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UHHS P&P

University Hospitals Health System
Policy & Procedure Manual

Medical Practice Asset Acquisitions

SCOPE


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

PURPOSE

To promote sound business judgment in connection with transactions involving the acquisition by UHHS of a medical practice or certain assets of a medical practice, to ensure such transactions comply with all applicable Federal and state laws, and to establish a process for entering into such transactions.

DEFINITIONS

- I. **Ineligible Person** means any 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. **Medical Practice** means a business entity that is operated primarily as a provider of professional physician services, or certain identified assets of such entity.
- III. **UHHS Authorized Representative** means the person with signing authority for an agreement involving the acquisition of a Medical Practice, in accordance with the UHHS policy on Contract Execution (F-24).

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POLICY

- I. All transactions involving the acquisition by UHHS of a Medical Practice will be managed and documented in accordance with this Policy.
- II. Each transaction covered by this Policy must comply with all applicable Federal and state laws, and be documented in a written agreement that:
 - (1) Is signed by both parties;
 - (2) Specifies the terms of the transaction and the assets to be acquired by UHHS;
 - (3) Specifies the purchase price to be paid by UHHS;
 - (4) Specifies the methodology and/or formula for post-closing adjustments (if any) that may be made between the parties; and
 - (5) Satisfies all other applicable legal requirements as determined by the UHHS Law Department.
- III. The purchase price of any transaction covered by this Policy (i) must be consistent with the appraised fair market value of the Medical Practice being acquired, (ii) must not be determined in a manner that takes into account, directly or indirectly, the volume or value of referrals to UHHS or any other business generated between the seller(s) and UHHS, or with the intention to induce referrals or business otherwise generated between the seller(s) and UHHS, and (iii) may be paid in a single payment, or in integrally related installment payments. If the purchase price is paid in installments, the following two criteria must be satisfied:
 - (1) The total aggregate payment amount must be fixed before the first payment is made (e.g. “earn-outs” and other contingent payments are prohibited); and
 - (2) The right to receive such payments must be immediately negotiable (i.e., legally capable of being transferred to another person or entity), or be guaranteed by a third party, secured by a negotiable promissory note, or subject to a similar mechanism to assure payment even in the event of default by UHHS.
- IV. The terms and conditions of any transaction covered by this Policy must be commercially reasonable even if the seller(s) were to make no referrals to UHHS.
- V. The transaction must be consistent with UHHS’s overall physician network development strategies.
- VI. UHHS must not enter into any additional transactions with the seller(s) for at least six (6) months following the closing date of the purchase of a Medical Practice, except for

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(i) commercially reasonable post-closing adjustments that do not take into account, directly or indirectly, the volume or value of referrals or other business generated between the seller(s) and UHHS, or (ii) transactions that satisfy an exception under the Stark law, as determined by the UHHS Law Department.

- VII. All documents leading up to, or associated with, a formal, binding agreement with the seller(s) of a Medical Practice are subject to this Policy. This includes non-binding letters of intent, letter agreements and memoranda of understanding.
- VIII. Side agreements or arrangements (whether written or oral) not covered by the primary written agreement are prohibited, unless they are made as formal amendments or additional agreements reviewed by the UHHS Law Department and signed by both parties.
- IX. UHHS will not enter into an agreement with a seller of a Medical Practice who is an Ineligible Person.
- X. In all arrangements subject to this Policy, payments must be consistent with the terms of the agreement and performance of all of the terms of the agreement is required.

PROCEDURE

- I. The UHHS Authorized Representative or his or her designee completes and forwards to the UHHS Law Department relevant portions of a contracting form as 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 the transaction is contemplated.
- II. The UHHS Authorized Representative or his or her designee shall obtain an independent, third-party written determination of the fair market value of the Medical Practice to be acquired, and will provide a copy of the determination to the UHHS Law Department and the Organization Integrity Department.
- III. All necessary due diligence review shall be completed in accordance with the UHHS Law Department guidelines and prior to closing a transaction involving the acquisition of a Medical Practice. All relevant due diligence information and findings shall be disclosed to the independent, third-party appraiser for consideration and inclusion in its fair market value determination.
- IV. The UHHS Law Department and the Organizational Integrity Department will analyze the proposed arrangement for compliance with all applicable legal requirements. The UHHS Law Department must approve the agreement as to form.

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- V. The UHHS Authorized Representative or his or her designee shall not make a commitment (whether written or oral) to the prospective seller(s) of a Medical Practice regarding the terms of a proposed 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 an agreement or arrangement, the agreement or arrangement will not be approved.
- VIII. Prior to signing an agreement on behalf of UHHS or presenting the agreement to the seller(s) 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) The transaction is consistent with UHHS's overall physician network development strategies and pursuant to an approved business plan;
 - (2) All relevant information and findings obtained during the due diligence process were disclosed to the independent, third-party appraiser for consideration and inclusion in its fair market value determination;
 - (3) Except as disclosed or cross-referenced in the written agreement, there are no other financial arrangements, written or oral, with the seller(s);
 - (4) He or she has reviewed the independent, third-party written determination of the fair market value of the practice;
 - (5) The aggregate purchase price to be paid under the agreement will represent the fair market value of the Medical Practice as established by the independent, third-party determination;
 - (6) No portion of the purchase price is being offered or paid with the intention to directly or indirectly induce referrals or other business from the seller(s) to UHHS;
 - (7) The terms of the agreement are commercially reasonable, even if no referrals were made to UHHS by the seller(s); and

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(8) Any other condition determined by the UHHS Law Department as necessary for the proposed arrangement to satisfy applicable legal requirements.

- 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 seller(s) for signature.
- X. The UHHS Authorized Representative or his or her designee forwards an original of the signed agreement, certification form and final fair market value determination report 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.

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. §§ 411.351 and 411.357;
26 U.S.C. § 4958; 26 C.F.R. §§ 53.4958-0 – 53.4958-8;
IRS Exempt Organizations Continuing Professional Education (CPE) Technical for Fiscal Year 1996, Topic Q, “Valuation of Medical Practices”

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