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UHHS P&P

University Hospitals Health System
Policy & Procedure Manual

Physician Equipment or Space Leases

SCOPE


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

PURPOSE

To provide a general statement of policy and guiding principles for the leasing of rental space and equipment to or from physicians and other sources of patient referrals to UHHS to ensure such agreements comply with applicable Federal and state laws, and to establish a process for entering into such lease arrangements of rental space and equipment.

DEFINITIONS

- I. **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.
- II. **Referral Source** means (a) a physician; (b) a physician’s immediate family member (i.e., spouse, natural or adoptive parent, child, sibling, step-parent, step-child, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, and the spouse of a grandparent or grandchild); (c) any entity that is controlled by a physician or a physician’s immediate family member; or (d) any non-physician who may be capable of making referrals to UHHS.
- III. **UHHS Authorized Representative** means the individual with signing authority for a space or equipment lease with a Referral Source, in accordance with the UHHS policy on Contract Execution (F-24).

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POLICY

- I. All leases for rental space and equipment to or from Referral Sources will be entered into and documented in accordance with this Policy.

- IV. All leases for rental space and/or equipment between UHHS and a Referral Source must comply with all applicable Federal and state laws, and must be documented by a written lease that:
 - (1) Is signed by all parties;
 - (2) Specifies the premises or equipment covered by the lease;
 - (3) Specifies the time-frame for the lease, which must be at least one year;
 - (4) Specifies the aggregate rental payments to be paid under the arrangement; and
 - (5) Satisfies all other applicable legal requirements as determined by the UHHS Law Department.


- V. If a lease is for part-time use of rental space or equipment, the lease must specify the period of use and payment for each time period.

- VI. If a lease is terminated with or without cause prior to the end of the first year of the lease term, then the parties must not enter into a new lease for the same or similar space or equipment on different terms until after the one year anniversary of the commencement date of the original lease.

- VII. The space or equipment leased must not exceed the amount of space or equipment that is reasonably necessary for the commercially reasonable business purposes of the person or entity leasing such space or equipment.

- VIII. The space or equipment must be used exclusively by the lessee during the period in which it is being used by the lessee, and may not be shared with or used by the lessor or any person or entity related to the lessor during such period. The lessee may, however, sublease the space or equipment to a third party pursuant to the terms of the agreement.


- IX. The rental charges over the term of any space or equipment lease must be set in advance, consistent with fair market value, and not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

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- X. The “fair market value” of rental space means the value of the space for general commercial purposes, and shall not take into account its intended use or the additional value that either party 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 or a state health care program.
- XI. The “fair market value” of equipment means the value of equipment when obtained from a manufacturer or professional distributor, and shall not be adjusted to reflect or take into account the additional value that either party would attribute to the equipment 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 or a state health care program.
- XII. Any lease of space or equipment covered by this Policy must be commercially reasonable even if no referrals were made between the parties.
- XIII. A month-to-month holdover period following the expiration or termination of a written lease may last no longer than six (6) months following the date of expiration or termination, and the terms and conditions of the written lease shall continue in effect during such period.
- XIV. All documents leading up to, or associated with, a formal, binding lease agreement with a Referral Source are subject to this Policy. This includes non-binding letters of intent, letter agreements and memoranda of understanding.
- XV. Side agreements or arrangements (whether written or oral) not covered by the primary written lease are prohibited, unless they are made as a formal amendment or additional agreement reviewed by the UHHS Law Department and signed by both parties.
- XVI. UHHS will not enter into a lease agreement with a Referral Source lessor who is an Ineligible Person.
- XVII. In all lease arrangements with Referral Sources, payments must be consistent with the terms of the written lease and performance of all of the terms of the written lease is required. UHHS will use commercially reasonable efforts to enforce the terms of all leases with Referral Sources.

PROCEDURE

- I. The UHHS Authorized Representative or his or her designee completes and forwards the relevant portions of a contracting form provided by the UHHS Law Department or provides such information as necessary for the efficient and timely preparation of the agreement by the UHHS Law Department, as soon as a transaction is contemplated.

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- II. The UHHS Law Department and Organizational Integrity Department will analyze each proposed lease arrangement between UHHS and a Physician for compliance with all applicable legal requirements. The UHHS Law Department must approve the lease agreement as to form.
- III. The UHHS Authorized Representative demonstrates that the rental amount under the proposed lease arrangement is consistent with fair market value. This can be done using a variety of methods, including independent third-party appraisals performed by independent appraisers, reliable local market rental survey data for comparable commercial rental property, and other benchmarks generally acceptable in the real estate industry.
- IV. The UHHS corporate real estate department may, from time-to-time, develop or obtain from independent third party sources studies of the fair market value rental rates for space rentals for all locations in which UHHS acts as a lessee or lessor in the Greater Cleveland area or relevant submarket. The listing of fair market value space rental rates shall be reviewed and, if necessary, updated on an annual basis.
- V. The UHHS Authorized Representative or his or her designee shall not make a commitment (whether written or oral) to any Referral Source regarding the terms of a proposed lease arrangement until such terms have been reviewed and approved by the UHHS Law Department.
- VI. 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, shall be permitted only upon approval of the Audit and Organizational Integrity Committee of University Hospitals Health System, Inc. 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 lease agreement or arrangement, the lease agreement or arrangement will not be approved.
- VIII. Prior to signing the agreement on behalf of UHHS or presenting the agreement to the Referral Source for signature, the UHHS Authorized Representative or his or her designee (who shall be at least a Senior Vice President) must certify in writing, on a form provided by the UHHS Law Department, that:
 - (1) Except as disclosed or cross-referenced in the agreement, there are no other arrangements, written or oral, with the Referral Source;
 - (2) The lease payments represent the fair market value as demonstrated by independent appraisals or fair market value studies, or evidence of comparable market place leases of similar equipment or rental space;

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- (3) The terms of the lease are commercially reasonable and not determined in a manner that takes into account the volume or value of referrals or other business generated between the parties;
 - (4) The aggregate space or equipment rented does not exceed that which is necessary to accomplish the commercially reasonable business purpose of the leased space or equipment; and
 - (5) Any other condition determined by the UHHS Law Department as necessary for the proposed arrangement to satisfy applicable legal requirements.
- IX. Upon receiving approval of the agreement 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 Referral Source for signature.
- X. The UHHS Authorized Representative or his or her designee must forward an original of the signed lease agreement and certification form and any fair market value analysis to the UHHS Law Department and a copy of the signed lease agreement to the UHHS Finance Department and retain a copy for his or her records.

SEE ALSO

In the UHHS P&P:


- F-24, Execution Policy
- F-30, Contracts Policy

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

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