



Origination:	07/2020
Effective:	10/2021
Last Reviewed:	10/2021
Last Revised:	10/2021
Next Review:	10/2023
Sponsor:	<i>Brian Kozik: SVP, COMPLIANCE & PRIVACY</i>
Section:	<i>GA-Corporate Compliance</i>
Manuals:	<i>Compliance</i>

GA-004-442 Referral Source Contracting Requirements

I. Purpose

This policy establishes the process for reviewing all Referral Source agreements to verify compliance with the requirements of policy [GA-004-441 Physician and Non-Physician Financial Arrangement Review Approval Tracking and Monitoring](#).

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:

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

Department Authority: means the relevant individual in the District's Corporate Executive Suite who, as provided within the District's Organizational Chart, (1) possesses authority over the District or over a particular District hospital, facility, department, or division; and (2) with the exception of the President/Chief Executive Officer, reports directly to the President/ Chief Executive Officer. Such individuals include, without limitation, the District's (a) President/Chief Executive Officer, (b) Chief Financial Officer, (c) Chief Administrative Officer, (d) SVP, Operations, (e) Chief Medical Officer, (f) Chief Human Resources Officer, (g) any other individual who meets the criteria for being deemed "Department Authority," and/or (h) any other individual or position delegated such "Department Authority" from time to time by the President/Chief Executive Officer.

Fair Market Value or FMV: (1) The value in an arm's-length transaction, consistent with the General Market Value of the subject transaction; (2) With respect to the rental of equipment, the value in an arm's-length transaction of rental property for general commercial purposes (not taking into account its intended use), consistent with the General Market Value of the subject transaction; or (3) with respect to the rental of office space, the value in an arm's-length transaction of rental property for general commercial purposes (not taking into account its intended use), without adjustment to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee, and consistent with the General Market Value of the subject transaction.

General Market Value: with respect to (1) the purchase of an asset, the price that an asset would bring on the date of acquisition of the asset as the result of bona fide bargaining between a well-informed buyer and seller that are not otherwise in a position to generate business for each other; (2) compensation for services, the compensation that would be paid at the time the parties enter into the

service arrangement as the result of bona fide bargaining between well-informed parties that are not otherwise in a position to generate business for each other; or (3) the rental of equipment or the rental of office space, the price that rental property would bring at the time the parties enter into the rental arrangement as the result of bona fide bargaining between a well-informed lessor and lessee that are not otherwise in a position to generate business for each other.

Referral Source: A physician or physician's immediate family member or person, or entity that is an actual source or recipient of healthcare business or referrals to or from Broward Health.

Referral Source Arrangement: Every arrangement that is between Broward Health and a Referral Source.

III. Policy

All Referral Source agreements must 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").

IV. Procedures

- A. Broward Health shall not enter into a written agreement with a Referral Source unless it demonstrates and documents the Referral Source's qualifications. To demonstrate the Referral Source's qualifications, Broward Health shall:
 1. Verify that the Referral Source is qualified to, capable of, and not restricted from, furnishing the services or items;
 2. Verify that the Referral Source is not excluded from any federal or state health care program in accordance with [GA-004-290 Sanction Screening](#); and
 3. Verify and obtain a copy of any licensure or accreditation required by law to be held by the Referral Source for its furnishing of the services or items.
- B. Referral Sources seeking to enter into an agreement with Broward Health must first complete a Disclosure Form for Conflict Of Interest, Physician Ownership & Financial Arrangements, in accordance with [GA-001-015 Conflict of Interest Policy](#)
- C. Broward Health may not enter into an agreement with a Referral Source unless it has objectively determined and documented that the remuneration being offered to the Referral Source is consistent with Fair Market Value and Commercially Reasonable. The process for obtaining objective Fair Market Value data shall be in accordance with [GA-004-410 Fair Market Value and Commercial Reasonableness Policy](#).
- D. Unless otherwise permitted by law and approved by the Corporate Compliance and Ethics Department and the Office of the General Counsel, no Referral Source may receive compensation for services that are provided prior to the execution of the agreement by all parties.
- E. Unless otherwise waived by the Corporate Compliance and Ethics Department, the agreement must include a clause that each party to the agreement who meets the definition of a Covered Person, must complete at least one hour of training regarding the Anti-Kickback Statute, the Stark Law, and examples of arrangements that potentially implicate the Anti-Kickback Statute or the Stark Law. In addition, the agreement must include a certification by the contracting parties that the parties shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of the Arrangement. Additionally, Broward Health shall provide each party to the agreement with Access to a copy of Broward Health's Code of Conduct and Policies and Procedures pertaining to the Stark Law and Anti-Kickback Statute.

- F. Compensation under an agreement with a Referral Source cannot be revised or modified during the first twelve (12) months of the term of the agreement unless approved in writing by the Office of the General Counsel and permitted by law. Unless otherwise permitted by applicable law, changes to compensation must be evidenced by a written amendment to the agreement, signed by both parties before the change in compensation takes effect. The compensation cannot be changed for twelve (12) months after the effective date of such amendment unless approved in writing by the Office of the General Counsel.
- G. Agreements with physicians with compensation equal to or above the 75th percentile (as determined by the parameters set forth in [GA-004-410 Fair Market Value and Commercial Reasonableness Policy](#)) require approval by the Board of Commissioners of the North Broward Hospital District (the "Board"), provided, however, that renewals of, or amendments to, agreements which have been approved by the Board within the last four years do not require subsequent Board approval if the compensation remains at the same percentile or is at a lower percentile than that which the Board already approved.
 - 1. For call coverage agreements, if the Board approves the compensation for a given specialty at one of the hospitals, any agreements for that same specialty at that same hospital can be entered without being presented to the Board again so long as the proposed effective date is within the four-year approval period.
 - 2. Broward Health may enter into agreements for physician services where the compensation is equal to or above the 75th percentile without prior Board approval if: (i) there are exigent circumstances affecting the delivery of patient care; (ii) the agreement has gone through the Contract Management System process (unless otherwise exempt under an exception pursuant to Policy No. GA-001-020, Review, Approval, and Administration of Contracts) and received required approvals; and (iii) a supporting memorandum is approved by the System Chief Executive Officer, the Office of the General Counsel or designee, and the Chief Compliance and Ethic Department. The agreement should be presented to the Board at the next scheduled meeting or as soon as practical.
- H. Renewals (including auto-renewals) or amendments of Agreements with Referral Sources are permitted only through adherence to this Policy and [GA-004-441 Physician and Non-Physician Financial Arrangement Review Approval Tracking and Monitoring](#).

V. Exceptions

The following three (3) exceptions apply to temporarily exempt a Broward Health hospital, facility, department, or division from the Contracting Process and/or the requirements under this policy:

- A. An actual or perceived threat or emergency exists whereby strictly adhering to the Contracting Process may result in (1) a negative effect to patient care; (2) a threat to the life, health, welfare, or safety of patients, employees, or the public; (3) Broward Health failing to comply with regulatory requirements (4) severe financial consequences; or (5) adverse effects or negative consequences to the operations of any Broward Health hospital, facility, department, or division. To the extent such a perceived or actual threat or emergency exists, it must be communicated to the Department Authority before proceeding forward without adhering to the Contracting Process. The Department Authority possesses the ultimate authority to decide whether or not a Contract may proceed forward without following the Contracting Process. To the extent such an exception is granted, the relevant circumstances of the perceived or actual threat or emergency and the approval of the Department Authority must be documented within the relevant Contract file in the Contracts Management System.

- B. The General Counsel's Office may draft, negotiate, and review Contracts and legal terms outside the Contracts Management System to ensure that all relevant reviews are being done in an effective and timely manner.
- C. The Corporate Compliance & Ethics Department in consultation with the General Counsel's Office may provide an exemption to one or more of the requirements outlined in this policy for good cause to the extent such exemption does not conflict with federal or state law.
Notwithstanding the three (3) exceptions above, any and all documentation and completed reviews must be properly documented within the relevant Contract file in the Contracts Management System following such reviews and approval.

VI. Related Policies and Compliance Documents

- A. Broward Health Code of Conduct
- B. [GA-004-007 Compliance with Federal Anti-Kickback Statute and Stark Law](#)
- C. [GA-001-015 Conflict of Interest](#)
- D. [GA-004-417 Disclosure of Physician Ownership & Financial Arrangements](#)
- E. [GA-004-410 Fair Market Value and Commercial Reasonableness](#)
- F. [GA-004-441 Physician and Non-Physician Financial Arrangement Review Approval Tracking and Monitoring](#)
- G. [GA-001-020 Review, Approval, and Administration of Contracts](#)
- H. [GA-004-290 Sanction Screening](#)

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
 Florida Patient Brokering Act, Fla. Stat. § 817.505

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
Final Approver	Brian Kozik: SVP, COMPLIANCE & PRIVACY	10/2021
	Lucia Pizano-Urbina: AVP, COMPLIANCE [LH]	10/2021