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**Sponsor:** Brian Kozik: SVP, COMPLIANCE & PRIVACY  
**Section:** GA-Corporate Compliance  
**Manuals:**

## GA-004-410 Fair Market Value and Commercial Reasonableness

### I. Purpose

The purpose of this policy is to ensure that any Broward Health Arrangement with a Referral Source provides for Remuneration which is consistent with Fair Market Value and is Commercially Reasonable, in order to comply with applicable state and federal laws and regulations, including, without limitation, the Stark Law, 42 U.S.C. § 1395nn, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and the Florida Patient Brokering Act, Fla. Stat. § 817.505 (collectively, the “Self-Referral Laws”).

(This Policy applies to all Broward Health Arrangements with a Referral Source (as the term Referral Source is defined in this Policy).

### II. Key Terms

For purposes of this Policy, the below terms shall have the meanings set forth below wherever they appear in this Policy, regardless of whether they are capitalized, unless:

1. The context in which they are used clearly requires a different meaning; or
2. A different definition is prescribed for a particular section of this Policy.

Words not defined shall be given their common and ordinary meaning unless the context in which they are used requires otherwise.

For purposes of this Policy, the below terms shall have the following meanings associated with them:

**Arrangement:** An instance or process of two or more persons or entities entering into a transaction or otherwise conducting business. The transaction or business may 1) involve, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value; and is between Broward Health and any actual or potential source of health care business or referrals to Broward Health or any actual or potential recipient of health care business or referrals from Broward Health; or 2) is between Broward Health and any physician (or a physician's immediate family member) (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Broward Health for designated health services (as defined at 42 U.S.C § 1395nn(h)(6)).

**Commercial Reasonableness or Commercially Reasonable:** A sensible, prudent business agreement,

from the perspective of the particular parties involved, even in the absence of any potential referrals. An arrangement will be considered "Commercially Reasonable" if the arrangement would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable healthcare provider of similar scope and specialty, even if there were no potential business referrals between the parties.

**Fair Market Value or FMV:** The compensation parties would exchange without consideration of referrals. As defined by federal regulation, this means the price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement. Usually, the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition, or the compensation that has been included in bona fide service agreements with comparable terms at the time of the agreement, where the price or compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals. 42 CFR § 411.351 (2011).

**Immediate Family Member:** Husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

**Physician:** A duly licensed doctor of medicine or osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, doctor of optometry, or any entity other than publicly traded entities which is wholly or partially owned by a Physician. A physician and the professional entity to which he or she belongs (e.g., a sole practice, physician group, etc.) are the same for purposes of this Policy.

**Referral Source:** A Physician or other person or entity that can make a "Referral," i.e., influence or recommend the purchasing, leasing, ordering, or arranging for any good, facility, item, or service paid for, in whole or in part, by a federal or state healthcare program. It is anyone (including an Immediate Family Member of a Physician) who has previously referred or influenced the flow of Medicare, Medicaid, or other government healthcare programs business to Broward Health or is reasonably anticipated to do so in the future.

**Remuneration:** Any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind.

### III. Policy

Any Arrangement with a Referral Source must: (i) not take into account the volume or value of referrals between the parties; (ii) be Commercially Reasonable; and (iii) provide for Remuneration which is consistent with the Fair Market Value of any items or services exchanged between Broward Health and the Referral Source (that could include no compensation). Further, any such Arrangement must be accompanied by documentation supporting its Fair Market Value and Commercial Reasonableness.

## IV. Procedures

Prior to executing any Arrangement with a Referral Source, Broward Health must ensure the Arrangement is Commercially Reasonable and that any Remuneration provided therein is consistent with Fair Market Value for the items or services acquired or sold in such Arrangement, by documenting the Fair Market Value and Commercial Reasonableness of the Arrangement. The supporting documentation shall accompany the Referral Source Arrangement in question and be made part of the Arrangement's file in Broward Health's Contract Management System.

### A. General:

1. *Commercial Reasonableness Documentation.* Documentation supporting the commercial reasonableness of an Arrangement may be in the form of a completed questionnaire, an explanatory memorandum, an independent third-party report, and/or other written correspondence (or a combination thereof). Such documentation shall evidence, with facts specific to the Arrangement in question, that the Arrangement is a sensible and prudent business agreement that would make commercial sense if entered into by a reasonable entity of similar type and size even in the absence of referrals.
2. *FMV Documentation.* Documentation supporting that the Remuneration provided for in an Arrangement is consistent with Fair Market Value may be in the form of the following:
  - a. *Purchased FMV Software or Tools.* The Fair Market Value of a given Arrangement may be documented through the use of a Broward Health approved third-party software or platform, such as an online FMV calculator or other specialized product utilized to provide information pertaining to Fair Market Value.
  - b. *Third Party Report.* The Fair Market Value of a given Arrangement may be documented by obtaining a report from a Broward Health approved independent third-party appraisal firm with knowledge of the healthcare rules and regulations impacting the Arrangement.
3. *Obtaining FMV & Commercial Reasonableness Documentation.* The Broward Health department requesting an Arrangement must work with the Office of the General Counsel to obtain the Commercial Reasonableness and FMV Documentation . The Office of the General Counsel, and/or its designee, shall be responsible for overseeing the process to obtain the FMV & Commercial Reasonableness documentation.
4. *Validity of Documentation.* The Commercial Reasonableness and FMV documentation must be current and valid as of the time an Arrangement is being entered into. That is, the documentation must evidence that an Arrangement is Commercially Reasonable and that any Remuneration therein is consistent with FMV at the time the Arrangement is being entered into. Any question as to the validity of such documentation shall be resolved by the Office of the General Counsel in consultation with the Corporate Compliance and Ethics Department.
5. *Comprehensive.* The FMV & Commercial Reasonableness documentation must support, with as much specificity as practical, the items and/or services contemplated in the subject Arrangement. Where possible, survey and/or benchmark data shall reflect arrangements comparable in character, nature, and value to the Arrangement being evaluated.
6. *Qualifications & Selection of Appraiser.* Outside appraisers or valuers must be reputable independent third party with experience in the healthcare industry, the subject matter of a given Arrangement, and the healthcare rules and regulations impacting the given Arrangement.

### B. Additional Considerations:

1. In addition to the definition of Fair Market Value provided above, rental agreements between Broward Health and any Referral Source shall not take into consideration the intended use of the property or the convenience or proximity of the property to the lessor and/or potential Referral Source in the rental payment amount.
2. Where a Referral Source provides the equipment (a technical service) as well as professional services pursuant to a personal services agreement, the values of both the professional services and the equipment should be separately supported by the FMV & Commercial Reasonableness documentation.
3. All Physician contracts will have capped total compensation. Exceptions to this can only be made with the written approval of the General Counsel and Chief Compliance Officer.
4. When acquiring or divesting a medical practice or medical practice assets of a Referral Source, the FMV & Commercial Reasonableness documentation must evaluate the value of the medical practice's assets as of the time of closing using recognized valuation methodologies and reasonable economic and market assumptions

#### V. **Review and Approval**

- A. **Review by Contract Owner/Internal Stakeholder:** The Broward Health person requesting the Arrangement will review and confirm that the proposed compensation is supported by the FMV & Commercial Reasonableness documentation and is documented in the Contracts Management System.
- B. **Review by General Counsel's Office:** The General Counsel's Office will review the proposed Arrangement and the FMV & Commercial Reasonableness documentation. The General Counsel's Office will review the proposed Arrangement for compliance with legal and regulatory requirements.
- C. **Review by Chief Compliance Officer:** The Chief Compliance Officer or his or her designee will review the proposed Arrangement and the FMV & Commercial Reasonableness documentation. The Chief Compliance Officer or his or her designee will ensure that the proposed Arrangement complies with the Compliance and Ethics Program.

#### VI. **Enforcement**

All Workforce Members whose responsibilities are affected by this Policy are expected to be familiar with the basic procedures and responsibilities created by this Policy. Failure to comply with this Policy will be subject to appropriate remedial and/or disciplinary action, up to and including termination of any employment or other relationship, in accordance with the Enforcement and Discipline Policy, Policy No. GA-004-238.

#### VII. **Document Retention**

Broward Health will retain a copy of all documents relating to this policy for a period of seven (7) years after their creation. Documents may be considered a public record under Chapter 119, Florida Statutes and may be subject to disclosure, unless otherwise exempted.

#### VIII. **Exceptions**

Exceptions to this Policy shall be made only upon the agreement of the President/Chief Executive Officer, General Counsel, and Chief Compliance Officer. The exception shall be documented in a written memorandum that is included in the Contract Management System.

## IX. Interpretations and Administration of Policy

This Policy shall be assessed and updated periodically and revised as necessary. Within 30 days of the effective date of any revisions or additions to this Policy, a description of the revisions shall be communicated to all affected responsible persons at Broward Health and a copy of the revised Policy shall be made available. The Chief Compliance Officer will monitor Broward Health's adherence to this Policy.

Administration and Interpretation of this Policy is the responsibility of the Chief Compliance Officer in consultation with the General Counsel.

## X. Related Policies and Compliance Documents

- Physician Financial Arrangement Review, Approval, Tracking and Monitoring, Policy No. GA-004-441
- Enforcement and Discipline Policy, Policy No. GA-004-238

## XI. References

Stark Law, 42 U.S.C. § 1395nn, and implementing regulations

Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and implementing regulations

## Attachments

No Attachments

## Approval Signatures

Step Description	Approver	Date
Final Approver	Brian Kozik: SVP, COMPLIANCE & PRIVACY	08/2020
	Lucia Pizano-Urbina: EXEC DIR, CORP COMPLIANCE	08/2020
	Lauren Brown: DIR, COMPLIANCE/PRIVACY OPS	08/2020