

UHHS P&P

**University Hospitals Health System
Policy & Procedure Manual**

Physician Recruitment Activities and Agreements

SCOPE


This Policy applies to University Hospitals Health System, Inc. and all of its wholly-owned entities (collectively, “UHHS”), as well as all UHHS employees, medical staff members and, where appropriate, others who provide services to UHHS.

PURPOSE

To establish uniform policies and procedures to be used for all UHHS hospitals in connection with the provision of recruitment incentives and benefits to attract physicians to relocate their practices.

DEFINITIONS


- I. **Audit Committee** means the Audit and Organizational Integrity Committee of University Hospitals Health System, Inc.
- II. **Geographic Area Served by the Hospital** means the area composed of the fewest number of contiguous ZIP codes from which a Hospital derives 75% of its patients.
- III. **Hospital** means any wholly-owned UHHS hospital.
- IV. **Ineligible Person** means a person or entity that (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility; or (iii) is excluded from receiving Federal contracts or subcontracts.
- V. **Recruitment Arrangement** means providing any direct or indirect financial incentive to induce a physician who is not already a member of the medical staff of a Hospital to become a member of the medical staff. Recruitment Arrangements do not include employment of a physician into a UHHS-owned entity, office and equipment leases, medical directorships, contracts with hospital-based physicians and other relationships with physicians that are covered by other UHHS policies.

Policy #	PT-3 
Page	2 of 8
NEW	07/05


- VI. **Support Period** means the period during which a Hospital provides support to a recruited physician or the practice which a recruited physician joins.
- VII. **UHHS Authorized Representative** means the individual with signing authority for a Recruitment Arrangement with a physician and/or physician practice, in accordance with the UHHS policy on Contract Execution (F-24). The designee of the UHHS Authorized Representative may include, but is not limited to, the President of a UHHS community Hospital.

POLICY

- I. All Recruitment Arrangements will be managed and documented in accordance with this Policy.
- II. Recruitment Arrangements may not be used to retain a physician currently on a Hospital medical staff or to provide additional compensation to existing Hospital medical staff members.
- III. All Recruitment Arrangements shall comply with the following rules:
- A. Finding of Community Need. Recruitment Arrangements will be used only if a community need analysis demonstrates an actual need for one or more physicians practicing in the recruited physician's specialty in the Geographic Area Served by the Hospital. The Hospital is to commission the community need analysis and such analysis shall be conducted in accordance with the methodologies set forth in Exhibit A.
 - B. Geographic Relocation Requirement and Exceptions. Recruitment Arrangements will be used only for physicians who relocate their practice to the Geographic Area Served by the Hospital in order to become a member of the medical staff of the Hospital. This requires that a recruited physician's new office must be located within the Geographic Area Served by the Hospital. It also requires that the Physician relocate his or her practice to the Geographic Area Served by the Hospital. A recruited physician will be deemed to satisfy this requirement if any one or more of the following standards are satisfied:
 - 1. The recruited physician is in a residency program immediately prior to the establishment of his or her practice or has been in practice less than one (1) year (excluding residency and fellowship programs);
 - 2. The recruited physician moves his or her medical practice at least 25 miles;
or

Policy #	PT-3 
Page	3 of 8
NEW	07/05

3. The recruited physician is establishing a new practice, either alone or with an existing group, to which he or she will not bring patients from his or her prior practice or other professional activity. This means that the physician is reasonably expected to derive at least 75% of his or her revenues from patients not seen or treated by the physician during the last 3 years.
- C. All Arrangements in Written Agreements. Any and all incentives and other aspects of any Recruitment Arrangement must be contained in one or more written agreements between the Hospital, the recruited physician, and, if applicable, the practice group the recruited physician will be joining.
1. All documents leading up to, or associated with, a formal, binding agreement with a recruited physician are subject to this Policy. This includes non-binding letters of intent, letter agreements and memoranda of understanding.
 2. Side agreements or arrangements (whether written or oral) not covered by the primary written agreement are prohibited, unless they are made as a formal amendment or additional agreement reviewed by the UHHS Law Department and signed by both parties.
 3. All written agreements will cross-reference other written agreements relating to the Recruitment Arrangement and will be structured with the advice of the UHHS Law Department.
 4. In all Recruitment Arrangements, payments must be consistent with the terms of the agreement and performance of all of the terms of the agreement is required.
- D. No Referral Requirement or Understanding. No recruitment incentive may be conditioned, directly or indirectly, on any requirement or understanding that the recruited physician, or any physicians in any practice the recruited physician may be joining, will admit or refer patients to any Hospital. Accordingly, financial projections and other proforma and/or business plans generated in connection with the recruitment of a physician should not include estimated or projected referrals that may result from the physician's recruitment.
- E. No Prohibition on Services at Other Facilities. The recruited physician or any physicians in the practice the recruited physician may be joining shall not be restricted in any way from obtaining or maintaining staff privileges at other hospitals or treating patients at or admitting patients to other hospitals.
- F. Support Period and Forgiveness Period. The Support Period should ordinarily be one (1) year, and in no case longer than three (3) years, excluding any forgiveness period. The total term of the Support Period and repayment or forgiveness period should be at least four (4) years.


Policy #	PT-3 
Page	4 of 8
NEW	07/05

G. Recruitment into Existing Practices. In the case of a recruited physician who joins an existing practice, the Recruitment Arrangement must comply with the following requirements:

1. The Recruitment Arrangement must be undertaken for legitimate reasons and not for the benefit of the existing practice;
2. The recruitment agreement must be signed by the recruited physician and, if the payments under the Recruitment Arrangement are made directly to the practice, the practice that the recruited physician is joining;
3. Except for actual costs incurred by the existing practice, any benefits paid by the Hospital must be passed directly through to, or remain with, the recruited physician;
4. If an income guarantee model is used, the costs allocated by the practice to the recruited physician may not exceed the actual additional incremental costs attributable to the recruited physician (i.e., only those costs that would not have been incurred by the practice but for the addition of the recruited physician to the practice);
5. The records of the actual costs and amounts passed through to the recruited physician under the Recruitment Arrangement should be maintained for at least five (5) years after the last distribution of benefits by the Hospital and must be made available upon request by the Secretary of the Department of Health and Human Services;
6. The amounts paid by the Hospital under the Recruitment Arrangement may not take into account the volume or value of any actual or anticipated referrals by the recruited physician or the practice (or any physician affiliated with the practice) receiving the direct payments from the Hospital;
7. Except for restrictions related to quality of care, the recruited physician shall not be subject to practice restrictions (e.g., non-compete provisions) imposed by any employment agreement or other arrangement the recruited physician may have with the practice group he or she is joining; and
8. The arrangement must not violate the anti-kickback statute or any Federal or state law or regulation governing billing or claims submission.

IV. Permissible Incentives. Each Recruitment Arrangement shall be structured as a loan to the individual recruited physician or to the practice he or she is joining, and the total amount of the loan available to the recruited physician or practice should reflect the fair market value of the salary and incremental expenses for the recruited physician's particular specialty. The permitted incentives for recruiting a physician shall be reasonable and necessary to recruit physicians to the Geographic Area Served by the Hospital and may include:

- A. Income Guaranty. Income guaranty loans must satisfy the requirements set forth in Exhibit B.
- B. Sign-on Bonus. The Hospital may pay the recruited physician a sign-on bonus, but the physician must have an obligation to repay the bonus if the physician does not perform the physician covenants in the recruitment agreement continuously for at least 12 months after commencing service.
- C. Relocation Assistance. The Hospital may pay the recruited physician the cost of actual and reasonable moving and relocation expenses as documented by the physician, but the physician must have an obligation to repay the relocation assistance amount if the physician does not perform the physician covenants continuously for at least 12 months after commencing service.
- D. Student Loan Repayment. The Hospital may pay the recruited physician sums needed to repay student loans, but the physician must have an obligation to repay the student loan repayment amount if the physician does not perform the physician covenants continuously for at least 12 months after commencing service.
- E. Recruitment Fees. The Hospital may advance to any recruited physician or physician practice which the recruited physician is joining the amount of any recruitment fees or costs paid by such physician or practice as part of an income guaranty loan. In that event, the costs of such fees will be included as start-up costs of the new physician's practice, and will be included in the itemized schedule of costs attached to the recruitment agreement. In addition, the Hospital may pay directly the fees and costs of recruiting firms that the Hospital or the practice engages during the recruitment process. Any such costs incurred directly by the Hospital will not be included in the schedule of costs attached to the recruitment agreement.
- F. J-1 Visa Waiver Fees. The Hospital may assist a recruited physician in the payment of legal and other fees in connection with obtaining a J-1 visa waiver to remain in the United States while performing health care services in the Geographic Area Served by the Hospital. The Hospital may pay for up to 50% of the legal and other fees associated with obtaining a J-1 visa waiver for a recruited physician. The Hospital may advance the balance of such fees to the recruited physician; provided, however, that upon receipt of a J-1 visa waiver, the amount advanced will be treated as a loan to the recruited physician and will be subject to repayment in accordance with the remaining provisions of this Policy.
- G. Other Benefits. From time to time, a recruited physician may seek additional benefits not specifically addressed herein. Any such request must be submitted to the Audit Committee for approval.
- H. Promissory Note and Loan Terms. Except as specified above, all Recruitment Arrangement incentives shall be treated as a loan from the Hospital to the recruited


Policy #	PT-3 
Page	6 of 8
NEW	07/05

physician and/or the practice that the recruited physician is joining, consistent with the terms set forth in Exhibit B.

- V. Ineligible Persons. UHHS will not enter into a Recruitment Arrangement with a recruited physician who is an Ineligible Person, or if the practice the recruited physician is to join is an Ineligible Person.
- VI. Recruitment of Non-Physician Practitioners. This Policy does not apply to the recruitment of non-physician practitioners. Due to concerns that arrangements involving the recruitment of non-physician practitioners could serve to subsidize the expenses of a physician who is already practicing in the Geographic Area Served by the Hospital, UHHS generally does not participate in the recruitment of non-physician practitioners to independent physician practices. Such arrangements may be permissible under special circumstances. Any proposed Recruitment Arrangement involving the recruitment of a non-physician practitioner to an independent physician practice will be analyzed on a case-by-case basis by the UHHS Law Department and approved by the Audit Committee.

PROCEDURE

- I. The UHHS Authorized Representative or his or her designee shall authorize the appropriate personnel to begin soliciting physician candidates only after a finding of community need. A copy of the community need analysis will be provided to the UHHS Law Department.
- II. Upon the selection of a physician candidate, the UHHS Authorized Representative or his or her designee shall forward the relevant portions of a contracting form provided by the UHHS Law Department or provide such information as necessary for the efficient and timely preparation of the agreement by the UHHS Law Department.
- III. The UHHS Authorized Representative or his or her designee shall not make a commitment (whether written or oral) to any candidate physician regarding the terms of a proposed Recruitment Arrangement until such terms have been reviewed and approved by the UHHS Law Department.
- IV. Written offers of employment from the practice that the recruited physician will join, if any, may not mention any recruitment incentives offered by the Hospital unless signed by the UHHS Authorized Representative or his or her designee (who shall be at least a Senior Vice President).
- V. In the case of a recruited physician who joins an existing practice, the UHHS Authorized Representative or his or her designee shall obtain a copy of the employment agreement or other arrangement between the recruited physician and the practice, for the following purposes:

Policy #	PT-3 
Page	7 of 8
NEW	07/05

- A. To verify the actual salary and benefits to be paid to the recruited physician and utilize this number to be used in calculations for computing the income or collections guarantee amount; and
 - B. To ensure that the employment agreement or other arrangement between the recruited physician and the practice does not contain any non-compete provisions or other provisions restricting the ability of the recruited physician to practice medicine in the Geographic Area Served by the Hospital.
- VI. Recruitment Arrangements that are not in compliance with this Policy or that are with a person who is a disqualified person, as defined in 26 C.F.R. § 53.4958-0 et seq., or in a common medical practice with a disqualified person, as determined by the UHHS Law Department and Organizational Integrity Department, shall be permitted only upon approval of the Audit Committee, pursuant to procedures adopted by such committee.
- VII. If, at any time, it appears that there have been discussions or memoranda indicating an intent to obtain or reward referrals by way of a Recruitment Arrangement, the arrangement will not be approved.
- VIII. The UHHS Authorized Representative or his or her designee (who shall be at least a Senior Vice President) will be required to certify with respect to each physician Recruitment Arrangement that:
- (1) The community needs analysis supports the recruitment of a physician in the specialty;
 - (2) The recruited physician meets one of the relocation requirements;
 - (3) The amount of the fair market value analysis was not based upon the volume or value of referrals to the Hospital from the recruited physician and, if applicable, the practice that the recruited physician is joining;
 - (4) The terms of the arrangement are commercially reasonable and at fair market value;
 - (5) Neither the recruited physician nor the physician practice which the recruited physician will join, if applicable, is an Ineligible Person; and
 - (6) Except as disclosed in the recruitment agreement, there are no other agreements (oral or written) between the physician and the Hospital.
- IX. Upon receiving the agreement approved as to form from the UHHS Law Department and signing the certification form, the UHHS Authorized Representative may sign the agreement on behalf of UHHS and present the agreement to the physician and/or practice for signature.

- X. The UHHS Authorized Representative or his or her designee forwards an original of the signed agreement and certification form to the UHHS Law Department and a copy of the agreement to the UHHS Finance Department, and retains a copy for his or her records.

- XI. The UHHS Law Department and the UHHS Authorized Representative or his or her designee shall maintain a separate file for each Recruitment Arrangement that includes an original signed copy of the recruitment agreement, the certification and any fair market value analysis and the community need analysis supporting the recruitment.

SEE ALSO

In the UHHS P&P:

- F-24, Contract Execution
- F-30, Contracts

REFERENCES

- 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952;
- 42 U.S.C. § 1395nn; 42 C.F.R. § 411.357;
- 26 U.S.C. § 4958; 26 C.F.R. §§ 53.4958-0 – 53.4958-8

APPROVALS	
 _____ CHIEF EXECUTIVE OFFICER	<u>7/18/05</u> Date
 _____ SENIOR VICE PRESIDENT	<u>7/18/05</u> Date

EXHIBIT A

Community Need Analysis

The community need analysis must be based on accepted planning methodologies. The methodologies primarily used to estimate the number of physicians required in each specialty to meet community health care needs include: the ratio developed by the Graduate Medical Education National Advisory Committee (“GMENAC”) of the United States Department of Health and Human Services, and the Physician Demand Database developed by Solucient, LLC (formerly the Sachs Group of Evanston, Illinois) (“Solucient”).

In addition to the factors embodied in the GMENAC and Solucient models, the analysis may consider the following factors:

2. The demand for a particular medical service in the community coupled with a documented lack of availability of the service, a determination that existing physicians are no longer accepting new patients, or long waiting periods for the service, if the physician is being recruited to increase availability of that service;
3. A demonstrated reluctance of physicians providing the service to relocate to the particular community due to its physical location or for other reasons (e.g., documentation of failed recruitment attempts by the Hospital);
4. A reasonably expected reduction in the number of physicians of the specialty serving the particular community due to anticipated retirements within the next five-year period of physicians presently serving the community;
5. A need for a new technology or research activities that promotes the advancement of medical science and provides access to new technologies or treatments not otherwise available in the community; and/or
6. If available, a documented lack of physicians serving indigent or Medicaid patients within the applicable community, provided that the newly recruited physician commits to serve a substantial number of Medicaid and charity care patients.

The community need analysis must be documented in a written report with the supporting statistics and survey information and maintained in the recruitment file.

The community need analysis also may be done pursuant to an annual strategic business plan conducted by the Hospital, in which the determination of need is done prospectively for the practice areas and specialties provided by the Hospital. Business plans generated in connection with the recruitment of a physician must follow the methodology described above and should not include estimated or projected hospital or other referrals that may result from the physician's recruitment.

EXHIBIT B

Terms of an Income Guaranty Loan

Any Recruitment Arrangement that includes an income guaranty loan shall comply with the following terms:

1. Each income guaranty loan will enable a physician or group practice to obtain a loan to cover the excess of the physician's or group practice's expenses attributable solely to the recruited physician over the revenues generated by the recruited physician. Accordingly, the maximum loan amount (assuming the recruited physician generates no revenue) will be the total projected cost of the recruited physician's operations during the first year of service for a physician establishing a new independent practice, and, in the case of a physician recruited to join an existing practice, not more than the incremental expenses associated solely with the recruited physician.
2. In computing the total costs of the recruited physician, the Hospital will itemize each cost on a schedule to be attached to the recruitment agreement. In the case of a physician who joins an existing practice, these costs may include only the actual incremental costs attributable solely to the recruited physician, such as the recruited physician's salary or draw, benefits, medical malpractice insurance, costs of support staff not otherwise supporting other physicians in the practice, general office expenses attributable solely to the recruited physician, additional costs in office rent, utilities, medical supplies, marketing costs, and other miscellaneous costs that the practice would not have incurred if the recruited physician had not joined the practice.
3. The Hospital will make loans on a monthly basis with the maximum monthly loan being one-twelfth of the total costs attributable to the physician in the first year.
4. At the end of the initial 12 months of the Support Period, and at the end of the Support Period (if longer than 12 months), the Hospital will perform a calculation to reconcile any excess monthly payments received by the physician or group practice during such period. The physician or practice will be required to repay immediately to the Hospital the aggregate total principal amount of the monthly loans during the period plus the entire physician revenue collected during the period, minus the lesser of agreed total costs or the actual total costs for the period.
5. The total principal amount subject to repayment shall be evidenced by a promissory note signed by the recruited physician as maker, if a solo recruitment, or by the practice group, if the physician is joining an existing group. In the latter instance, the recruited physician will also sign the note as a guarantor.
6. The loan will be secured adequately (such as by accounts receivable and/or office equipment) and the recruited physician and/or practice he or she joins shall execute a Security Agreement evidencing the Hospital's security interest in such assets.

7. The rate of interest on the loan will be not less than the prime rate as reported in the Wall Street Journal on the effective date of the recruitment agreement. Interest will be forgiven at the end of each calendar year if the physician covenants are observed continuously through that year.
8. A portion of the outstanding principal balance of the loan amount will be forgiven ratably over a predetermined period if the physician continues to perform all covenants of the recruitment agreement. Forgiveness should be in equal annual installments on the anniversaries of the physician's commencement date.
9. All interest forgiveness and principal forgiveness will be reported to the Internal Revenue Service and to the recruited physician or the practice group, as the case may be, on IRS Form 1099 annually. All taxes and assessments arising therefrom will be the sole responsibility of the recruited physician, or practice group.