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## GA-016-006 Physician Recruiting Agreements

### I. Scope

This policy applies to all Broward Health-affiliated entities, including, but not limited to: hospitals, ambulatory surgery centers, hospices, home health agencies, physician practices, outpatient centers, clinics, and all Broward Health departments, groups, and divisions.

### II. Purpose

To provide direction as to recruiting arrangements between Broward Health facilities and physicians involving physician relocation agreements and/or income guaranties.

### III. Policy

Recruitment of Physicians to practice at Broward Health is appropriate in certain circumstances, such as where there is a demonstrable community need to add Physicians in an underserved geographic location, to add or enhance a service of the medical staff, or to increase coverage where there is a shortage. All Physician Recruitment Agreements shall be in accordance with 42 U.S.C. § 1320a-7b (Federal Anti-Kickback Statute), 42 C.F.R. § 411.357(e) (Physician Recruitment Exception to the Stark Law), the Internal Revenue Service's Revenue Rule 97-21 (May 5, 2997), and Resolution FY20-20, Resolution Establishing Guidelines for Physician Recruitment Arrangements, adopted on May 27, 2020 by the Board of Commissioners of North Broward Hospital District, and all as amended from time to time, and any successor statutes, regulations, rulings, or resolutions thereof. To the extent that any procedure of this Policy conflicts with, modifies, or alters any of the foregoing, the foregoing statutes, regulations, rulings, and resolutions shall control.

### IV. Definitions

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:

- A. **Forgiveness Period:** Shall refer to the period that immediately follows the conclusion of the Guarantee Period (which can be for a maximum duration of thirty-six (36) months). During this time, the Physician is required to remain practicing in the Geographic Service Area and maintain medical staff privileges at the

applicable Broward Health hospital (the "Hospital"). For forgiveness periods of thirty-six months, the forgiveness shall be on the basis of 1/36th of the debt obligation for each month where all conditions are fulfilled. For forgiveness periods of a shorter duration, the forgiveness shall be on the basis of 1/(the number of months of the given forgiveness period).

- B. **Geographic Service Area:** Shall mean the lowest number of contiguous postal zip codes from which the recruiting Broward Health Hospital draws at least 75 percent of the Hospital's inpatients during the most recent calendar year or twelve-month period, as set forth in 42 CFR § 411.357(e)(2)(i).
- C. **Group Practice:** Shall mean two or more Physicians who practice through a single legal entity, using a common trade name and a common tax identification number, including a faculty practice plan or other physician group practice organization affiliated with an academic medical center. A "group practice" also includes the medical practice that is formed when a Physician joins one or more solo practitioners.
- D. **Guarantee:** Shall mean that component of the Physician Recruitment Agreement pursuant to which Broward Health agrees, subject to certain repayment and forgiveness provisions, to guarantee a certain level of collections (solo practitioners only) or net income.
- E. **Guarantee Period:** Physician Recruitment Agreements may provide for a net collectable revenue guarantee or an income guarantee (depending on the type of arrangement) which shall reflect the going market rate for a particular specialty and expire after a set time period (typically between 12 and 24 months). The Guarantee period shall not exceed twenty-four (24) months without expressed written approval of the CEO or CFO and the Office of General Counsel and Chief Compliance Officer. *The Anti-Kickback Statute Safe Harbor requires that the Guarantee Period not exceed three (3) years and the terms of the agreement not be renegotiated in any substantial aspect during this period. 42 C.F.R. §1001.952(n)(3). "Any substantial aspect" means in any manner that materially affects the payments or benefits to the recruited physician. Commentary to Final Regulation, 64 F.R. 63518, 63543 (Nov. 19, 1999).*
- F. **Incremental Expenses:** Shall refer to actual additional expenses attributable to the recruited Physician. Costs that are not genuinely attributable to the recruited Physician shall not be considered incremental expenses and shall not be subsidized by Broward Health. With respect to office rent, personnel, equipment, and other ordinary expenses, such expenses may not be passed through to the recruited Physician unless the expenses are directly related to and incurred on behalf of the relocated Physician. For example, if an existing Group Practice enlarges its existing space or employs additional personnel solely for use by the relocated Physician, then such expenses will be treated as incremental expenses and may be passed through to the recruited Physician. Incremental Expenses shall be specifically identified within **an attachment** of each Physician Recruitment Agreement.
- G. **Nonphysician Practitioner:** Refers to a physician assistant as defined in section 1861(aa)(5) of the Social Security Act (the Act), a nurse practitioner or clinical nurse specialist as defined in section 1861(aa)(5) of the Act, a certified nurse-midwife as defined in section 1861(gg) of the Act, a clinical social worker as defined in section 1861(hh) of the Act, or a clinical psychologist as defined in 42 CFR section 410.71(d).
- H. **Physician:** Refers to a duly licensed and authorized doctor of medicine or osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, doctor of optometry, or chiropractor.
- I. **Physician Cash Collections:** Shall mean all receipts derived from Physician's professional services (including services performed incident to Physician's services), including office calls, hospital practice, emergency room treatments, any payments for consulting or other services, and all other professional services provided by Physician, including any additional source revenue for Physician's services such as

call coverage fees, medical directorship fees, expert witness fees, or speaking for honoraria.

J. **Physician Recruitment Agreement:** Shall mean any agreement between Broward Health and a Physician (2-Party Agreement) or Broward Health, Group Practice, and Physician (3-Party Agreement) in which Broward Health offers remuneration to an eligible Physician to induce the Physician to relocate to the Service Area.

K. **Remuneration:** Shall mean any payment, discount, forgiveness of debt or other benefit made directly or indirectly, overtly, in cash or in kind.

I. **Procedure**

A. Recruitment of Physicians to practice at Broward Health is appropriate in certain circumstances: where there is a demonstrable community need to add Physicians in an under-served geographic location, to add or enhance a service of the medical staff, or to increase coverage where there is a shortage. Physician Recruitment Agreements are not appropriate to retain a Physician currently on the medical staff (i.e., retention agreements), to move a Physician within the service area, or to provide additional compensation to existing medical staff members. Under no circumstances are Physician Recruitment Agreements to be tied expressly, by implication or by "private understanding," to facility utilization; accordingly, materials generated in connection with the recruitment of a Physician, or discussions relating to same, should never include estimated or projected Hospital or other referrals.

B. Unless otherwise permitted pursuant to 42 C.F.R. § 411.357E, Physicians may only be recruited if the medical practice of the physician was located outside the Geographic Service Area, and all Physician Recruitment Agreements must satisfy at least one of the following essential conditions:

1. The Physician's practice must be moved more than 25 miles and into the Geographic Service Area; or
2. The Physician must relocate and establish a new practice, or join an existing practice, to which he or she derives at least 75% of his or her revenues from professional services furnished to patients (including hospital inpatients) not seen at Physician's prior practice during the preceding 3 years, measured on an annual basis; or
3. The Physician is (or will be, upon the commencement of the payments under the recruitment agreement) in his or her first year of practice and there is a reasonable expectation that the recruited Physician's practice will derive at least 75% of its revenues from professional services furnished to patients not seen by the Physician at his or her prior medical practice during the preceding 3 years; or
4. The Physician is a resident or physician who has been in practice one year or less, or the Physician is recruited from a public service obligation or a university (or the like) from which no private practice patient base was established and the Physician was employed on a full-time basis for at least 2 years immediately prior to the recruitment..

*If a Physician is sought after, but does not meet one of the conditions for recruitment under this policy, consider utilizing a different arrangement with the Physician, such as an employment relationship.*

A. Each Physician Recruitment Agreement shall be supported by a community needs analysis and/or similar documentation.

B. Each Physician Recruitment Agreement shall be individually analyzed on a facts and circumstances, case-by-case basis, and shall be supported by a fair market and commercial reasonableness report or analysis.

C. Each Physician Recruitment Agreement shall be analyzed and confirmed to be in compliance with 42

U.S.C. § 1320a-7b; 42 C.F.R. § 411.357(e); the Internal Revenue Service's Revenue Rule 97-21; and Resolution FY20-20, Resolution Establishing Guidelines for Physician Recruitment Arrangements, adopted on May 27, 2020 by the Board of Commissioners of North Broward Hospital District, and all as amended from time to time and any successor statutes, regulations, rulings, or resolutions thereof.

D. Physician Recruitment Agreements may include:

- i. Forgiveness of obligation, over a predetermined period of up to thirty-six (36) months, if the Physician remains in the community and maintains staff privileges at Broward Health;
  - ii. Net collectable revenue guarantee may include reasonable market cost of overhead and operating expenses, such as:
    - a. Support staff salary and benefits
    - b. office and equipment rental and expenses
    - c. malpractice insurance
    - d. other similar routine and ordinary expenses (those expenses that are deductible by the physician as a business expense)
    - e. Guarantee income should be based on the reasonably expected income level for an established Physician of the recruited specialty.
      - i. The Physician Recruitment Agreement may provide reimbursement for non-recurring expenses to include start-up marketing and expenses (2-Party Agreements Only) and relocation expenses. Payments should be based upon Broward Health policies for payment/reimbursement of expenses. In the case of 2-party agreements, they must meet the operational test of 26 C.F.R. § 1.501(c)(3)-1 by showing that, taking into account all of the benefits provided the physician by Broward Health, reasonable compensation is being paid to the Physician for the services the Physician is providing in return.
      - ii. See sample list of permitted/not permitted expenses in Questions 13, 14, and 15 of the attached Frequently Asked Questions, which is hereby incorporated by reference to this Policy and in the List of Incremental Expenses attached hereto.
- A. When a Physician seeks to join or be employed by an existing Group Practice (3-Party Agreement), the following conditions must be met:
- i. The recruited Physician must be eligible for recruitment under the conditions of this policy.
  - ii. The Physician Recruitment Agreement must be undertaken to meet a community need and not for the benefit of the existing Group Practice.
  - iii. The Physician Recruitment Agreement must be between the recruited Physician, the Group Practice, and Broward Health.
  - iv. The Physician Recruitment Agreement must be signed by the Physician, Group Practice, and Broward Health.
    - i. There should be strict adherence to Broward Health's Code of Conduct and conflict of interest policy and procedures.
    - ii. The financial terms shall never be tied directly or indirectly to referrals or other business generated between Broward Health, Group Practice, and/or the Physician.
    - iii. The documents should not limit the Physician's ability to seek medical staff membership at any other

health care facility.

- iv. The Physician Recruitment Agreement should always contain a requirement that the Physician serve Medicare and Medicaid patients in a nondiscriminatory manner and will participate in Managed Care contracts with third-party payors that have arrangements with Broward Health.
- v. The Physician Recruitment Agreement must be well documented, to include the rationale and need for the agreement.
- A. When a Physician seeks to relocate and establish a solo practice (2-Party Agreement), the following conditions must be met:
  - i. The recruited Physician must be eligible for recruitment under the conditions of this policy.
  - ii. The Physician Recruitment Agreement must be undertaken to meet a community need.
  - iii. There should be strict adherence to Broward Health's Code of Conduct and conflict of interest policy and procedures.
  - iv. The financial terms shall never be tied directly or indirectly to referrals or other business generated between Broward Health and the Physician.
  - v. The documents should not limit the Physician's ability to seek medical staff membership at any other health care facility.
  - vi. The Physician Recruitment Agreement should always contain a requirement that the Physician serve Medicare and Medicaid patients in a nondiscriminatory manner and will participate in Managed Care contracts with third party payors that have arrangements with Broward Health.
  - vii. The Physician Recruitment Agreement must be well documented, to include the rationale and need for the agreement.
- A. All Physician Recruitment Agreements must:
  - i. be negotiated at arms' length;
  - ii. be reasonable;
  - iii. be in writing and signed by the parties before the Physician relocates to the community and before any payments are made under the Physician Recruitment Agreement;
  - iv. specify the benefits provided, the terms under which the benefit are provided, and the obligations of each party;
  - v. not provide any additional benefits or incentives beyond those described in the Physician Recruitment Agreement;
  - vi. state that the Forgiveness Period will not be provided by Broward Health for a period exceeding three (3) years;
  - vii. only be made to Physicians who are new to the practice or community or practice in a specialty that is necessary to maintain or establish a key program or service at the hospital with high quality care;
  - viii. not be with a Physician with a pre-existing relationship with the hospital or any members of the Board of Commissioners of North Broward Hospital District;
  - ix. require the Physician, if he or she agrees to treat patients receiving medical benefits or assistance under any federal health care program, to treat them in a nondiscriminatory manner;
  - x. require the Physician to practice in the Geographic Service Area;

- xi. state that the Physician is not prohibited from maintaining staff privileges at, or referring to or generating business for, other facilities of his or her choosing (except as such referrals may be restricted under an employment agreement or Stark-compliant services agreement);
  - xii. state that the Physician is not required to refer patients to the Hospital or any Broward Health facility, be in a position to make or influence referrals to, or otherwise generate business for the entity as a condition for receiving the benefits;
  - xiii. require the Physician to maintain staff privileges at the Hospital for a specified period;
  - xiv. state the benefits provided are not determined in a manner that takes in to account (directly or indirectly) the volume or value of any referrals by the Physician or other business generated between the parties,
  - xv. with the exception of payment of actual costs incurred by a Group Practice, not directly or indirectly benefit any person (other than the Physician being recruited) or entity in a position to make or influence referrals;
  - xvi. in the case of an income guarantee of any type to a recruited Physician who joins a Group Practice, the costs allocated by Group Practice to the Physician do not exceed the actual additional incremental costs attributable to the Physician;
  - xvii. in the case of a Group Practice, the Group Practice may not impose restrictions that unreasonably restrict the recruited Physician's ability to practice medicine in the Geographic Service Area;
  - xviii. not violate any state or federal law; and
  - xix. obtain review from the Office of General Counsel and the Corporate Compliance Office.
  - xx. Nonphysician Practitioner ("NPP"). Recruitment of an NPP to provide patient care services must satisfy all requirements set out above for recruitment of Physicians. In addition, NPP services must be primary care or mental health services, and remuneration from Broward Health for the NPP cannot exceed 50 percent of the actual compensation, sign-on bonus, and benefits paid by the physician to the NPP. Finally, Broward Health is limited to payment of NPP recruitment once every three years for the same referring Physician
- A. Audits and Reconciliations. Broward Health's CFO shall delegate to the appropriate team the responsibility of completing a monthly audit during the term of the Recruitment Agreement, to be completed by the 20<sup>th</sup> of each month. In addition, internal audit shall perform post guarantee period audits to track Practice and Physician's debt.
  - B. Requests for Physician Recruitment Agreements shall be in accordance with Policy # GA-001-020, Review, Approval, and Administration of Contracts.
- I. Review and Approval**
- A. **Review by Requestor** The requesting business unit (e.g. the CEO of a Broward Health hospital) shall review and confirm that the proposed compensation is supported by an FMV & Commercial Reasonableness Report and is documented in the Contracts Database.
  - B. **Review by General Counsel's Office** The General Counsel's Office shall review the proposed arrangement and its supporting documentation. The General Counsel's Office shall 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 shall review the proposed arrangement and ensure that the proposed arrangement complies with the Compliance and Ethics Program and applicable Broward Health policies.

**II. 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 of Disciplinary Standards Policy, Policy GA-004-238.

**III. Document Retention**

Broward Health will retain all documents relating to this policy for a period of at least six (6) years after their creation unless required for a longer period under state or federal law. Documents may be considered a public record under Chapter 119, Florida Statutes and may be subject to disclosure, unless otherwise exempted.

**IV. Exceptions**

Exceptions to this Policy may only be made with the express written consent of the Chief Executive Officer, General Counsel, and Chief Compliance Officer. Otherwise, there are no exceptions to this Policy.

**V. Interpretation and Administration of Policy**

This Policy shall be assessed and updated as appropriate 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.

**VI. Related Policies**

- \* Conflicts of Interest Policy, *Policy No. GA-001-015*
- \* Fair Market Valuation and Commercial Reasonableness Policy, *Policy No. GA-004-410*
- \* Disclosure of Physician Ownership & Financial Arrangements Policy, *Policy No. GA-004-017*
- \* Physician Financial Arrangement Review, Approval, Tracking and Monitoring, Policy, *Policy No. GA-004-441*;
- \* Enforcement of Disciplinary Standards Policy, *Policy No. GA-004-238*

**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
- IRS Revenue Ruling 97-21 (May 5, 1997).

**Attachments:** Physician Recruitment Policy – Frequently Asked Questions

**Approval Signatures**

\_\_\_\_\_  
Date

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Date

## Attachments

[Physician Recruitment Policy FAQs .docx](#)

## Approval Signatures

Step Description	Approver	Date
	Linda Epstein: GENERAL COUNSEL	07/2020
	Gerald Del Amo: MANAGING SR ASSOC GEN COUNSEL	07/2020