporate Department) and any referral sources, including Professional Services Agreements, Income Guarantees (Recruiting Agreements), Medical Directorships, Leases (including those maintained by an independent property manager), Employment Agreements and generally, any referral source relationship other than lease arrangements in a Medical Office Building and one-time payments to a potential referral source.

Here is a link to a Sample Referral Source Contract Control Log on Atlas:

http://connect.medcity.net/c/document_library/get_file?uuid=838a7fb2-d38c-4d0b-b1b7-ede1f20b3f14&groupId=42069440

- J. For those facilities that have received training on TCM (Total Contract Manager, formerly known as "Upside"), agreements created in TCM do not need to be separately listed on an independently maintained Contract Control Log. The existing Contract Control Log for the agreements not in TCM, along with the control log maintained within TCM, will constitute the Contract Control Log as contemplated by this policy.
- K. The individual responsible for custody and maintenance of the Referral Source Contract Control Log must keep records current and provide timely updates to the facility's function of Accounts Payable or Consolidated Service Center. This individual must ensure that a copy of each fully executed agreement is maintained at the facility with copies of all supporting documents, including fair market value verification, Legal approval and time records.
- L. One-time payments to referral sources are not documented on the Referral Source Contract Control Log, though facilities are strongly advised to maintain a separate list of all payments made to referral sources, including one-time payments, for at least five years from the termination date of each agreement. An end of year record of payment listings will suffice if it is documented and filed. This separate log should alert facilities when payments to a potential referral source exceed \$500 in a year, so that appropriate approvals will be obtained promptly. All one-time payments to referral sources must be supported by a written

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agreement. A copy of the fully-executed written agreement for the one-time payment, usually the Physician Expense Reimbursement Form, must be attached to the [Referral Source Check Request](#) Form before payment is processed.

- M. Disbursements: These requirements must be met before a facility may transfer or pay any funds to a referral source:
1. The Referral Source Check Request Form should be completed prior to making any payment, including one-time payments, to a referral source. For payments made by a Corporate Department, the Corporate Referral Source Check Request Form must be completed with the log of expenses incurred attached. For payments made to a Physician Owned Vendor, as that term is defined in the Physician-Owned Vendors Relations Policy, LL.027, via a purchase order, no Referral Source Check Request Form is required.
 2. The CEO of a facility, Administrator of an Ambulatory Surgery Center or, in Corporate Departments, the Disbursement Authority, must authorize all disbursements to referral sources unless, after receiving the approval of the Approving Authority, the CEO or Administrator delegates that authorization to the facility's or center's COO or CFO. If authorization is delegated, the CEO or Administrator must continue to review a sample of disbursements to referral sources periodically to ensure that the approvals are made appropriately. In Corporate Departments, the Disbursement Authority or an appropriate delegate will review the payment log as needed. The Referral Source Check Request Form is the standard authorization form, though Corporate Departments will use the Corporate Referral Source Check Request Form.
 3. The Accounts Payable Specialist must review each Referral Source Check Request Form for the following prior to payment. If there is any discrepancy between the contract terms and the request, it should be submitted to the CFO or, in Corporate Departments, the Director of Accounting, before payment.
 - a. Verify that the Referral Source Check Request Form is matched to the Referral Source Contract Control Log provided by the facility. This verification includes validating the payee name, contract type, contract effective dates, payment terms and payment amount. If the physician referral source is not listed on the log, the Accounts Payable Specialist notifies the facility Controller, who will follow up with the custodian of the Referral Source Contract Control Log.
 - b. Ensure the adequacy of supporting documentation for each disbursement has been validated and the CEO or authorized delegate or Disbursement Authority for Corporate Departments has properly approved the Referral Source Check Request Form. Validation of supporting documentation will be completed when the Division Consolidated Service Center or facility Accounts Payable Specialist reviews and validates that the appropriate supporting documentation is attached.
 - c. Verify that the Consolidated Service Center has received the Physician Referral Source Contract, a completed W-9 and a Revised Referral Source Contract Control

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Log, and that the physician referral source is established in the vendor file prior to processing the Referral Source Check Request.

d. Verify that each one-time payment is supported by a properly approved Referral Source Check Request Form. Additionally, a copy of the executed written agreement, usually in the Physician Expense Reimbursement Form, is required before processing a one-time payment to referral sources.

DEFINITIONS:

Approving Authority: For purposes of this policy, the approving authority of a facility is the Division President or the Market President, except where the Division or Market President is also the CEO of the facility, in which case approval should come from the next highest position. For the Ambulatory Surgery Division, the Approving Authority is the Senior Vice President. For the imaging and oncology division of the Outpatient Services Group (OSG), the Group President of the OSG is the Approving Authority. The Approving Authority for the Home Health and Hospice service lines is the President, Post-Acute Services. The Approving Authority in the Corporate office is the Senior Vice President of the department entering into the agreement.

Disbursement Authority: In Corporate departments, the Disbursement Authority is an individual with authority to make a cash disbursement pursuant to the [Cash Disbursement and Contract Authorization Policy](#), including non-officers who have been delegated authority.

Physician: Physician means 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.

Potential Referral Sources: Potential referral sources, other than physicians, include but are not limited to long-term acute care centers, nursing homes, clinics, therapists and other individuals and entities who are in a position to influence referrals. Company colleagues should consult the definition of Foreign Official, provided in the Global Anti-Corruption Policy, LL.AC.001, and be aware that physicians and other employees of hospitals or other facilities owned or controlled by national, state or local governments of any Foreign Country may be considered Foreign Officials under the Global Anti-Corruption Policy and Foreign Corrupt Practices Act.

REFERENCES:

- 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn;
- 60 Fed. Reg. 41914 (Aug. 14, 1995); 63 Fed. Reg. 1659 (Jan. 9, 1998);
- 66 Fed. Reg. 856 (Jan. 4 2001); 69 Fed. Reg. 16054 (March 26, 2004)
- Global Anti-Corruption Policy, [LL.AC.001](#)

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5. Laboratory-Marketing Practices Policy, [REGS.LAB.023](#)
6. Physician Purchasing Items or Services from the Facility Policy, [LL.021](#)
7. Physician-Owned Vendor Policy, [LL.027](#)
8. Cash Disbursement and Contract Authorization Policy
9. HCA Healthcare Accounting Policy Guide #2, Accounting for Physician Income Guarantees, Physician Loans and Other Physician Contracts