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## GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring

### I. Purpose

This policy establishes administrative principles, guidelines, review processes, and approvals that must be followed before Broward Health enters into a direct or indirect Arrangement with a Referral Source. An Arrangement between Broward Health and a Referral Source is a Focus Arrangement and is subject to this policy.

### II. Key Terms

**Arrangement:** Any arrangement or transaction that 1) involves, 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)).

**Commercially Reasonable:** 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.

**Covered Persons:** All owners, officers, directors, commissioners, employees, contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of Broward Health (excluding vendors whose sole connection to Broward Health is selling or otherwise providing medical supplies or equipment to Broward Health and who do not bill Federal or State Health Care Programs for such medical supplies or equipment), and all physicians and other non-physician practitioners who are members of Broward Health's active medical staff. This term does not include part-time or per diem employees, contractors, subcontractors, agents, or other persons who are not reasonably expected to work more than 160 hours during a Reporting Period, except that any such individuals shall become "Covered Persons" at the point when they work more than

160 hours during a Reporting Period.

**Fair Market Value:** The value in arm's length transactions, consistent with the price that an asset would bring, or the compensation that would be included in a service agreement, as the result of a bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party at the date of acquisition of the asset or the time of the service agreement.

**Focus Arrangement:** Every Arrangement that 1) is between Broward Health and any actual source of health care business or referrals to Broward Health and involves, directly or indirectly, the offer, payment, or provision of anything of value; 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)).

**Referral Source:** A Physician, Contractor or Entity that is an actual source of healthcare business or referrals to Broward Health.

**Tracking Remuneration:** The process of monitoring internal controls developed to verify all payments made to Focus Arrangements are in accordance with the terms of the agreement.

### III. Policy

All Focus Arrangements shall comply with the Stark Law, the Anti-Kickback Statute and any other applicable federal and state laws or regulations. Focus Arrangements must be entered into only where they are objectively determined to be Commercially Reasonable and consistent with Fair Market Value, as required under Fair Market Valuation and Commercial Reasonableness Policy, Policy No. GA-004-410. The following are the elements to meet compliance requirements for all Focus Arrangements:

### IV. Procedures

- A. **Focus Arrangement Determination** – All Arrangements Broward Health intends to enter into with persons or entities must be reviewed by the Corporate Compliance Department to determine if the person or entity meets the definition of a Focus Arrangement and/or Covered Person. This process of determination is outlined in Focus Arrangement Review Standard Operating Procedure, Policy No. GA-004-441-001.
- B. **Centralized Tracking System** – All Focus Arrangements must be created and maintained in the Contract Management System for all existing and new or renewed Focus Arrangements.
- C. **Focus Arrangement Requirements** – In the event a person or entity is determined to be a Focus Arrangement, Broward Health must comply with the following requirements before business can be done with the Focus Arrangement:
  1. Ensure that each Focus Arrangement is set forth in a writing and such writing is signed by Broward Health and the other parties to the Focus Arrangement (“Written Agreement”);
  2. The business rationale of the Focus Arrangement and the Fair Market Value of the remuneration specified in the Focus Arrangement must be properly documented within the

Contract Management System;

3. The Focus Arrangement must be reviewed by the General Counsel's Office to determine that the business rationale and fair market value is properly documented and that the Focus Arrangement does not violate the Anti-Kickback Statute or the Stark Law;
4. The written agreement must include language to the effect that each party to the Focus Arrangement who meets the definition of a Covered Person shall complete at least one (1) hour of training regarding the Anti-Kickback Statute and the Stark Law and examples of arrangements that potentially implicate the Anti-Kickback Statute or the Stark Law;
5. Include in the written agreement a certification by the parties to the Focus Arrangement that the parties shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of the Arrangement; and
6. A copy of Broward Health's Code of Conduct and Policies and Procedures pertaining to the Stark Law and Anti-Kickback Statute must be provided to all parties to the Focus Arrangement.

The requirements are further detailed in BH Policy, Referral Source Contracting Requirements, Policy No. GA-004-442

D. **Tracking Remuneration:** Broward Health has a process to ensure all remuneration to Focus Arrangements is consistent with the terms of the agreement. The Tracking and Monitoring Activities Policy, Policy No. GA-004-443 outlines how Broward Health will:

1. Track remuneration to and from all parties to Focus Arrangements;
2. Track service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable); and
3. Monitor the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable).

## V. Auditing and Monitoring

A. Corporate Compliance Department: With regard to Focus Arrangements, the Corporate Compliance Department shall be responsible for reviewing the contract database, the internal review and approval process, and other Focus Arrangement procedures, on at least an annual basis, and providing a report on the results of such review to the Board Compliance and Ethics Committee.

## VI. Related Policies and Standard Operation Procedures

- Broward Health Code of Conduct
- Call Coverage Policy, Policy No. GA-004-500
- Compliance Audit and Monitoring, Policy No. GA-004-345
- Compliance with Federal Anti-Kickback Statute and Stark Law, Policy No. GA-004-007
- Conflict of Interest, Policy No. GA-001-015
- Disclosure of Physician Ownership and Financial Arrangements Policy, Policy No. GA-004-417
- Electronic Signatures, Policy No. GA-001-400
- Fair Market Valuation and Commercial Reasonableness Policy, Policy No. GA-004-410

- Medical Director/ Program Director Arrangements, Policy No. GA-004-013
- Physician Recruiting Agreements, Policy No. GA-016-006
- Referral Source Contracting Requirements, Policy No. GA-004-442
- Review, Approval, and Administration of Contracts, Policy No. GA-001-020
- Tracking and Monitoring Activities, Policy No. GA-004-443
- Tracking and Monitoring of Medical Office Buildings and Lease Agreements, Policy No. GA-510-001
- Standard Operating Procedure for Focus Arrangements Review, Policy No. GA-004-441-001
- Standard Operating Procedure for Final Compliance Review, GA-004-441-002
- Standard Operating Procedure for ServiceNow Medical Directorship Log Reporting and Review Process, Policy No. GA-004-441-005

**VII. 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**

[Standard Operating Procedure for Final Compliance Review, Policy No. GA-004-441-002](#)

[Standard Operating Procedure for Focus Arrangements Review, Policy No. GA-004-441-001](#)

[Standard Operating Procedure for ServiceNow Medical Directorship Log Reporting and Review Process, Policy No. GA-004-441-005](#)

**Approval Signatures**

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