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|   | Law Department Policy | No. L-22 |
| | Title: HOSPITAL ASSISTANCE FOR RELOCATION OF NONPHYSICIAN PRACTITIONERS TO PHYSICIAN PRACTICE | Page: 1 of 9 |
| | | Effective Date: 10-05-20 |
| | | Previous Versions Dated: 07-21-20; 06-01-16 |
| | | Corporate Review Date: 09-29-20 |

I. SCOPE:

This policy applies to (1) Tenet Healthcare Corporation and its 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 an Affiliate either manages or controls the day-to-day operations of the facility (each, a “Hospital”) (collectively, “Tenet”). Non-hospital entities are prohibited from providing financial assistance to relocate a nonphysician practitioner.

II. PURPOSE:



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

- A. compensation assistance agreements are undertaken for the purpose of promoting community access to primary health care or mental health treatment;
- B. assistance agreements comply with applicable laws and regulations, including the federal Anti-Kickback law and the Stark law; and
- C. under no circumstances will any assistance agreement involve a hospital paying remuneration to a physician or nonphysician practitioner (NPP), directly or indirectly, with the intent to induce or reward the physician or NPP to refer patients to, or otherwise generate business for, any hospital.

III. DEFINITIONS:

- A. **“Community Need”** means a demonstrated shortage of primary care services, as defined below, and/or mental health services as evidenced by the most recent community needs assessment conducted by an independent third party in accordance with Law Department Policy L-2 Physician Relocation.
- B. **“Fair Market Value”** or **“FMV”** means the median compensation rate reported by the Medical Group Management Association for providers holding the same license and practice area, the mid-point of the compensation range established by the Hospital’s Human Resources Department for providers holding the same license and practice responsibilities, an amount determined to be within the range of fair market value by an independent third party approved by the Law Department or such other amount approved as consistent with fair market value by Operations Counsel.



See Law Department Policy L-25 “Referral Source Fair Market Value” for additional requirements on determining Fair Market Value.

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- C. **“Geographic Area Served by Hospital”** or **“GSA”** means the area composed of the lowest number of contiguous zip codes from which the Hospital draws at least 75% of its inpatients. The GSA 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 area described above from which the Hospitals draws at least 75% of inpatients.
- D. **“Nonphysician Practitioner”** or **“NPP”** means a physician assistant, a nurse practitioner or clinical nurse specialty, a certified nurse midwife, a clinical social worker, or a clinical psychologist.¹
- E. **“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 and his or her immediate family members. Immediate family member means husband or wife; birth 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 spouse of a grandparent or grandchild.
- F. **“Primary Care Services”** means general family practice, general internal medicine, pediatrics, geriatrics, obstetrics and gynecology.
- G. **“Remuneration”** means anything of value, including, but not limited to, cash, items or services.
- H. **“Substantially all”** means at least 75% of the total patient care services of the NPP provided to the physician or physician practice’s patients.
- 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 Corp Volunteers, Railroad Retirement Benefits Black Lung Program, Services Provided to Federal Prisoners, Pre-Existing Condition Insurance Plans (PCIPs) and Section 1011 Requests.

III. POLICY:

¹ As further defined in 42 USC 1395x : Physician Assistant/ Nurse Practitioners/Clinical Nurse Specialty §1395x (aa)(5); Certified Nurse-midwife §1395x (gg); Clinical social worker (§1395x (hh)); or Clinical Psychologist (42 CFR 410.71(d).

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Hospitals shall only provide remuneration to Physicians in order to compensate for NPP patient care services for the purposes of promoting community access to primary health care and mental health evaluation, treatment, and improving outcomes.

IV. PROCEDURE:

A. Hospital Implementation



A Hospital may provide remuneration to Physicians on its medical staff to assist in the relocation of a NPP to provide Primary Care Services or mental health services provided there is demonstrated Community Need in the NPP’s specialty and all of the conditions of this policy are followed.

1. Physician Eligibility for Assistance

In order to be eligible to receive remuneration pursuant to this policy, a Physician must meet the following conditions:

- a. Be a member in good standing on the medical staff of the Hospital, which is defined as no corrective action other than administrative suspension for delinquent medical records within the preceding two (2) years;
- b. Not have received remuneration under this policy within the preceding three (3) years except when (i) the NPP is replacing a NPP who terminated his/her employment or contractual arrangement with the Physician within one (1) year of the commencement of the employment or contractual arrangement and (ii) the remuneration to be provided to the Physician does not exceed two (2) consecutive years as measured from the commencement of the employment or independent contractor arrangement between the NPP who is being replaced and the Physician.
- c. Specialize solely in primary care or mental health care, unless otherwise approved by the Assistant General Counsel² and certify in writing that substantially all (as defined below) services that the NPP furnishes to patients of the Physician’s practice are Primary Care Services and/or mental health care services.



² “Assistant General Counsel” means the Assistant General Counsel for Hospital Operations or Senior Managing Counsel for Ambulatory Operations or other attorney in the Tenet Law Department who oversees Tenet Facility’s Operations Counsel. Throughout this policy, the Assistant General Counsel approval can also be accomplished by Tenet’s General Counsel.

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- d. Not have received relocation assistance for a Physician within the preceding two (2) years unless otherwise approved by the Assistant General Counsel.
- e. In the case of assistance to support a NPP being relocated as part of a physician relocation arrangement, the relocating Physician may not have received remuneration under this policy within the preceding three (3) years, except for a replacement NPP.
- f. A Physician is not eligible for assistance to relocate a NPP who is a member of his or her immediate family.

2. Remuneration



- a. Remuneration from the Hospital shall not exceed 50% of the actual, aggregate compensation paid to the NPP, including signing bonus and benefits, which include, without limitation, relocation paid by the physician to the NPP during a period not to exceed the first two (2) consecutive years of the compensation arrangement between the NPP and Physician. Benefits are limited to: health insurance, paid leave, relocation costs, and routine non-cash benefits offered to similarly situated employees of the Physician's practice.
- b. Remuneration to Physician shall not include any additional incremental costs attributed to the NPP.
- c. Remuneration is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by:
 - (1) Physician or any other business generated between the parties; or
 - (2) the NPP or other business generated between the parties.
- d. Remuneration does not exceed fair market value for the services furnished by the NPP to patients of the Physician's practice.
- e. Physician shall provide the Hospital with a copy of the written agreement with the NPP or any other documentation of the compensation and other benefits provided to the NPP.
- f. Records of the actual amount of remuneration provided by the Hospital to the Physician, and by the Physician to the NPP, must be

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maintained for a period of at least six (6) years and made available to the Hospital and the U.S. Department of Health and Human Services Secretary upon request



3. Requirements for Relocation Assistance Arrangements.

- a. The NPP shall not have within one (1) year of the commencement of his/her compensation arrangement with the Physician (i) practiced in the Geographic Area Served by the Hospital or (ii) been employed or otherwise engaged to provide patient care services by a Physician or a Physician Organization that has a medical practice site located in the Geographic Area Served by the Hospital, regardless of whether the NPP furnished services at the medical practice site located in the Geographic Area Served by the Hospital.
- b. Substantially all of the services that the NPP furnishes to patients of the Physician's practice shall be primary care services or mental health care services furnished to primary care patients or mental health patients within the Geographic Area Served by the Hospital. Patient care services are measured by one of the following:
 - (1) The total time NPP spends on patient care services documented by any reasonable means (including but not limited to time cards, appointment schedules, or personal diaries); or,
 - (2) Any alternative measure that is reasonable, fixed in advance of the performance of the services being measured, uniformly applied over time, verifiable and documented.
 - (3) The Physician shall make available the data used to document the percentage of time spent by the NPP on patient care services upon reasonable request.
- c. The NPP shall not be restricted in his/her arrangement with Physician in the ability to provide patient care services in the Geographic Area Served by the Hospital.
- d. The NPP shall have a compensation arrangement with the Physician. The NPP is not permitted to have an ownership or investment interest in the Physician group practice.
- e. The compensation arrangement between the NPP and the Physician may be an employee or as an independent contractor. An



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independent contractor arrangement must be directly between the NPP, as an individual, and the Physician. There cannot be an intervening entity between the NPP and the Physician.

- f. The arrangement shall not violate the Anti-Kickback Statute or any Federal or State law or regulation governing billing or claims submission.
4. The proposed relocation assistance agreement shall meet all of the following terms:
 - a. The arrangement shall be evidenced by a written assistance agreement contained in the Law Department's Contractual Arrangements Manual (CAM) signed and dated by Hospital, Physician and NPP.
 - b. There shall be no oral or implied understandings that are not incorporated in the written agreement.
 - c. In the assistance agreement, the NPP and the Physician shall represent and warrant that he or she expects that substantially all of the services that the NPP furnishes to patients of the Physician's practice are Primary Care Services or mental health care services.
 - d. The assistance agreement shall require the Physician and the NPP to treat Federal health care program patients in a nondiscriminatory manner.
 - e. The terms of the assistance agreement shall not be renegotiated, renewed, extended, amended or terminated after the agreement is executed by all of the parties unless approved in advance and in writing by the Operations Counsel.
 - f. The remuneration shall not directly or indirectly benefit any individual or entity in a position to make or influence patient referrals (actual or anticipated) to, or otherwise generate business for, the Hospital.
 - g. The NPP shall not be required to refer patients to the Hospital and shall not be restricted from establishing privileges at any other hospital or facility, or referring patients to or utilizing the services or, or otherwise generating business for any other hospital or facility.

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- h. The Physician shall not be required to refer patients to the Hospital and shall not be restricted from establishing staff privileges at any other hospital or facility, or referring patients to or utilizing the services or, or otherwise generating business for any other hospital or facility.
 - i. The remuneration shall not vary (or is not adjusted or renegotiated) in any manner based on the volume or value of any actual or anticipated referral other business generated between or among the parties.
 - j. The Physician and NPP will be required to abide by Tenet's Compliance Program. Specifically, the parties will be required to have received, read, understood and abide by Tenet's Code of Conduct, and 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 upon request. Further, the parties to the relocation agreement shall certify that they shall not violate the Anti-Kickback Statute and/or the Stark Law. The Physician and NPP shall complete any training required under Tenet's Compliance Program.
5. Prepare Contract Arrangement. The Hospital shall include the following in the electronic contract approval term sheet (eCATS):
- a. A cover memorandum including: (i) all the terms of the arrangement; (ii) all previous, current and anticipated Hospital arrangements, agreements or assistance, if any, provided within the last three (3) years to the Physician or to assist in the relocation of the NPP to any practice; (iii) a statement that the proposed arrangement represents the entire agreement with the Physician and the NPP; and, (iv) any items requested by Operations Counsel, Assistant General Counsel or General Counsel;
 - b. A copy of the recruited NPP's current curriculum vitae;
 - c. A criminal background check on the NPP;
 - d. The employment or independent contractor agreement between the Physician and the NPP or, if none, a written representation prepared by Physician describing the terms of the arrangement between them;

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- e. Evidence that the compensation payable to the NPP by the Physician is consistent with Fair Market Value; and,
- f. The results of a search of the U.S. General Services Administration’s System for Awards Management, 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 NPP and Physician.

B. Pay Remuneration Pursuant to the Compensation Assistance Agreement

- 1. The Hospital CFO is responsible for ensuring that no remuneration is furnished in connection with an assistance arrangement until all appropriate approvals are received in eCATS and an agreement and all supporting documentation, if applicable, have been executed by the parties.
- 2. On a monthly basis, the Physician shall furnish the Hospital with a monthly statement of actual costs and benefits paid to the NPP. Only after receipt of all necessary supporting documentation shall the CFO approve payment to the Physician consistent with the terms of the agreement.

C. Document Retention



The Hospital shall retain all agreements and other documentation relating to assistance agreements and the audits conducted thereunder in accordance with Administrative policy AD 1.11, Records Management and its Record Retention Schedule.

D. Responsible Person

The Hospital CEO and CFO are responsible for ensuring that all individuals adhere to the requirements of this policy. If they are unable to create adherence to this policy, they shall immediately report the non-adherence to this policy to the Compliance Officer.

E. 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

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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
- Anti-Kickback Law, 42 U.S.C. §1320a-7b(b), and implementing regulations