
 HAWAII HEALTH SYSTEMS CORPORATION <i>Quality Healthcare for All</i> POLICY	Department: Human Resources	Policy No. HR 0015A (formerly ADM 0015) Supersedes Policy No.
	Subject: Physician Employment	Approved By:  HHSC Board of Directors By: Donna McCleary, M.D. Its: Secretary/Treasurer

PURPOSE:

To ensure compliance with all applicable federal and state laws, including without limitation Stark and Anti-kickback Statutes, and to promote sound and orderly business judgments in connection with arrangements for Physician employment. This policy shall apply to all of Hawaii Health Systems Corporation (HHSC) regional facilities.

DEFINITIONS:

"Administrative Employment Arrangement" means employment for non-clinical services.

"Commercial Reasonableness" means that the particular Employment Arrangement furthers a legitimate business purpose of the parties to the Employment Arrangement and is sensible in relation to the characteristics of the parties, including size, type, scope, and specialty.

"Physician Employment Arrangement" means all Employment Agreements or Arrangements between HHSC and the Physician, whether in writing or not.

"Physician Employment Contract" or "Physician Employment Agreement" means a written agreement that would bind HHSC to legal or financial terms or both.

"Fair Market Value" or "FMV" means the value of total compensation in an arms-length transaction, consistent with the General Market Value of the transaction.

"General Market Value" means the compensation that would be paid at the time the Physician and the facility enter into the Employment Arrangement as the result of bona fide bargaining between well-informed parties that are not otherwise in a position to generate business for each other.

"Physician" means a 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, as defined in section 1861 (r) of the Social Security Act and in State law.

"Taking into account volume or value of referrals" is a phrase that means the formula used to calculate the Physician's compensation includes the Physician's referrals to the facility as a variable, resulting in an increase or decrease in the Physician's compensation that positively correlates with the number or value of the Physician's referrals to the facility.

“Total Amount Paid” means the total compensation provided to a Physician for services rendered, including but not limited to salary, bonuses, benefits, pension, deferred compensation, and insurance.

“Travel Reimbursement Agreement” means an approved agreement to reimburse a Physician Candidate for reasonable and necessary travel expenses incurred as part of an Employment Arrangement.

POLICY:

- I. **Approval Requirements.** All Employment Arrangements shall be for clearly identifiable services. The employment of all Physicians requires approval from the Regional Chief Executive Officer (RCEO). Each facility is responsible for ensuring compliance with this policy.

- II. **Physician Employment Arrangements.**
 - a. All Physician Employment Arrangements with Physicians who have the potential to refer patients to the facilities, for any reason, shall be in writing and such written Employment Agreements must comply with this policy.
 - b. Administrative Employment Arrangements with Physicians, who are bona fide employees, who do not have the potential to solicit or receive any remuneration for the referral of patients to the facility are not required to be in writing but a written agreement is preferred.”

- III. **Compliance with State and Federal Laws including Fraud and Abuse Laws.** All Physician Employment Agreements shall comply with all applicable federal and state laws, including Stark and Anti-Kickback statutes, both as amended from time to time.

- IV. **Compliance with Standard Fair Market Value and Commercial Reasonableness.** The Total Amount Paid to a Physician under an Employment Arrangement shall be:
 - a. No greater than the Fair Market Value for the services provided; and
 - b. Shall meet the Commercial Reasonableness standard, even if no referrals were made to the facility; and
 - c. Shall not take into account the volume or value of referrals or any referral relationship between the parties.

A FMV analysis shall be memorialized for all Physician Employment Arrangements. No Physician shall be retained as an employee unless the FMV analysis meets regulatory requirements.

- V. **Travel Reimbursement.** Travel Reimbursement Agreement requests of a Physician candidate shall be documented on the Physician Recruitment Travel Pre-approval template and submitted to the HHSC General Counsel, or an outside legal firm approved by General Counsel based on expertise in this area with HHSC General Counsel copied on the transmission. Once approved, the Travel Reimbursement Agreement shall be signed by both the RCEO or designee and the Physician candidate, and a fully signed copy sent to HHSC General Counsel, before any travel arrangement are made.

- VI. **Legal Review.** All Physician Employment Contracts shall be reviewed by HHSC General Counsel, or an outside legal firm approved by General Counsel based on expertise in this area, to ensure compliance with legal regulatory requirements.

- VII. **Record Keeping**. All Physician Employment Contracts and supporting documents, including Fair Market Value analysis, shall be kept in the central repository that is established and maintained by HHSC Contracts' Management System and acceptable to the General Counsel. It shall be the responsibility of each facility administrator to ensure that the contract repository is updated.
- VIII. **Professional Insurance Policy**. Employed Physicians may be added to the HHSC Professional Liability Insurance Policy.
- IX. **Independent Contractor Physicians**. Refer to the HHSC Procurement Policies regarding Independent Contractor Physicians.
- X. **AUTHORITY:**
- Hawaii Revised Statutes (HRS) § 323F-7
 - HRS §323F-8.5
- XI. **RELATED PROCEDURE(S):**
- None
- XII. **REFERENCE(S):**
- 42 U.S.C. § 1320a-7b(b) (Anti-Kickback Statute)
 - 42 U.S.C. § 1395nn (Stark Law), and related federal and state regulations and guidance documents
 - 42 C.F.R. Part 411, Subpart J
 - Chapter 453, Hawaii Revised Statutes