



Origination:	08/2019
Effective:	04/2021
Last Reviewed:	04/2021
Last Revised:	04/2021
Next Review:	04/2022
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Section:	GA-Legal
Manuals:	General Administrative

## GA-016-006 Physician Recruiting Agreements

### I. Scope

This Policy applies to North Broward Hospital District d/b/a Broward Health ("Broward Health") and all of its wholly-owned entities.

### II. Purpose

The purpose of this Policy is to provide direction to Broward Health when entering into a recruitment arrangement with a Physician to assist such Physician's relocation to the applicable Geographic Service Area, in order to fulfill a community need and to join the respective Hospital's medical staff.

### III. Policy

Recruitment of a Physician to relocate to one (1) of Broward Health's Geographic Service Areas and to serve as a member of one (1) of Broward Health's medical staffs is appropriate in certain circumstances, such as where there is documented evidence of an objective community need for the Physician's medical specialty in such Geographic Service Area. All Physician Recruitment Agreements shall comply 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, 1997), 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 ("Resolution FY20-20"), 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 as if fully set forth herein.

### IV. Definitions

For purposes of this Policy, the following 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.

1. **"Cash Collections"** means all receipts derived from Physician's professional services (as well as services performed incident to Physician's services), including, without limitation, office calls, hospital practice, emergency room treatments, any payments from Hospital for consulting or other services, and all other professional services provided by Physician, as well as any additional source revenue for Physician's services such as medical directorship fees, expert witness fees, speaking fees, or

honoraria.

2. **"Forgiveness Period"** means the period that immediately follows the conclusion of the Guarantee Period (which such Forgiveness Period 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 Hospital. For Forgiveness Periods of thirty-six (36) 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).
3. **"Geographic Service Area"** means the area composed of the lowest number of contiguous postal zip codes from which the recruiting Hospital draws at least 75% of the Hospital's inpatients during the most recent calendar year or twelve-month period. The Geographic Service Area served by the hospital may include one or more zip codes from which the Hospital draws no inpatients, provided that such zip codes are entirely surrounded by zip codes in the Geographic Service Area described above from which the Hospital draws at least 75% of its inpatients.
4. **"Group Practice"** means two (2) 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.
5. **"Guarantee"** means the component of the Physician Recruitment Agreement pursuant to which Broward Health agrees, subject to certain repayment and applicable forgiveness provisions, to ensure Guaranteed Income support for the Physician, typically as a monthly salary, equal to the amount of guaranteed income, less the actual income generated by the Physician.
6. **"Guaranteed Income"** means the Net Income advanced and guaranteed to Physician.
7. **"Guarantee Period"** means the set time period (typically between twelve (12) and twenty-four (24) months) in the Physician Recruitment Agreement that provides for a Net Income Guarantee and which reflects the fair market value for a particular medical specialty as determined by an independent third-party valuation company.
8. **"Hospital"** means the Broward Health hospital or region that is seeking the Recruitment of a Physician or a Nonphysician Practitioner.
9. **"Incremental Costs"** means the reasonable and necessary business expenses attributable to the Recruitment of a Physician.
10. **"Net Income"** means Cash Collections minus Incremental Costs for the calendar month.
11. **"Nonphysician Practitioner"** means 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 C.F.R. § 410.71(d).
12. **"Physician"** means 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 a chiropractor.
13. **"Physician Recruitment Agreement"** means any agreement between Broward Health and a Physician (2-Party Agreement) or Broward Health, Group Practice, and a Physician (3-Party

Agreement) in which Broward Health offers Remuneration to an eligible Physician to induce the Physician to relocate to the Service Area.

14. **"Recruitment of a Physician" or "Physician Recruitment"** means the recruitment of a Physician from outside the Geographic Service Area into the Geographic Service Area of a Hospital in order to practice medicine in the Geographic Service Area and join the Hospital's medical staff, but not as an employee of Broward Health.
15. **"Remuneration"** means any payment, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly, in cash or in kind.

## V. Procedure

### *Purposes and Considerations for Recruitment*

- A. Permissible Considerations for Physician Recruitment: Recruitment of a Physician to practice in the Geographic Service Area is appropriate when the procedures of this Policy are adhered to and when the recruitment of the Physician is at all times in accordance with state and federal laws and Resolution FY20-20. Physician Recruitments may be permissible when one (1) or more of the following circumstances are present and documented:

1. The Physician Recruitment is objectively needed because the Geographic Service Area of the Hospital is deficient in the particular specialty of the Physician being recruited and there is a demand for such medical service as demonstrated and set forth in writing by an independent non-interested entity;
2. The Physician Recruitment is objectively needed because the Geographic Service Area of the Hospital has been designated as a Health Professional Shortage Area ("HPSA") as defined in 42 C.F.R. §§ 5.1-5.4 or a Medically Underserved Area as defined in 42 C.F.R. § 62.52;
3. The Physician Recruitment is objectively needed because there is a demonstrated reluctance of Physicians to relocate to the Geographic Service Area of the Hospital because of its physical location, such as being in an economically-disadvantaged inner-city area; or
4. The Physician Recruitment is objectively needed to serve the medically indigent patients in the Geographic Service Area of the Hospital.

The above circumstances are not the exclusive means for the Recruitment of a Physician, nor are they indicative of a permissible arrangement for Physician Recruitment. Rather, in all circumstances Broward Health's Office of the General Counsel shall be consulted to evaluate the proposed Physician Recruitment Agreement to determine if required criteria are satisfied.

- B. Non-Permissible Reasons for the Recruitment of a Physician: The Recruitment of a Physician is not appropriate when any of the following factors are present:
  1. The Physician is currently on one (1) of Broward Health's medical staffs and the arrangement is being sought to retain the Physician on the medical staff or in the Geographic Service Area (i.e., retention agreements);
  2. The Physician has an established referral stream in the Geographic Service Area of the Hospital;
  3. The physician practice relocation is less than twenty (25) miles from the Hospital's service area and the Physician's patients in a nearby area would continue to represent a large percentage of the Physician's practice; or
  4. There is any "private understanding" of hospital or facility utilization, business generation, or patient referrals estimated or contemplated under the arrangement.

The above factors are some but not all of the circumstances to render the Recruitment of Physician impermissible. In all circumstances Broward Health's Office of the General Counsel shall be consulted to evaluate the Physician Recruitment Agreement to determine if required criteria are satisfied.

*Requirements and Essential Conditions*

- A. Essential Requirements: Following a valid, objective, and documented purpose for Recruiting a Physician, and consistent with the Anti-Kickback Statute, the Stark Law, and Resolution FY20-20, all of the following essential requirements and conditions shall exist for the Recruitment of a Physician:
1. The Physician's medical practice is located outside the Geographic Service Area served by the Hospital;
  2. The Physician will move his or her medical practice into the Geographic Service Area served by the Hospital;
  3. The Physician is not currently a member of the of the Hospital's medical staff or any other Broward Health hospital's medical staff; and
  4. Physician will become a member of the recruiting Hospital's medical staff following the execution of the Physician Recruitment Agreement.
- B. Essential Conditions: All Physician Recruitment Agreements shall also satisfy at least one (1) of the following essential conditions:
1. The Physician is moving the Physician's medical practice at least twenty-five (25) miles into the Geographic Service Area served by the Hospital; or
  2. The Physician is relocating from outside to inside the Geographic Service Area of the Hospital and establishing a new medical practice, or joining an existing medical practice, to which the Physician derives, or there is a reasonable expectation that Physician will derive, at least 75% of the Physician's revenues from professional services furnished to patients (including hospital inpatients) not seen or treated by Physician at Physician's prior practice during the preceding three (3) years, measured on an annual basis (fiscal or calendar year); or
  3. The Physician is a resident or physician who has been in practice one (1) year or less; or
  4. The Physician was employed on a full-time basis (and did not maintain a private practice in addition to such full-time employment) for at least two (2) years immediately prior to the Physician Recruitment Agreement by one of the following: (a) a federal or state bureau of prisons (or similar entity operating one or more correctional facilities) to serve a prison population; (b) the United States Department of Defense or Department of Veterans Affairs to serve active or veteran military personnel and their families; or (c) a facility of the Indian Health Service to serve patients who receive medical care exclusively through the Indian Health Service.

*Entering into the Physician Recruitment Agreement*

- A. Certifications: Prior to being reviewed by Broward Health's Office of the General Counsel, the Hospital's CEO shall certify in writing (see Hospital CEO Certification attached to this Policy) with respect to each Physician Recruitment Agreement that:
1. The Physician Recruitment Agreement is being entered into for at least one (1) of the "Permissible Considerations for Physician Recruitment" noted above and it is documented accordingly based on an independent third-party entity;
  2. The Physician Recruitment Agreement satisfies all the "Essential Requirements" noted above;

3. The Physician Recruitment Agreement satisfies one (1) of the "Essential Conditions" noted above;
  4. Except as provided in the Physician Recruitment Agreement, there are no other agreements (whether oral or written) between the Physician and any Broward Health Hospital;
  5. There is no "private understanding" of facility utilization, business generation, or patient referrals estimated or contemplated between any of the parties under the Physician Recruitment Agreement;
  6. The Physician Recruitment Agreement complies with, and there is nothing that the Hospital CEO is or should be aware of to render it non-compliant with, state and federal law; and
  7. To the extent there is a Forgiveness Period for the Physician Recruitment Agreement, that the CEO will ensure that the security interest in the accounts receivable is perfected by filing a Form UCC-1 Financing Statement (see the Form UCC-1 Financing Statement attached to this Policy) with the Florida Secretary of State in accordance with § 679.5011(2), Florida Statutes.
- B. Legal Requirements: Once there is a permissible consideration and purpose, after the essential requirements and conditions are or will be met, and after the Hospital's CEO has completed the certification mentioned above, the Hospital may start the Physician Recruitment process. To begin, the Hospital shall reach out to Broward Health's Office of the General Counsel so that the legal sufficiency of the Physician Recruitment Agreement may be analyzed. At a minimum, all of the following legal requirements shall be satisfied:
1. The Physician Recruitment Agreement is set out in writing and signed by Broward Health and the Physician;
  2. The Physician Recruitment Agreement is not conditioned on the Physician's referral of patients to the Hospital;
  3. The amount of Remuneration under the Physician Recruitment Agreement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by the Physician or other business generated between the parties; and
  4. The Physician is allowed to establish staff privileges at any other hospital(s) and to refer business to any other entities (except as referrals may be restricted under an employment or services arrangement that complies with 42 C.F.R. § 411.354(d)(4)).
- C. Legal Requirements for Recruitments to Existing Group Practice: From time to time, the Hospital may approach a Physician to induce such Physician to relocate to the Geographic Service Area and, instead of the Physician establishing the Physician's own medical practice, the Physician will be joining an existing Group Practice within the Geographic Service Area as an employee. In such instances, additional legal requirements shall be met which include, at a minimum:
1. The Physician Recruitment Agreement shall also be signed by the Group Practice in addition to the Physician and Broward Health;
  2. Except for additional actual costs incurred by the Group Practice in the Physician Recruitment, the Remuneration is passed directly through to or remains with the Physician;
  3. In the case of an income guarantee of any type made by the Hospital to the Physician, the costs allocated by the Group Practice to the Physician do not exceed the actual additional Incremental Costs attributable to the Physician. With respect to a Physician recruited to join a Group Practice located in a HPSA, if the Physician is recruited to replace a physician who, within the previous twelve (12) month period, retired, relocated outside of the Geographic Service Area

served by the Hospital, or died, the costs allocated by the Group Practice to the Physician do not exceed either (a) the actual additional Incremental Costs attributable to the Physician; or (b) the lower of a per capita allocation or 20% of the Group Practice's aggregate costs;

4. Records of the actual costs and the passed-through amounts are maintained for a period of at least six (6) years and made available to the Secretary of the U.S. Department of Health & Human Services upon request;
5. The Remuneration from the Hospital under the Physician Recruitment Agreement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by the Physician or the Group Practice (or any physician affiliated with the Group Practice) receiving the direct payments from the Hospital;
6. The Group Practice may not impose on the Physician restrictions that unreasonably restrict the Physician's ability to practice medicine in the Geographic Service Area served by the Hospital; and
7. The Physician Recruitment Agreement does not violate the Federal Anti-Kickback Statute, or any federal or state law or regulation governing billing or claims submission.

*General Guidelines Governing All Recruitment Agreements*

- A. Each Physician Recruitment Agreement shall be supported by a community needs analysis and/or similar documentation. The Physician Recruitment Agreement must be well documented, to include the rationale and need for the agreement which is necessary to maintain or establish a key program or service at the hospital with high quality care.
- B. Each Physician Recruitment Agreement, and the benefits provided therein, shall be reasonable, negotiated at arms' length, and shall be supported by a fair market and commercial reasonableness report or analysis.
- C. Each Physician Recruitment Agreement shall be analyzed on a facts and circumstances and on a case-by-case basis by Broward Health's Office of the General Counsel and Broward Health's Corporate Compliance and Ethics Department and confirmed to be in compliance with the Federal Anti-Kickback Statute; the Physician Recruitment Exception to the Stark Law; 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. No Physician Recruitment Agreement may be with a Physician who has a pre-existing relationship with the Hospital or any members of the Board of Commissioners of North Broward Hospital District.
- E. The Recruitment of the Physician shall be in furtherance of Broward Health's purpose and shall be reasonably related to the accomplishment of that purpose in promoting the health of the community and ensuring a high quality of medical care.
- F. Any benefit to the Physician in the Physician Recruitment Agreement shall be incidental to the public purpose achieved in recruiting the Physician.
- G. All Physician Recruitment Agreements shall specify the benefits provided, the terms under which the benefits are provided, and all the obligations of all the parties.
- H. All requests for Physician Recruitment Agreements shall be in accordance with Policy No. GA-001-020, Review, Approval, and Administration of Contracts.
- I. All Physician Recruitment Agreements shall always contain the following terms and conditions that

are not subject to negotiation:

1. A requirement that the Physician relocate the Physician's practice into the Geographic Service Area;
  2. A requirement that the Physician maintain staff privileges at the Hospital for a specified period;
  3. 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;
  4. A requirement that the Physician treat patients receiving medical benefits or assistance under any federal or state health care program, to treat them in a nondiscriminatory manner;
  5. A statement that the benefits provided are not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by the Physician to the Hospital or any other business generated between the parties;
  6. If the Physician Recruitment Agreement is with a Group Practice, a provision that the records of the actual costs and the passed-through amounts be maintained for a period of at least six (6) years and made available to the Secretary of the U.S. Department of Health & Human Services upon request;
  7. To the extent there is a Forgiveness Period, a requirement that the Physician continues to practice in the Geographic Service Area, agrees to continue emergency on-call coverage or provide services under Broward Health's Physician Payment for Uncompensated Care Program (PPUC), and maintains staff privileges at the Hospital during the Forgiveness Period;
  8. To the extent there is a Forgiveness Period, the Physician Recruitment Agreement shall be accompanied by a security agreement and promissory note; and
  9. That any invoice submitted for payment under the Physician Recruitment Agreement shall be itemized by line-item and accompanied by receipts evidencing the actual costs incurred that justify such payment. Additionally, in cases of 3-party Agreements, any invoice submitted for payment under the Physician Recruitment Agreement must also contain the following attestations:
    - a. An attestation signed and dated by the physician practice attesting that (1) the physician practice actually incurred the additional incremental costs attributable to the Physician Recruitment into the physician practice, (2) only the actual additional incremental costs attributed to bring the Physician into the physician practice are being submitted to the Hospital for reimbursement, (3) except for actual recruitment costs incurred by the physician practice, all other funds received from the Hospital for reimbursement are passed directly to or remains with the Physician, and (4) the costs allocated by the physician practice to the Physician do not exceed the actual additional incremental costs attributed to the Physician; and
    - b. An attestation signed and dated by the Physician attesting that (1) except for actual costs incurred by the physician practice for the Physician Recruitment, all other funds the physician practice received from the Hospital for reimbursement are passed directly to or remains with the Physician, and (2) the costs allocated by the physician practice to the Physician do not exceed the actual additional incremental costs attributed to the Physician.
- J. All Physician Recruitment Agreements shall be fully executed before the Physician relocates and before any payments are made under the Physician Recruitment Agreement.

- K. Costs that are not genuinely attributable to the recruited Physician shall not be considered Incremental Costs 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 Costs and may be passed through to the recruited Physician. Incremental Costs shall be specifically identified within an attachment of each Physician Recruitment Agreement. See the 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 Costs attached hereto.
- L. The Guarantee Period shall not exceed twenty-four (24) months without the express written approval of Broward Health's President/CEO, Chief Financial Officer, the Office of General Counsel, and Chief Compliance Officer.
- M. The Physician Recruitment Agreement may not be renegotiated in any substantial manner during this Guarantee Period. "Any substantial manner" means in any manner that materially affects the payments or benefits to the recruited physician. Commentary to Final Regulation of 42 C.F.R. §1001.952(n)(3), 64 F.R. 63518, 63543 (Nov. 19, 1999).
- N. No additional benefits or incentives beyond those described in the Physician Recruitment Agreement may be provided to the Physician and/or Group Practice unless otherwise provided in another written agreement entered into by the parties consistent with state and federal law.
- O. To the extent there is a Forgiveness Period, such Forgiveness Period shall not exceed three (3) years in length.
- P. After execution of the security agreement and promissory note when a Forgiveness Period is part of the Physician Recruitment Agreement, the security interest shall be perfected by filing a Form UCC-1 Financing Statement (see Form UCC-1 Financing Statement attached to this Policy) with the Florida Secretary of State in accordance with § 679.5011(2), Florida Statutes. The fees and costs of perfecting the security interest shall be added to the Practice's principal balance. The Hospital's CEO and CFO is responsible for ensuring that the financing statement is properly filed and that the security interest is perfected. More information regarding filing the Form UCC-1 Financing Statement may be found at the following link: <https://www.floridaucc.com/uccweb/ucc.aspx>.
- Q. With the exception of payment of actual Incremental Costs incurred by a Group Practice, a Physician Recruitment Agreement may not directly or indirectly benefit any person (other than the Physician being recruited) or entity in a position to make or influence referrals to the Hospital;
- R. Recruitment of Nonphysician Practitioners ("NPP") to provide patient care services must satisfy all the same requirements set out above for Physician Recruitments. In addition, NPP services must be primary care or mental health services, and Remuneration from Broward Health for the NPP cannot exceed 50% of the actual compensation, sign-on bonus, and benefits paid by the Physician to the NPP. Broward Health is limited to payment of NPP recruitment once every three (3) years for the same referring Physician.
- S. The CEO of the Hospital that recruited a Physician must attest quarterly that (1) the Physician is a member of the Hospital's medical staff and has privileges in good standing; (2) the Physician is still practicing in the Geographic Service Area; (3) the Physician and the physician practice (as applicable) is complying with all of the terms and conditions of the Physician Recruitment Agreement;

and (4) that the Hospital, Physician, and physician practice (as applicable) is complying with the provisions of Broward Health's Physician Recruitment Policy, GA-016-006.

**VI. Audits and Reconciliations**

Broward Health's Chief Financial Officer shall delegate to the appropriate team the responsibility of completing a monthly audit during the term of the Physician Recruitment Agreement, to be completed by the 20th of each month. In addition, Broward Health's Internal Audit Department shall perform post-Guarantee Period audits to track a Group Practice's and Physician's debt.

**VII. 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 shall be subject to appropriate remedial and/or disciplinary action, up to and including termination of employment or any other relationship, in accordance with the Enforcement of Disciplinary Standards Policy, Policy No. GA-004-238.

**VIII. 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 ch. 119, Florida Statutes, and may be subject to disclosure, unless otherwise exempted.

**IX. Interpretation and Administration of Policy**

The administration and interpretation of this Policy is the responsibility of Broward Health's Office of the General Counsel in consultation with Broward Health's Corporate Compliance and Ethics Department.

**X. References**

1. Stark Law, 42 U.S.C. § 1395nn, and implementing regulations.
2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and implementing regulations
3. IRS Revenue Ruling 97-21 (May 5, 1997).
4. 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

## Attachments

- [CEO Quarterly Attestation](#)
- [Form UCC-1 Financing Statement](#)
- [Hospital CEO Certification](#)
- [Physician Recruitment Policy - FAQs](#)

## Approval Signatures

Step Description	Approver	Date
	Gerald Del Amo: DEPUTY GENERAL COUNSEL	04/2021
	Linda Epstein: GENERAL COUNSEL	04/2021