

ORGANIZATION POLICY

POLICY TITLE: CONTRACTS WITH REFERRAL SOURCES

POLICY NUMBER: 1229

PURPOSE:

The purpose of this policy is to ensure compliance with all applicable federal and state laws, including, without limitation, the Stark law and regulations and the Anti-Kickback Statute and regulations, and to promote sound business judgments in connection with agreements whereby OMH contracts with a physician or physician entity in exchange for a fair market value fee for services to be provided.

POLICY:

1. **Compliance with all applicable laws.** All transactions involving OMH and a physician or medical practice where any remuneration (including but not limited to money or services) is exchanged, must comply with all applicable federal and state laws, including, without limitation, the federal Stark law and the Anti-Kickback Statute and regulations, as well as any relevant state laws regulating financial transactions with health care providers and referral sources, as amended from time to time.
2. **Policy requirements.** The Policy, with respect to agreements, with physicians and medical practices, requires that:
 - There is a written agreement signed by both the physician or medical practice and OMH representative before services are rendered and before any fee is paid, unless approved in advance by OMH General Counsel;
 - The agreement specifies all of the services to be provided;
 - The services to be provided do not exceed those that are reasonable and necessary for the arrangement's commercially reasonable business purposes;
 - The agreement has a term of at least one year;
 - Compensation over the term of the agreement is set in advance, is not less than fair market value, exceeds a combination of both direct and overhead costs (based on capacity), and is not determined in a manner that reflects, or with the intention to induce, referrals or business otherwise generated between the parties;
 - The terms and conditions of the agreement shall be commercially reasonable;
 - The services provided under the agreement do not involve counseling or promoting business arrangements or other activities that violate state or federal law;
 - If the agreement is intended to provide for the services on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement must specify exactly the schedule of such intervals, their precise length, and the exact charge for each interval; and

- The arrangement meets any other requirements included in federal and state regulations.
3. **Independent Third Party Appraisal.** In order to determine the fair market value for services provided under the contract, sometimes it is necessary for a qualified independent, third party valuation firm must validate the process to cover direct and overhead costs (based on capacity) by which the fee for services to be provided is established. The decision of whether or not to obtain an independent, third party valuation will be made in conjunction with OMH General Counsel.

PROCEDURE:

FOR PHYSICIAN SERVICES:

1. **Review of FMV Appraisals.** To ensure that each contract is in compliance with the appropriate state and federal laws, OMH General Counsel shall review all contracts involving referral sources on an annual basis. If necessary, an independent, third-party appraisal may be obtained annually to validate the process by which the fee for services to be provided is established. OMH shall maintain a list of qualified, reputable valuation consultants available for use in all transactions.
2. **Review of Legal Counsel.** OMH General Counsel, at its option, shall either perform the legal work directly or supervise and review the work of outside law firms in the preparation of contracts for each transaction.
3. **Contract Approval Process.** All contracts with referral services shall be approved by the Chief Executive Officer prior to becoming effective. The approval process and documentation shall include all relevant information regarding the practice and physicians involved, the major terms of the agreement, and the details of the fee for services to be provided.
4. **Verification.** CEO or his/her designee shall verify (in his/her capacity as an officer of OMH) that:
 - a) except as disclosed in the verification, there are no other financial arrangements, oral or written, with the professional;
 - b) the payments pursuant to the agreement will represent the fair market value of the services to be rendered;
 - c) the services to be provided do not exceed those that are reasonable and necessary for the arrangement's commercially reasonable business purposes; and
 - d) the terms and conditions of the agreement are commercially reasonable.

FOR ALL OTHERS:

1. **Review of Legal Counsel.** OMH General Counsel, at its option, shall either perform the legal work directly or supervise and review the work of outside law firms in the preparation of contracts and agreements for each transaction.

2. **Approval Process.** All agreements with referral sources shall be approved by the CEO and Hospital Board prior to becoming effective. The approval process and documentation shall include all relevant information regarding the practice and physicians to be managed, the major terms of the agreement, and details of the fee for services to be provided.
3. **Verification.** The CEO shall certify (in capacity as officer of OMH) that:
 - a. except as disclosed in the verification, there are no other financial arrangements, oral or written, with the professional;
 - b. the payments pursuant to the agreement will represent the fair market value of the services to be rendered;
 - c. the services to be provided do not exceed those that are reasonable and necessary for the arrangement's commercially reasonable business purposes; and
 - d. the terms and conditions of the agreement are commercially reasonable.

EFFECTIVE DATE: May 14, 2010

REVIEW DATE: January 2012, January 2015

REVISION DATE: January 2018

AUTHORIZED BY: _____
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Signed Original in Executive Office