

**SUBJECT: GENERAL STATEMENT ON AGREEMENTS WITH REFERRAL
SOURCES – APPROVAL PROCESS**

IMPLEMENTED: 07/09

EXPIRES:

REVIEWED:

PAGE 1

REVISED:

AD1.0121

- REFERENCE:** 42 U.S.C. § 1320a-7b
REFERENCE: 42 C.F.R. § 1001.952(a)-(v)
REFERENCE: 42 U.S.C. § 1395nn
REFERENCE: 60 Fed. Reg. 41914 (Aug. 14, 1995)
REFERENCE: 63 Fed. Reg. 1659 (Jan. 9, 1998)
REFERENCE: 66 Fed. Reg. 856 (Jan. 4 2001)
REFERENCE: 69 Fed. Reg. 16054 (March 26, 2004)
REFERENCE: BD1.0002 Marketing, Advertising and Community Events with Physicians Policy
REFERENCE: AD1.0088 Purchases of Items or Services by Physicians and Other Potential Referral Sources from Hospital Entities Policy,
REFERENCE: AD1.0119 Fair Market Value Policy
REFERENCE: AD1.0082 Contract Administration
REFERENCE: Cash Disbursement Authorization Policy

SCOPE:

This policy applies to Tomball Hospital Authority d/b/a Tomball Regional Hospital (“Tomball,” “Hospital” or “TRH”) and any other entity or organization in which Tomball or an affiliate owns a direct or indirect equity interest of 50% or more.

PURPOSE:

To provide direction as to Tomball’s process on entering into financial arrangements, with physicians and other potential referral sources, as defined below. The purpose of this policy is also to ensure compliance with the terms of the Corporate Integrity Agreement (“CIA”) dated July 23, 2007, and the CIA Amendment dated May 5, 2009, between Tomball Hospital Authority d/b/a Tomball Regional Hospital (the “Hospital”) and the Office of the Inspector General (“OIG”) of the Department of Health and Human Services.

DEFINITIONS:

The following definitions apply to this policy:

1) Approving Authority: Only an Executive Vice President or Administrator has the legal authority to contractually bind the organization. The Legal Services Department must review and approve all contracts prior to execution.

2) Physician: Physician means a duly licensed doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

3) Potential Referral Sources: Potential referral sources, other than physicians, include but are not limited to any individual (other than a physician) or entity in a position to make or influence referrals to, or otherwise generate business for the Hospital (i.e. including, but not limited to, ambulance service providers, other healthcare entities, clinics, therapists and TOMAGWA).

**SUBJECT: GENERAL STATEMENT ON AGREEMENTS WITH REFERRAL
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PAGE 2

REVISED:

AD1.0121

4) **Immediate family member** is defined by law as spouse; natural 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 the spouse of a grandparent or grandchild.

POLICY:

From time to time, Tomball will promulgate various policies outlining the financial relationships between Tomball and physicians and other referral sources (the "Policies"). Compliance with these Policies is required in all of the contracts with physicians and other referral sources, although narrow exceptions may be made in certain circumstances where the facts demonstrate that an exception is appropriate and reasonable. Prior to committing to such non-conforming proposals, any proposed exceptions must be discussed with and approved by Legal Services. Such exceptions are generally discouraged and only permitted where the applicable legal requirements continue to be met.

Application: The Policies apply to any agreement or financial relationship involving, i) a physician or, as set forth above, a non-physician referral source, or ii) a physician's immediate family members (herein and in the Policies, all may be referred to as "Referral Sources"). Such agreements and financial relationships include, but are not limited to, physician recruiting agreements, loans/guarantees of physician loans, management services agreements, professional service agreements, letter agreements for expense reimbursement and/or interview expenses, other agreements for the provision of services or supplies (whether medically related or not), asset purchase and disposition agreements, and medical office building leases.

Requirements: In general, in compliance with 42 U.S.C. § 1395nn (commonly known as "Stark II") and the fraud and abuse safe harbors, an agreement with a Referral Source must:

1. be in writing, signed by the parties and must specify the services covered (however, for the purchase of items or services by a physician, See AD1.0088 Purchases of Items or Services by Physicians and Other Potential Referral Sources from Hospital Entities Policy.)
2. specify the time-frame for the arrangement;
3. specify the consideration (*i.e.*, rent, purchase price, compensation) and set the consideration in advance (with the exception of employment agreements), consistent with fair market value, for services or items actually provided without taking into account the value or volume of referrals or other business generated by the Referral Source. See AD1.0119 Fair Market Value Policy; and
4. be intended to obtain or provide an item or service that is reasonable and necessary for a legitimate business purpose.

Note: Additional legal requirements may apply. Review all other applicable Tomball

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EXPIRES:

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PAGE 3

REVISED:

AD1.0121

policies before entering into an agreement with any Referral Source.

Informal documents, such as "letters of intent," "letter agreements," or "memorandums of understanding" are subject to the Policies, as are arrangements with physician-owned entities. Tomball must not enter into any agreements or arrangements (written or oral) with physicians that are not reviewed and approved through the normal Referral Source contract review process. See AD1.0082 Contract Administration. The Policies apply to all amendments, addendums and extensions/renewals of agreements with physicians as well. If at any time it appears that there have been discussions or memoranda indicating intent to obtain or reward referrals by way of an agreement, such agreement will not be approved.

Legal Services must review all agreements with potential referral sources except those mentioned below. This review must be obtained even if the agreement complies in all respects with the Policies. In addition, this review must be obtained as well for amendments to existing agreements. It is not acceptable to obtain the appropriate review and approvals after making payments in accordance with the agreement. Further, commitments to physicians must not be made until written approval has been obtained from Legal Services.

Referral Source Agreements of financial transactions that are exempt from Legal Services approval are limited to:

1. One time payments that are:
 - a. Payment of \$2500 or less in a 12 month period that are paid as compensation and/or reimbursement for expenses in accordance with an executed Physician Speaker Letter Agreement or other agreement in the unmodified form, pursuant to the BD1.0002 Marketing, Advertising and Community Events with Physicians policy.

Execution Timing: Both the physician/other referral source and the CEO or other approved designee must sign the contract before any services are provided and before payment is made. Any services provided before both the physician/other referral source and the CEO or other approved designee sign the agreement will not be compensated by Tomball, at the time of service or at any time in the future.

Compliance with contract terms: In all arrangements with Referral Sources, payments must be consistent with the terms of the agreement and performance of all of the terms of the agreements is required. For example, monies owed by a physician under a lease agreement or loan documents must be paid in accordance with the terms of the documents. Accurate and complete records of all physician receivable collection activity will be maintained by Tomball. Legal Services should be contacted in the event of a default so that remedies may be pursued in a prompt and professional manner.

Disbursements: These requirements must be met before Tomball may transfer or pay any funds to a referral source:

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PAGE 4

REVISED:

AD1.0121

1. The Referral Source Check Request Form should be completed prior to making any payment, including one-time payments, to a referral source. For payments made to a Physician-Owned Vendor, via a purchase order, no Referral Source Check Request Form is required.
2. The Referral Source Check Request process requires:
 - a. Department Director affirms and attests that the listed items or services, have been performed by the referral source in accordance with the Agreement, attaches any supporting documentation, signs the form and forwards to the Compliance Officer.
 - b. Compliance Officer affirms and attests that the information submitted, including the supporting documentation, substantiates payment and is within the current time period limits and conditions of the Agreement, signs the form and forwards to the Assistant CFO.
 - c. Assistant CFO affirms and attests that the monetary amount to be paid is consistent with the information submitted and within the terms of the Agreement, signs the form and forwards to the CFO and CEO.
 - d. CFO and CEO affirm and attest that they have confirmed that the contractual obligations have been met and payment is authorized.
3. The Accounting Department must review each Referral Source Check Request Form to ensure appropriate approvals have been obtained prior to payment.
4. The Accounting Department must verify that each one-time payment is supported by a properly approved Referral Source Check Request Form. Additionally, supporting documentation is required before processing a one-time payment to referral sources.

DOCUMENT RETENTION:

The Hospital or its entity that is a party to the agreement shall retain all Contract Packages, agreements and other documentation relating to each purchase arrangement for a period of six (6) years.

ENFORCEMENT:

Failure to adhere to the terms and conditions of this policy will be referred to the Legal Services Department, the Compliance Officer or designee and the appropriate administrative officers and shall result in appropriate human resources action up to and including termination. Failure to adhere to the terms and conditions of this policy will also be a factor in individual performance evaluations, including individual compensation determinations.

TOMBALL REGIONAL HOSPITAL

POLICY

SUBJECT: **GENERAL STATEMENT ON AGREEMENTS WITH REFERRAL
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PAGE 5

REVISED:

AD1.0121

AD1.0121

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COMPLIANCE: All Departments