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I. SCOPE:

This policy applies to (1) Tenet Healthcare Corporation and its wholly-owned subsidiaries and affiliates (each, an “Affiliate”); (2) any other entity or organization in which Tenet Healthcare Corporation or an Affiliate owns a direct or indirect equity interest greater than 50%; 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”) (collectively, “Tenet”).


II. PURPOSE:

The purpose of this policy is to ensure, through the implementation of prudent and reasonable controls, that:

- A. lease arrangements comply with applicable laws and regulations, including the federal Anti-Kickback law and the Stark law; and
- B. under no circumstances will any lease arrangement involve a Tenet entity, directly or indirectly, paying or transferring remuneration to, or receiving remuneration from, a physician or other potential referral source, with the intent to induce one party to refer patients to, or otherwise generate business for, another party.

III. DEFINITIONS:

- A. “**Lease Arrangement**” means an arrangement pursuant to which a Tenet entity leases or subleases office space or leases equipment to or from a physician or other potential referral source. “**Lease arrangement**” specifically includes the situation when Tenet holds a master lease on certain office space and then subleases all or part of that office space to a physician or other potential referral source.
- B. “**Remuneration**” means anything of value, including, but not limited to, cash, items or services.
- C. “**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.
- D. “**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.
- E. “**Lessee**” means the Tenet entity, physician or other potential referral source which is leasing space or equipment from another party pursuant to the terms and conditions of this policy.

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- F. “**Lessor**” means the Tenet entity, physician or other potential referral source which is leasing space or equipment to another party pursuant to the terms and conditions of this policy.
- G. “**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.
- H. “**Fair Market Value**” for rental property means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessor or lessee) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid and all other federal health care programs.
- I. “**Federal health care program**” means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, including, but not limited to: Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TriCare/VA/CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corps Volunteers, Railroad Retirement Benefits, Black Lung Program, Services Provided to Federal Prisoners, Pre-Existing Condition Insurance Plans (PCIPs) and Section 1011 Requests.
- J. “**Lease Agreement**” means the written agreement setting forth the specific terms and conditions of a Lease Arrangement with respect to leased or subleased office space (a space lease) or with respect to leased equipment (an equipment lease).


IV. POLICY:

Tenet entities shall only enter into space or equipment lease arrangements with physicians or other potential referral sources that comply with applicable laws and regulations, including the federal Anti-Kickback law and the Stark law.

IV. PROCEDURE:

- A. Hospital Implementation

Tenet entities shall follow the steps set forth in this policy when entering into space or equipment leases with physicians or other potential referral sources.

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1. Step 1 Determine What Space or Equipment is Reasonable and Necessary

Regardless of whether the Tenet entity is the lessee or lessor, when a Tenet entity proposes to enter into a lease for space or equipment with a physician, group practice or other potential referral source, the leased premises or leased equipment, as applicable, shall not exceed that which is reasonable and necessary for the legitimate business purposes of the lease and shall be used exclusively by the lessee when being used by the lessee (and is not shared with or used by the lessor or any person or entity related to the lessor); provided, however, in a space lease, the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee’s pro rata share of expenses for such common areas based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using the common areas. The CEO or designee shall make reasonable inquiry into whether the leased premises or leased equipment, if any, will be used for the legitimate business purposes of the lessee.


For a space lease, go to Step 2.

For an equipment lease, go to Step 3.

2. Step 2 Determine the Fair Market Value of the Rent in a Space Lease

On an annual basis, the Tenet Real Estate Department shall engage an independent third party to undertake a local market survey in each geographic region in which Tenet is a lessor to determine fair market value and commercially reasonable rental rates, lessee improvement allowances and rent abatements for comparable office space (an “Annual FMV Survey”). In the event that a Tenet entity is the lessee in a lease arrangement, and an annual FMV Survey has not been prepared for the lessor’s geographic area, then the responsible Regional Counsel shall engage an independent third party to undertake an ad hoc FMV Survey (an “Ad Hoc FMV Survey”).

The independent third party who undertakes the Annual FMV Survey shall complete a written report of its findings. Once the Tenet Real Estate Department approves an Annual FMV Survey report, it shall distribute the report to all Tenet entities, including the appropriate Regional Counsel, that own or lease office space in the applicable geographic region. Each such Annual FMV Survey report shall remain in effect until the next Annual FMV Survey is completed and approved in accordance with this policy. Once the responsible Regional Counsel approves an Ad Hoc FMV Survey report, he or she shall distribute the report to the applicable Tenet lessee. That Ad Hoc

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FMV Survey report shall remain in effect until the next Annual or Ad Hoc FMV Survey with respect to the lessor's geographic area is completed and approved in accordance with this policy.

The rent and any lessee improvement allowances in the lease agreement shall be set within the acceptable range set forth in the Annual or Ad Hoc FMV Survey report. Go to Step 4.


3. Step 3 Determine Fair Market Value in an Equipment Lease

No equipment lease may be entered into unless (a) the aggregate rent (or the per service rent, if applicable) over the term is set in advance and (b) the Tenet entity has objectively determined that the rent is consistent with fair market value for the equipment rented. Per click and per use rental rates and rates determined by reference to revenue attributable to the leased equipment with physicians or entities owned directly or indirectly by physicians or their immediate family will not be permitted after October 1, 2009 if the lessor-physician refers patients for the service utilizing the equipment.


4. Step 4 Review the Terms of the Lease Agreement

a. When a Tenet entity is the lessor, the lease arrangement shall be set forth in a written lease agreement that is signed and dated by authorized representatives of the parties. Except as otherwise permitted by this policy, the lease agreement shall conform to the approved space lease or equipment lease, as applicable, that is available in the Contractual Arrangements Manual (CAM) on eTenet. When a Tenet entity is the lessee, the lease arrangement shall be set forth in a CAM written lease agreement or a written lease agreement provided by the lessor that has been approved by the Regional Counsel.

b. The lease agreement shall set in advance the aggregate rental charges to be paid over the term as determined pursuant to Step 2 or Step 3 above. The rent 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 the lessor or lessee. Neither the selection of a lessee or lessor nor the terms and conditions of the lease agreement shall be conditioned on the lessee or lessor (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.

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- c. The lease agreement shall be commercially reasonable without regard to any referrals made between the parties.
- d. In the event a Tenet entity is leasing space to an entity, including without limitation, a group practice, then the lease agreement shall contain a written representation and warranty that (1) 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; and (2) that the group practice agrees to comply with all relevant claims submission and billing laws and regulations.
- e. The lease agreement shall describe the leased premises, including, without limitation, the street address, suite number and square footage of the leased premises (or, in an equipment lease, all of the equipment covered by the lease).
- f. The term of the lease agreement shall be at least one (1) year and, as a general rule, should be limited to no longer than five (5) years except that an equipment lease shall have a term of no longer than three (3) years unless a longer term is approved in advance by Regional Counsel.
- g. The lease agreement shall cover all of the space or equipment, as applicable, leased between the parties for the term of the agreement.
- h. The lease agreement shall provide that, unless approved by the responsible Regional Counsel, the lease agreement may not be terminated without cause during the first year of the term.
- i. The lease agreement shall provide that, in the event the lease agreement is terminated during the first year of the term, then the parties shall not enter into a lease arrangement for all or a portion of the same premises or equipment, as applicable, for the remainder of the first year of the intended term of the lease agreement. Notwithstanding, the parties shall not be prohibited from entering into a space lease for different office space provided all aspects of this policy are met.

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- j. No physician or other potential referral source shall be precluded or restricted in any way by a space lease 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.


- k. If the lease agreement provides the lessee with access to the leased premises or equipment, as applicable, for periodic intervals of time, rather than on a full-time basis for the term, the lease agreement shall specify exactly the schedule of such intervals, their precise length, and the exact rental charges for such intervals.

- l. No rent abatements (e.g., free rent), other than those within the range of rent abatements set forth as commercially reasonable in the approved Annual FMV Survey report or the Ad Hoc FMV Survey report, shall be granted unless advance written approval is granted by the responsible Regional Counsel. With respect to an equipment lease, no rent abatements, other than those set forth in the approved CAM equipment lease shall be granted unless advance written approval is granted by the responsible Regional Counsel.

- m. The following additional requirements apply to space leases:
 - (1) A Tenet entity must obtain the advance written approval of the responsible Regional Counsel in order to make any deviations from the "Use of Premises" provision in the CAM lease agreement or to add any other non-competition provision or restrictive covenant to the approved CAM lease agreement.

 - (2) A lessee shall not be allowed to occupy office space, or commence construction of any leasehold improvements, until all required approvals have been obtained in accordance with this policy and until all parties have signed a space lease.

 - (3) The lease shall provide that any costs incurred by the lessee for leasehold improvements or refurbishments in excess of any lessee improvement allowance provided in the space lease shall be the sole responsibility of the lessee. Any excess leasehold improvement costs may be paid by the lessor and charged to the lessee as additional rent provided a fair market value interest rate is factored into the additional rent

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calculation and the repayment period is no longer than the lease term.


- (4) Annual adjustments to the rent shall be based on the Consumer Price Index and any other factors permitted by the approved template space lease, and shall be calculated by Tenet’s property management service provider. Annual adjustments to the rent may also be based on a fixed percentage that is approved in writing by the Regional Counsel and the Tenet Real Estate Department. Annual adjustments to the rent 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 the lessor or lessee.

- n. The lease agreement will require the physician and the group practice, if applicable, to abide by Tenet’s Compliance Program. Specifically, the physician and group will be required to have received, read, understood and abide by Tenet’s [Standards of Conduct](#). The parties to the lease 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 lease 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 Tenet’s Compliance Program.

5. Step 5 Prepare the Contractual Arrangements Terms (CATS) Package


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

 - a. A cover memorandum (Note: sample cover memos for space and equipment leases are included in the Forms section of the CAM on eTenet) that includes:
 - (1) A detailed description of the proposed lease arrangement, including but not limited to: a summary of the principal lease terms, such as the name of the lessee person or entity, commencement date, lease term, renewal term (if any),

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description of the space or equipment to be leased, rent, rental adjustments (if any), security deposit (if any), rent abatement (if any), and tenant improvements (if any);

- (2) The means of calculating the fair market value of the proposed rent;
 - (3) An outline of the terms and conditions of the proposed lease agreement, and a summary of any amendments or supplements made to the CAM individual or group space or equipment lease agreement (as appropriate);
 - (4) An outline of all previous, current or anticipated arrangements or agreements between the Tenet entity and (a) the lessee physician and/or any immediate family members of the lessee physician, or (b) the Tenet entity and the lessee group practice, or any other physician affiliated with such lessee group practice;
 - (5) A statement of whether any immediate family member of the lessee physician has a financial arrangement with the Tenet entity;
 - (6) A statement of whether an immediate family member of the lessee physician is currently in a position to generate patient referrals or other business for the Tenet entity, market the Tenet entity's services, or furnish items or services to the Tenet entity, and if the answer to any of these questions is "yes", the names of the immediate family member(s) and a comprehensive description of the Tenet entity's relationships with the immediate family member, including copies of any agreements then in effect; and
 - (7) A statement that the proposed lease agreement represents the entire agreement with respect to the lease arrangement between the Tenet entity and the physician or group practice, as appropriate.
- b. A fully completed CATS signed by the CEO and CFO, setting forth the total dollar value of the remuneration to be paid by the lessee to the Tenet entity pursuant to the lease agreement, and any remuneration to be paid or provided by the Tenet entity to the lessee (such as rent

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abatement and/or tenant improvements) pursuant to the lease agreement.


- c. A draft lease agreement and a redlined draft of the proposed lease agreement which highlights all changes, if any, made to the approved CAM template space lease or equipment lease, as appropriate.
- d. All documentation prepared in connection with determining the fair market value and the rent for the space or equipment at issue.
- e. The results of a search of the U.S. General Services Administration’s Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, the Office of Inspector General of the Department of Health and Human Services List of Excluded Individuals/Entities and any applicable state healthcare exclusion list noting no exclusions, suspensions or debarments of the physician (in the case of an individual lease), or of the group practice (in the case of a group lease), from participation in any Federal health care program, as required by [Regulatory Compliance Policy COMP-RCC 4.22 Federal Program Eligibility Screening and Exclusion Disclosure](#).
- f. Copies of all internal and external correspondence (including, but not limited to, e-mails, memos or other like materials), if any, that have been generated in connection with the proposed lease arrangement.
- g. Any other information required by responsible Regional Counsel, Assistant General Counsel or General Counsel.

6. Step 6 Obtain Legal Review and Approval

All lease arrangements shall be submitted and approved through eCATS prior to executing the lease agreement. A lessee shall not be allowed to occupy office space, commence construction of any leasehold improvements, take delivery of equipment or use equipment, until all required approvals have been obtained and the lease agreement has been executed by all parties. Immediately after execution of the lease agreement, the CEO, or his or her designee, shall scan the executed agreement into the eCATS system.

B. Administrative Oversight of Leases

For guidance with respect to who is responsible for managing leases, collection of rents, maintenance of accurate files on space leased, and the operational/financial

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control of office buildings, please refer to [Administrative Policy AD 2.14, Lease and Operation of Medical Office Buildings](#).

C. Document Retention

The Tenet entity that is a party to the lease agreement shall retain all CATS Packages, agreements and other documentation relating to each lease arrangement according to the requirements of [Administrative Policy AD 1.11 Records Management](#).

D. Responsible Person

Each Tenet entity CEO is responsible for ensuring that all individuals adhere to the requirements of this policy. If the CEO is unable to create adherence to this policy, the CEO shall immediately report the non-adherence to the Hospital Compliance Officer.

E. Auditing and Monitoring


Audit Services will audit compliance with this policy as part of its routine audits.

F. Enforcement

All employees 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 performance management pursuant to all applicable policies and procedures, up to and including termination. Such performance management may also include modification of compensation, including any merit or discretionary compensation awards, as allowed by applicable law.

V. REFERENCES:

- Stark Law, 42 U.S.C. § 1395nn and implementing regulations
- Rental of Office Space exception, 42 U.S.C. § 1395nn(e)(1); 42 C.F.R. § 411.357(a)
- Rental of Equipment exception, 42 U.S.C. § 1395nn(e)(1); 42 C.F.R. § 411.357(b)
- Definition of Immediate Family Member, 42 C.F.R. § 411.351
- In-Office Ancillary Services exception, 42 U.S.C. § 1395nn(e)(1); 42 C.F.R. § 411.355(b)
- Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)

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- Safe Harbor for Space Rentals, 42 C.F.R. § 1001.952(b)
- Safe Harbor for Equipment Rentals, 42 C.F.R. § 1001.952(c)
- [Tenet Contractual Arrangements Manual](#)
- [CAM Standard Form Space Lease](#)
- [CAM Standard Form Equipment Lease](#)
- [CAM Standard Form Sublease](#)
- [CAM Standard Form Time Share Sublease](#)
- [Administrative Policy AD 2.14 Lease and Operation of Medical Office Buildings](#)
- [Administrative Policy AD 1.11 Records Management](#)
- [Regulatory Compliance Policy COMP-RCC 4.22 Federal Program Eligibility Screening and Exclusion Disclosure](#)