	<b>Law Department Policy</b>	<b>No. L-9</b>
	<b>Title:</b>  <b>PURCHASES OF ITEMS OR SERVICES BY PHYSICIANS AND OTHER POTENTIAL REFERRAL SOURCES FROM TENET ENTITIES</b>	<b>Page: 1 of 7</b>
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		<b>Original Date: 08-17-04</b>

**I. SCOPE:**

This policy applies to (i) Tenet Healthcare Corporation and its wholly-owned subsidiaries and affiliates; (2) any other entity or organization in which Tenet Healthcare Corporation or affiliate owns a direct or indirect equity interest of 50% or more; and (3) any hospital or healthcare facility in which Tenet Healthcare Corporation or an affiliate either manages or controls the day-to-day operations of the facility (each, a “Tenet entity”). This policy applies to all purchase arrangements<sup>1</sup> unless a more specific policy exists as to the item or service in question, e.g., CME and other incidental benefits pursuant to Business Courtesies to Physicians and Immediate Family Members (Policy No. L-1), Complimentary Local Transportation (Policy No. L-7), Hospital Chart Completion (Policy No. COMP-RCC-4.03), Personal Services Arrangements (Policy No. L-5), and Office Space and Equipment Leases with Physicians and Other Potential Referral Sources (Policy No. L-4).

**II. PURPOSE:**

To ensure compliance with the terms of the Corporate Integrity Agreement (CIA) dated September 27, 2006 between Tenet Healthcare Corporation and the Office of Inspector General (OIG) of the Department of Health and Human Services. Further, the purpose of this policy is to ensure, through the implementation of prudent and reasonable controls, that:

A. purchase arrangements comply with applicable laws and regulations, including the federal Anti-Kickback law and the Stark Law;


B. involve a Tenet entity, directly or indirectly, paying or transferring remuneration<sup>2</sup> to, or receiving remuneration from, a physician<sup>3</sup> or other potential referral source<sup>4</sup>, with the intent to induce one party to refer patients to, or otherwise generate business for, another party; and

<sup>1</sup> “Purchase Arrangement” means an arrangement pursuant to which a Tenet entity sells an item or service to a physician or other potential referral source.

<sup>2</sup> “Remuneration” means anything of value, including, but not limited to, cash, items or services.

<sup>3</sup> “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 chiropractor.

<sup>4</sup> “Other Potential Referral Source” means any individual (other than a physician) or entity in a position to make or influence referrals to, or otherwise generate business for, a Tenet entity.

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C. Tenet shall seek and, to the extent possible, obtain timely collection of amounts due under the purchase arrangements.

### III. POLICY:

Tenet entities shall only enter into purchase arrangements with physicians or other potential referral sources which comply with applicable laws and regulations, including the federal Anti-Kickback law and the Stark law. Tenet entities do not sell malpractice insurance to physicians.

### IV. PROCEDURE:

#### A. Entity Implementation

Tenet entities shall follow the steps set forth in this policy when entering into purchase arrangements with physicians or other potential referral sources. Examples include management services, staffing services, sales of laboratory-related services, drugs or pharmaceuticals, instrument sterilization services, private practice transcription services, and joint marketing arrangements.

#### 1. Step 1 Determine that Purchase is Reasonable and Necessary


When a Tenet entity proposes to sell items or services to a physician, group practice<sup>5</sup> or other potential referral source, the items and services, as applicable, shall not exceed that which is reasonable and necessary for the legitimate business purposes of the arrangement. The CEO or designee shall make reasonable inquiry into whether the items and services will be used for the legitimate business purposes of the purchaser.

#### 2. Step 2 Determine Fair Market Value of Items or Services

a. No purchase arrangement may be entered into unless (a) the purchase price (which may include a fixed aggregate price or a fixed per-item or unit of service based price) is

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<sup>5</sup> “Group Practice” means 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.

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set in advance and (b) the Tenet entity has objectively determined that the purchase price is consistent with fair market value<sup>6</sup> for the items or services purchased. The payment amount should include the collection of sales taxes where required by state sales tax laws.

b. For services to be compensated on a per-unit of service basis, documentation of fair market value must be demonstrated by reference to objective benchmarks relevant to the service being contracted for. Such benchmarks may include applicable Medicare and Medicaid rates, prevailing managed care rates in the relevant market, amounts received by the hospital from third party payors for the specific contracted services in question, weighted averages of the above benchmarks based on historical or anticipated case mix and payor mix, or independent valuations. The Tenet entity shall identify the basis for selection of the benchmark(s) utilized as most appropriate for the service in question.


### 3. Step 3 Review the Terms of the Purchase Agreement

a. The purchase arrangement shall be set forth in a written agreement that is signed and dated by authorized representatives of the parties.<sup>7</sup> Shared marketing agreements and management services agreements shall conform to the approved agreements that are available in the CAM. Other purchase agreements shall be in a form approved by the Regional Counsel.

b. The purchase agreement shall set forth the purchase price determined pursuant to Step 2 above. The price shall not be determined in a manner that takes into account the volume or value of any actual or expected referrals to, or business otherwise generated for, either party. The sale of the items or services shall not be conditioned on either party (a) making referrals to the other, (b) being in a position to make or influence referrals to the other, or (c) otherwise generating business for the other.

<sup>6</sup> “Fair Market Value” means the value that would be ascribed to the item or service in an arms-length transaction, as the result of bona-fide bargaining between well-informed parties who are not otherwise in a position to generate business for the other party.

<sup>7</sup> In the sole case where the Tenet entity is providing a clinical laboratory service (e.g., the purchase of a unique lab test on an infrequent basis), the purchase order or invoice will suffice as adequate documentation. All other items or services purchased by a physician must be pursuant to a written agreement.

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c. The purchase agreement shall be commercially reasonable without regard to any referrals made between the parties. In general, the purchase price for all new items must exceed the Tenet entity's acquisition costs and the purchase price for all services must exceed the Tenet entity's actual costs on a "fully loaded" rather than incremental basis. Any exceptions must be approved in advance by the Assistant General Counsel.


d. In the event the purchaser is an entity, including without limitation, a group practice, then the purchase agreement (except such agreements referenced in footnote 7 above) shall contain a written representation and warranty that the compensation of each physician affiliated with the group including, without limitation, shareholders, members, partners, employees and independent contractors (a) will be commercially reasonable and consistent with fair market value; and (b) will not vary with, or reflect or relate to – either directly or indirectly – the volume or value of patient referrals (actual or anticipated) to, or other business generated for, the Tenet entity.

e. The purchase agreement shall describe all items and services, and only those items and services, to be provided by the Tenet entity under the purchase agreement.

f. Where the purchase agreement contemplates multiple purchases over time (e.g., a sterilization services agreement), the term of the purchase agreement shall be at least one (1) year and have a term of no longer than two (2) years unless a longer term is approved in advance by the Assistant General Counsel. The purchase agreement may contain an automatic month-to-month renewal provision for up to six (6) months provided the arrangement is on the same terms and conditions as the immediately preceding agreement but shall otherwise require the affirmative renewal by mutual written agreement of the parties.

g. No physician or other potential referral source shall be precluded or restricted in any way by a purchase agreement from (a) establishing staff privileges at any non-Tenet hospital or facility, (b) referring patients or utilizing the services of any non-Tenet hospital or facility, or (c) otherwise generating business for any non-Tenet hospital or facility.

h. The following additional requirements apply to shared marketing agreements:

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(1) A Tenet entity must obtain the advance written approval of the responsible Regional Counsel in order to make any deviations from the approved CAM shared marketing agreement.

(2) All services rendered under the shared marketing agreement shall be subject to the FTC approval process and shall comply with the Tenet Corporate Communications Department's Guidelines for Advertising, Marketing and Promotions.

i. The following additional requirements apply to management services agreements:


(1) If the duties of the Tenet entity include marketing or managed care contracting services, the compensation under the agreement must be set in advance and not vary based on the revenue or income of the physician or group practice.

j. Any arrangement requiring a written agreement under this policy will require the physician and the group practice, if applicable, to abide by Tenet's compliance obligations. Specifically, the physician and group will be required to have received, read, understood and abide by Tenet's Code of Conduct. The parties to the agreement shall comply with Tenet's Compliance Program and Tenet's policies and procedures related to the Anti-Kickback Statute and the Stark Law. A summary of Tenet's Compliance program and a link to Tenet's policies and procedures shall be provided to the physician and group upon request. Further, the parties to the agreement shall certify that they shall not violate the Anti-Kickback Statute and/or the Stark Law. The physician and group, if applicable, shall complete any training required under the Corporate Integrity Agreement ("CIA") between the Office of Inspector General of the Department of Health and Human Services and Tenet Healthcare Corporation dated September 27, 2006.

#### **4. Step 4 Prepare the Contractual Arrangements Terms (CATS) Package**

For each proposed purchase arrangement, the Tenet entity shall prepare all of the following documentation for submission with the CATS package into eCATS:

a. A cover memorandum that identifies the items or services to be purchased.

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b. A completed CATS and Contract Data Sheet (“CDS”), signed by the CEO and CFO.

c. A draft purchase agreement and, in the case of a shared marketing agreement, a redlined draft of the shared marketing agreement which highlights all changes, if any, made to the approved CAM template, or, in the case of a management services agreement, a redlined draft of the management services agreement which highlights all changes, if any, made to the approved CAM template.

d. All documentation prepared in connection with determining the fair market value of the items and services and the commercial reasonableness of the proposed arrangement, or, in the case of a shared marketing agreement, the fair market value allocation of costs.

e. Copies of all internal and external correspondence (including, but not limited to, e-mails, memos or other like materials) that have been generated in connection with the proposed purchase arrangement; and


f. Any other information required by the responsible Regional Counsel or Assistant General Counsel.

### **5. Step 5 Obtain Legal Review and Approval**

Except as identified in footnote 7, all purchase arrangements shall be submitted and approved through eCATS prior to executing the purchase agreement. A purchaser shall not be allowed to take possession of an item, or to receive a service, until all required approvals have been obtained and the purchase agreement has been executed by all parties. Immediately after execution of the purchase agreement, the CEO, or his or her designee, shall scan the executed agreement into the eCATS system.

### **6. Step 6 Collect Amounts Due to Tenet Entities**

The CFO is responsible for ensuring that diligent efforts are made to collect any and all money due from the physician, group practice, or referral source in accordance with the terms of the underlying purchase arrangement. The hospital shall maintain all documentation of its

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efforts to collect delinquent receivables. The hospital shall not write off a referral source's receivable without the prior approval of the Regional Counsel and the Assistant General Counsel.

#### **B. Document Retention**

The Tenet entity that is a party to the purchase agreement shall retain all CATS Packages, agreements and other documentation relating to each purchase arrangement for a period of ten (10) years.

#### **C. Enforcement**

All Company employees 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 disciplinary action pursuant to all applicable Company policies and procedures, up to and including termination. Such disciplinary action may also include modification of compensation, including any merit or discretionary compensation awards.

#### **V. REFERENCES:**

- Stark Law, 42 U.S.C. § 1395nn and implementing regulations.
- Payments by a Physician for Items and Services, 42 U.S.C. § 1395nn(e)(8); 42 C.F.R. § 411.357(i).
- Definition of Immediate Family Member, 42 C.F.R. § 411.351.
- Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)
- Safe Harbor for Personal Services and Management Contracts, 42 C.F.R. § 1001.952(d)
- [Tenet Contractual Arrangements Manual \(CAM\)](#)
- [CAM Shared Marketing Agreement](#)
- [CAM Management Services Agreement](#)
- [Tenet Corporate Communications Center](#)
- [Guidelines for Advertising, Marketing and Promotion](#)