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# UHHS P&P

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## University Hospitals Health System Policy & Procedure Manual

### Physician Employment

#### 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, where appropriate, others who provide services to UHHS.

#### PURPOSE

To promote sound business judgments in connection with arrangements for physician employment, to ensure such employment arrangements comply with all applicable Federal and state laws, and to establish a process for entering into such employment arrangements.


#### DEFINITIONS

- I. **Ineligible Person** means any person who: (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. **Physician** means a physician, chiropractor, podiatrist or such person’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).
- III. **UHHS Authorized Representative** means the individual with signing authority for an employment agreement with a Physician, in accordance with the UHHS policy on Contract Execution (F-24).

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## **POLICY**


- I. All Physician employment arrangements must be entered into and documented in accordance with this Policy.
- II. All Physician employment arrangements must comply with all applicable Federal and state laws, and be documented in a written agreement that:
  - (1) Is signed by both parties;
  - (2) Identifies the services to be performed by the Physician;
  - (3) Specifies the compensation amount or compensation formula; and
  - (4) Satisfies all other applicable legal requirements as determined by the UHHS Law Department.
- III. The amounts paid to Physicians under employment arrangements must be consistent with the fair market value of the services provided, and must not take into account (directly or indirectly) the volume or value of referrals or any referral relationship between the parties.
- IV. The compensation paid to a Physician under an employment arrangement must be commercially reasonable even if no referrals were made to UHHS by the Physician employee.
- V. Where possible, UHHS encourages productivity based arrangements instead of salary guarantees. Compensation paid to Physicians under employment arrangements may include clinical and academic productivity bonus components, or may be based exclusively upon the Physician's clinical productivity. Any clinical productivity bonus or clinical productivity formula will be based solely upon services performed personally by the Physician, and shall not include any clinical services referred by the Physician and performed by any other individual or entity.
- VI. An employment agreement with a Physician may require the Physician to make referrals to a particular provider, practitioner or supplier, including UHHS, if:
  - (1) The requirement is included in the written employment agreement;
  - (2) The employment agreement provides that the referral requirement does not apply if (i) the patient expresses a preference for a different provider, practitioner or supplier, (ii) the patient's insurer determines the provider, practitioner or supplier,

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or (iii) the referral is not in the patient’s best medical interests in the Physician’s judgment;

- (3) The referral requirement is limited to the Physician’s services provided as an employee of UHHS (i.e., the referral requirement does not apply during any period in which a Physician is employed by, or working on behalf of, anyone other than UHHS); and
- (4) The referral requirement is reasonably necessary to effectuate the legitimate business purposes of the employment arrangement.


- VII. Except as otherwise specifically stated or modified by the written employment agreement, a Physician employee shall be entitled to the same benefits as other employees at his or her level within the UHHS entity employing such Physician, in accordance with the UHHS policies and procedures. Employed physicians may also on occasion receive non-monetary compensation (e.g., meals, social events, tickets to sporting events) from the UHHS entity employing such Physicians or from the UHHS parent entity, University Hospitals Health System, Inc. Such extras (i) are provided to employed Physicians regardless of whether they make referrals to UHHS entities, (ii) must not cause the overall compensation to the Physician from the UHHS entity employing such Physician to exceed fair market value, and (iii) must further the legitimate business purposes of the UHHS entity providing such “extra” non-monetary compensation. Non-monetary compensation provided to UHHS employed Physicians from other UHHS sources may constitute a “Business Courtesy” to a “Referral Sources” under the UHHS Policy on Physician Gifts, Meals, Free CME and Other Business Courtesies (PT-4) and be subject to that policy.
- VIII. All UHHS Physician employment arrangements will comply with applicable state “corporate practice of medicine” and “fee-splitting” restrictions. Physicians will be employed by a UHHS affiliated entity that is an Ohio professional association, professional limited liability company, “rural hospital,” or any other entity permitted by law to employ Physicians. UHHS affiliated entities that employ physicians will not control the professional clinical judgment exercised by the employed physician within acceptable and prevailing practice and in accordance with all applicable laws.
- IX. All documents leading up to, or associated with, a formal, binding agreement within the scope of this Policy are subject to this Policy. This includes non-binding letters of intent, letter agreements and memoranda of understanding.
- X. 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.

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- XI. UHHS will not enter into an employment arrangement with a Physician who is an Ineligible Person.
- XII. In all employment arrangements with Physicians, 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 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 the transaction is contemplated.
- II. The UHHS Law Department and 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.
- III. The UHHS Authorized Representative or his or her designee provides information to verify that the compensation to be paid to the Physician under the proposed employment arrangement does not exceed the 75<sup>th</sup> percentile compensation amount for physicians in the same medical specialty or sub-specialty as the Physician, based upon one or more physician compensation surveys issued by nationally recognized independent firms. If this data is not available or cannot be verified, the UHHS Authorized Representative must demonstrate that the compensation is consistent with fair market value. This can be done using a variety of methods, including independent third-party appraisals performed by independent appraisers or compensation analysts, bona fide competing offer letters, reliable and nationally-recognized physician compensation survey data (e.g., comparable or composite data from other similar specialties) and other benchmarks generally acceptable in the health care industry.
- IV. The UHHS Authorized Representative or his or her designee shall not make a commitment (whether written or oral) to any Physician regarding the terms of a proposed employment arrangement until the terms have been reviewed and approved by the UHHS Law Department. At the discretion of the UHHS Authorized Representative or his or her designee, a non-binding offer letter may be sent to a Physician candidate for employment. Such non-binding offer letter:
  - (1) may not be sent prior to the completion of a fair market value analysis of the compensation to be paid to the Physician pursuant to this Policy;
  - (2) must be approved as to form by the UHHS Law Department;
  - (3) must comply with the UHHS policy on Letterhead (OI-7); and

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- (4) must be signed by the UHHS Authorized Representative or his or her designee (who must be at least a Senior Vice President).
- V. 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.
- VI. 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 employment agreement or arrangement, the agreement or arrangement will not be approved.
- VII. Along with the initial submission of a Physician employment agreement to the UHHS Law Department for approval, the UHHS officer involved in the proposed Physician employment agreement negotiations 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 disclosed or cross-referenced in the agreement, there are no other arrangements, written or oral, with the Physician;
  - (2) The Physician is not an Ineligible Person;
  - (3) The employment is for clearly identifiable services;
  - (4) The compensation offered is consistent with and does not exceed fair market value for the services to be provided by the Physician;
  - (5) No portion of the Physician's compensation is being paid with an intention to induce referrals to UHHS, and the amount of compensation was not determined in a manner that takes into account (directly or indirectly) the volume or value of referrals by the Physician;
  - (6) The compensation paid to the Physician under the agreement would be commercially reasonable even if no referrals were made to UHHS; and
  - (7) Any other condition determined by the UHHS Law Department as necessary for the proposed arrangement to satisfy applicable legal requirements.
- VIII. 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 for signature.
- IX. The UHHS Authorized Representative or his or her designee forwards an original of the signed employment agreement and certification form and any fair market value analysis

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to the UHHS Law Department and a copy 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
- HR-8, Background Checks
- PT-4, Physician Gifts, Meals, Free CME and Other Business Courtesies

University Hospitals Professionals, Ltd., Professional Employee Policy Manual, as amended from time to time.

**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;
- Ohio Rev. Code § 4731.226;
- Ohio Rev. Code § 4731.31

<b>APPROVALS</b>	
 _____ CHIEF EXECUTIVE OFFICER	 _____ Date
 _____ SENIOR VICE PRESIDENT	 _____ Date