

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 1 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

<p>SCOPE: All Company-affiliated facilities worldwide including, but not limited to, hospitals, ambulatory surgery centers, home health centers, home health agencies, outpatient imaging centers, physician practices, service centers, joint ventures and all Corporate Departments, Groups, Divisions and Markets.</p>
<p>PURPOSE: To provide direction as to recruiting arrangements between Company-affiliated facilities and physicians.</p>
<p>POLICY: Recruitment of physicians to practice in the geographic area served by Company-affiliated facilities is appropriate in certain circumstances to:</p> <ol style="list-style-type: none"> 1. add physicians in an under-served geographic location (as defined below); or 2. increase coverage where there is a shortage. <p>The Stark exception for Recruitment Agreements allows a hospital to offer remuneration to an eligible physician to induce the physician to relocate to the geographic area served by the hospital. Therefore, the hospital must have a direct relationship with the potential recruit to meet the exception. The hospital cannot rely on a relationship with an existing group and the potential recruit.</p> <p>Note: A recruitment arrangement is valid when the minimum necessary is offered to induce a physician to relocate his/her medical practice to the geographic area serviced by the facility in order to join the hospital's medical staff (along with meeting the other requirements of this policy).</p> <p>Physician recruitment agreements are not appropriate to:</p> <ol style="list-style-type: none"> 1. retain a physician currently on the medical staff (<i>i.e.</i>, retention agreements); or 2. provide additional compensation to existing medical staff members. <p>Under no circumstances are recruiting agreements to be tied expressly, by implication, or by "private understanding" to hospital utilization; accordingly, the analysis and/or materials generated and factors considered in connection with the recruitment of a physician should not include estimated or projected hospital or other referrals. Any agreement with a physician who is a Foreign Official must also comply with the Global Anti-Corruption Policy, LL.AC.001.</p> <p>DEFINITIONS: <u>Approving Authority</u>, for purposes of this policy, 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.</p>

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 2 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

Physician, pursuant to Stark II, is defined as physicians, osteopaths, oral surgeons, dentists, podiatrists, optometrists, and chiropractors.

Under-served geographic location is determined by one or more of the following (for purposes of this policy only):

1. a population to physician ratio in the community that is deficient in the particular specialty (with reference to the applicable ratio set forth by an independent non-interested entity, e.g., MGMA) of the physician being recruited;
2. demand for a particular medical service in the community coupled with a documented lack of availability of the service or long waiting periods for the service, if the physician is being recruited to increase availability of that service;
3. designation of the community (or that portion of the community that the physician is serving) at the time the recruitment agreement is executed as a Health Professional Shortage Area (HPSA) as defined in 42 CFR 5.1-5.4;
4. a demonstrated reluctance of physicians to relocate to the hospital due to the hospital's physical location (this criterion is intended to refer to a hospital located in a rural or economically-disadvantaged inner-city area);
5. a reasonably expected reduction in the number of physicians of that specialty serving the hospital's service area due to the anticipated retirement within the next three year period of physicians presently in the community; or
6. a documented lack of physicians serving indigent or Medicaid patients within the hospital's service area, provided that newly recruited physicians commit to serving a substantial number of Medicaid and indigent patients.

Note: The Stark legislation provides an exception for physician recruiting arrangements with hospitals, federally qualified health centers or rural health clinics. If a non-hospital facility, agency or physician practice desires to enter into a physician recruiting arrangement, please contact your Operations Counsel.

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.

PROCEDURE:

1. Hospital Recruitment Objectives: The hospital's Board of Trustees should approve every two years (or more frequently if necessary), through a medical staff development plan or otherwise, the recruitment objectives of the hospital, which must be consistent with the above policy statement. Specifically, the medical staff development plan or recruitment

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 3 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

<p>objectives must address the hospital's needs for physician coverage of its inpatients (e.g., hospitalists, anesthesiologists) as well as be supported by a current, documented community need analysis completed by an independent party. Hospitals should obtain a new community need analysis for all specialties for which it intends to recruit at least every two years.</p> <p>2. <u>Essential Conditions</u>: All physician recruitment agreements should qualify within the hospital's current Board-approved recruitment objectives. In addition, the physician to be recruited must satisfy all of the following essential conditions:</p> <ul style="list-style-type: none"> a. Physician is relocating his or her medical practice from outside to inside the Geographic Service Area (GSA) of the hospital, consistent with the requirements below; and b. Physician is not currently a member of the facility's medical staff and will become a member of the medical staff after the recruitment agreement is executed. <p>3. <u>Relocation</u>. One of the following conditions must be met in order for a physician to meet the relocation requirement:</p> <ul style="list-style-type: none"> a. A physician's medical practice was located outside the geographic area served by the hospital and either of the following is true: <ul style="list-style-type: none"> i. the physician moves his or her previous medical practice, which was outside the hospital's GSA, more than 25 miles and into the hospital's GSA, or ii. the physician moves his or her medical practice less than 25 miles from outside the hospital's GSA into the hospital's GSA, and the physician's new medical practice derives at least 75% of its revenues from patients not seen or treated by the physician at his or her prior medical practice site during the preceding three (3) years, measured on an annual basis (fiscal or calendar year); for the initial "start up" year of a recruited physician's practice, the 75% test will be satisfied if there is a reasonable expectation that the recruited physician's practice for the year will derive at least 75% of its revenues from professional services furnished to patients not seen or treated by the physician at his or her prior medical practice site during the preceding three (3) years. If the hospital is relying on this subsection, then the hospital must document the basis for its conclusion that the recruited physician is reasonably expected to derive at least 75% of his or her revenues from new patients. b. The recruited physician will not be subject to the relocation requirement of 2.a. above if the physician establishes his or her medical practice in the geographic services area served by the recruiting hospital, and
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DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 4 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

- i. The physician is (or will be upon the commencement of the recruitment agreement) in his or her first year of practice, including residents and post-resident fellows; or
- ii. The physician has been employed full-time for at least the immediately previous two years with no independent practice outside of that employment by any one of the following:
 - A Federal or State bureau of prisons or similar operating correctional facility to serve exclusively a prison population;
 - The Department of Defense or Department of Veterans Affairs to serve active or veteran military personnel or their families; or
 - Facilities of the Indian Health Service who serve patients who receive medical care exclusively through the Indian Health Service.

If a physician is sought after but does not meet the conditions for recruitment under this Policy, you may consider utilizing a different arrangement with the physician, such as an employment relationship. Please refer to the applicable policies.

4. Geographic Area Served by the Hospital: The recruited physician must establish his or her medical practice within the area composed of the lowest number of contiguous zip codes from which the hospital draws at least 75 percent of its inpatients. Contiguous zip codes touch at least one other zip code in which inpatients reside. The hospital may include one or more zip codes from which the hospital draws no inpatients, provided such zip codes are entirely surrounded by contiguous zip codes in the GSA. If, on the effective date of the recruiting agreement, there is more than one configuration of the lowest number of contiguous zip codes that draw 75 percent of the facility's inpatients, the hospital may select the configuration that it wishes to apply.
5. Recruitment of Nonphysician Practitioners: The recruitment of nonphysician practitioners is governed by HCA Policy LL.030. Please contact applicable Operations Counsel for guidance in this area.
6. Permitted Financial Arrangements
 - a. Guarantee Addenda: The physician recruitment agreement may provide for a net collectable revenue guarantee which should reflect the going market rate for a particular specialty and expire after a set time period (*i.e.*, ordinarily one (1) year, but in no event to exceed three (3) years) (the "Support Period"). The material terms of the agreement should not be renegotiated during the term of the agreement. At the end of the Support Period, a repayment obligation (the "Obligation") may exist under the terms of the agreement. The Obligation should either (1) be repaid in full within six (6) months, without interest (as an incentive for prompt repayment), or (2) be

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 5 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

repayable over a term generally not to exceed three (3) years and evidenced by a promissory note, bearing interest from the end of the guaranty period at a floating rate equal to prime plus one percent (1%). The total of the Support Period and the repayment or forgiveness (see below) period should not exceed four (4) years.

- b. Forgiveness: The contract may provide for the forgiveness of the Obligation, over a predetermined period [generally three (3) years, if the Support Period is one (1) year], if the physician remains in the community, agrees to continue emergency room coverage and maintains medical staff privileges at the hospital. Forgiveness shall be on the basis of 1/36th [if three (3) years is the forgiveness period] of the Obligation for each month where all conditions are fulfilled. In certain circumstances, however, a period of forgiveness less than three (3) years may be appropriate and must be approved in advance by the appropriate Approving Authority and Operations Counsel. The Obligation forgiveness feature should be used consistently by a hospital for similar situations and under no circumstances should it be based upon the volume or value of any referrals by the referring physician.

- c. Determination of Net Collectable Revenue Amount: For those recruited physicians entering into a solo practice, the dollar amount of the net collectable revenue guarantee may include the commercially reasonable, market cost of overhead and operating expenses for the recruited physician. These expenses may include support staff salary and benefits, office and equipment rental and expenses, malpractice insurance, and other similar routine and ordinary expenses (*i.e.*, only those expenses that are deductible by the physician as business expenses). Physician recruiting agreements cannot include direct payment by the hospital to a third party for ordinary operating expenses, and office or equipment rentals cannot be paid directly by the hospital to a third party (however, such expenses may be included in the net collectable revenue guarantee amount). Before committing to a net collectable revenue guarantee, the hospital CEO is to verify, in conjunction with HCA Physician Services (HCAPS), the reasonably expected income level for an established physician of the recruited specialty and that number is to be used in the calculations utilized to compute the net collectable revenue guarantee. Guaranteeing income or the payment of expenses in excess of that which can be reasonably expected in the community may be construed as payments for other items, such as referrals to the hospital.

- d. Reimbursement for Non-recurring Expenses: The physician recruitment agreement may provide for the reimbursement of other types of reasonable non-recurring expenses, including start-up marketing expenses, relocation assistance (both office and household, including assistance with the purchase and/or sale of a residence), and moving expenses. Although recruited physicians may not be employees, all payments for such items should be on a basis consistent with the Corporate Human

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 6 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

Resources Department policy for the payment/reimbursement of expenses for the relocation of similarly-compensated employees. If such incentives are offered, the overall recruitment package must still be reasonable and prudent.

e. Additional/Different Incentives: In certain circumstances, it may be necessary to offer a recruit additional or different incentives to relocate. Examples of items occasionally requested include repayment of student loans (in this instance, repayment is to go directly to the lender) or signing bonuses in addition to the relocation assistance offered as a part of the standard relocation package. The offering of these other items to a recruited physician is to be market driven, necessary to compete legitimately with another institution or necessary to provide comparable assistance as in the case of recruitments to rural or physician shortage areas. The assistance that may be provided in this category must be approved by the Approving Authority, the HCAPS Vice President, and Operations Counsel. Such assistance shall not be offered to a recruit until such prior approval is obtained. If such incentives are offered, the overall recruitment package must still be reasonable and prudent.

f. Advances: Up to two (2) months support may be advanced to the physician prior to the commencement of the recruitment agreement. If such an advance is to be made, the advance must 1) be included in the physician recruitment agreement, or 2) otherwise be documented in writing and signed by the parties.

g. Total Amount: The total financial compensation offered to any individual physician should not exceed the minimum amount required to induce the physician to relocate their practice to the GSA served by the hospital and to join the hospital's medical staff after consideration of all relevant variables. Relevant variables include but are not limited to the facility's location and community, the physician's demonstrated skills and the physician's personal interest in the location.

7. Agreement Requirements: The physician recruitment agreement must (1) be in writing and signed by the recruit and the facility CEO or other approved delegate before the recruit relocates to the community and before any payments are made under the recruiting agreement, unless approved in advance by Operations Counsel, and must specify the benefits provided by the hospital and the terms under which they are provided, and the obligations of each party, (2) state that the benefits will not be provided by the hospital for a period exceeding three years, (3) require the physician, if he or she agrees to treat patients receiving medical benefits or assistance under any federal health care program, to treat them in a nondiscriminatory manner, (4) state that the physician is not prohibited from maintaining staff privileges at, referring to or generating business for other facilities, (5) state that the physician is not required to refer patients to the hospital, (6) require the physician to maintain staff privileges at the hospital, (7), state that as requested by the hospital, the physician will participate in managed care contracts with third party payers that

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 7 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

have agreements with the hospital, and (8) state the benefits provided are not determined in a manner that takes in to account (directly or indirectly) the volume or value of any referrals by the physician or other business generated between the parties.

8. Recruitment into an Existing Practice: Frequently, and especially in light of today's managed care environment, physicians will seek to join or be employed by an existing practice, and in connection with joining the existing practice, assign the rights to payment under the recruitment agreement to the existing practice. However, the Office of Inspector General has expressed a concern that recruitment arrangements into existing practices can result in the existing practice receiving inappropriate benefits from the hospital. Therefore, the hospital must take the necessary steps to ensure that the recruited physician only receives those benefits necessary to induce the physician to reside in the community and such benefits do not inappropriately benefit physicians or medical practices already in the community. Thus, if a recruited physician is joining an existing practice either contemporaneously with the execution of the recruiting agreement, or subsequent to relocation within the community, the following conditions must be met:
- a. The hospital must have direct relationship with the potential recruit;
 - b. The recruited physician must be eligible for recruitment under all of the essential conditions of this policy;
 - c. The recruitment arrangement must be undertaken for legitimate reasons and not for the benefit of the existing practice;
 - d. The physician recruitment addendum is also signed by the existing practice;
 - e. Except for actual costs incurred by the existing practice in recruiting the new physician, the remuneration is passed directly through to or remains with the recruited physician. Actual costs incurred may include headhunter fees, travel costs for the physician and his/her immediate family to visit the service area, moving expenses, telephone calls, and tail malpractice insurance;
 - f. Before committing to a net collectable revenue guarantee, the hospital is to verify, in conjunction with HCAPS, the actual salary and benefits to be paid to the recruited physician reasonably by the existing practice and that number is to be used in the calculations utilized to compute the net collectable revenue guarantee;
 - g. The costs allocated by the existing practice to the recruited physician do not exceed the actual additional incremental costs attributed to the recruited physician;

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 8 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

- h. Records of the actual costs and the passed through amounts are maintained for a period of at least 5 years and made available to the Secretary of Health and Human Services upon request;
 - i. The remuneration from the hospital per the physician recruitment agreement is not to be determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by the recruited physician or the existing practice (or any physician affiliated with the existing practice) receiving the direct payments from the hospital;
 - j. The existing practice may not impose on the recruited physician additional practice restrictions other than i) those permitted by HCAPS and pre-approved by Legal, and ii) conditions related to quality of care; and
 - k. The physician recruitment agreement does not violate the federal anti-kickback statute or any federal or state law or regulation governing billing or claims submission.
9. Legal and Accounting Assistance: The hospital may offer an additional recruitment incentive to the recruited physician of up to \$5,000 to reimburse the recruited physician for legal and accounting assistance actually incurred by the recruited physician in negotiating his/her arrangement with the existing practice. This is recommended to be used especially when an existing practice seeks to impose any practice restrictions on the recruited physician.
10. Certifications: The CEO of the hospital will be required to certify with respect to each physician recruiting agreement that:
- a. the physician being recruited satisfies at least one of the two required conditions;
 - b. the terms of the agreement are commercially reasonable and at fair market value;
 - c. there is a community and/or hospital need* for the recruitment; and
 - d. except as disclosed in the Certificate, there are no other agreements (oral or written) with the physician and the hospital.
11. Recruiting Dinners: Occasionally, facilities desire to invite a physician who is already on its medical staff to join officers of the facility and a potential recruit for a meal. The facility may pay for the meal of the medical staff member(s) pursuant to an executed [Recruitment Dinner Letter](#). If the potential recruit brings a guest to the dinner, the existing medical staff member(s) may also bring a guest, and the facility may pay for the meals of the guests. Any payment made to a physician or physician practice for time spent recruiting another physician must comply with an executed agreement pursuant to a separate policy, such as a Professional Services Agreement or an Employment Agreement.

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Recruiting Agreements
PAGE: Page 9 of 9	REPLACES POLICY DATED: 2/11/98, 9/29/98, 12/1/99, 11/1/01, 1/1/02, 6/1/02, 6/30/02, 8/1/03, 1/1/04, 8/1/04, 4/30/05, 01/01/06, 11/15/06; 5/1/07, 3/1/08, 6/1/08, 11/1/08, 2/1/11; 2/1/12
EFFECTIVE DATE: February 1, 2017	REFERENCE NUMBER: LL.003
APPROVED BY: Ethics and Compliance Policy Committee	

12. Recruitment Expense Reimbursement: Occasionally, in the process of recruiting a potential referral source to a facility, the potential referral source incurs certain expenses, such as the cost of travel for an interview. The facility may reimburse those pre-approved expenses incurred before an agreement between the facility and the recruit is executed if supporting documentation is provided and the [Recruitment Candidate Expense Reimbursement form](#) is completed prior to the issuance of any reimbursement.

***Note:** If the hospital is recruiting to address a hospital need and not community need, then the recruiting rationale and supporting documentation must be submitted to and approved by operations counsel in advance of any offer being made to the recruited physician.

The Approving Authority must approve the terms of the agreement and certify that the contract is commercially reasonable.

REFERENCES:

42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn (e)(5); 60 Fed. Reg. 41914 (Aug. 14, 1995); 63 Fed. Reg. 1659 (Jan. 9, 1998); 69 Fed. Reg. 16054 (March 26, 2004)
 Global Anti-Corruption Policy, [LL.AC.001](#)