

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician and Referral Source Real Estate Transactions; Physician and Referral Source Space Leases
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EFFECTIVE DATE: September 1, 2022	REFERENCE NUMBER: LL.004
APPROVED BY: Ethics and Compliance Policy Committee	

<p>SCOPE: This Policy applies to HCA Healthcare, Inc. (the “Company”) and all of its Affiliates operating in the United States (“HCA Affiliates”).</p> <p>Other capitalized terms used in this Policy and not otherwise defined have the meaning given to them below in the Definitions section.</p> <p>This Policy applies to all agreements with a Referral Source in connection with a Real Property Transaction.</p>
<p>PURPOSE: To provide direction for Real Property Transactions between the Company or HCA Affiliates and Referral Sources.</p>
<p>POLICY:</p> <p>Except as approved by the Senior Vice President for Development, all leases for space to non-employed Physicians and other potential Referral Sources will be managed by professional third-party property managers (each a “Property Manager”). These Property Managers must ensure that all Physicians and other potential Referral Sources have written leases, the rent payable under the leases is consistent with Fair Market Value (without taking into account the volume or value of any referrals or other business generated between the parties), all leases are commercially reasonable even if no referrals were made between the parties, and all rental payments are either current or appropriate collection proceedings are being pursued.</p> <p>This Policy does not apply to the lease of space to a potential Referral Source for a meeting, seminar or other short-term event; such leases must comply with the terms of the Use of Facility-Owned Space by Physicians Policy, LL.024.</p> <p>The procedures established by the Corporate Real Estate Department as to the use of Lease Term Approval Forms (“LTAFs”) and Standard Business Lease Terms (“SBLTs”) are to be followed in the leasing of both medical and non-medical office building space to and from Physicians and other potential Referral Sources. Pursuant to Accounting Policy Guide #4, all real estate leases pursuant to which an HCA Affiliate is the lessee, regardless of term or value, must be approved and executed by the Corporate Real Estate Department.</p> <p>General Requirements for Space Leases</p> <p>All leases for space between the Company or HCA Affiliates and a Referral Source must comply with the following:</p> <ol style="list-style-type: none"> 1. a written lease, signed by both the lessor and the lessee before the lessee begins occupying the space and before payments are made, and specifying the space/equipment subject to

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- lease must be entered into;
2. the lease term must be at least one year, with this requirement being satisfied even if the lease agreement is terminated during the term, with or without cause, as long as the parties do not enter into another lease for the same space and/or equipment during the first year of the original term of the agreement;
 3. the rental payments must be set in advance, consistent with a Fair Market Value verification by an independent third-party appraiser;
 4. the rental payments are not determined: (a) in a manner that reflects the volume or value of referrals or business otherwise generated between the parties or (b) using a formula based on (i) a percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space or through the use of any equipment, or (ii) per click or per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee;
 5. if the arrangement is for part-time use of space/equipment, the lease must state the period of use and payment for each time period;
 6. the space/equipment rented or leased must not exceed that which is reasonable and necessary for the commercially reasonable business purposes of the lessee;
 7. the space/equipment must be used exclusively by the lessee when being used by the lessee (except that space leases can provide for prorated payments for common areas);
 8. the lease covers all of the premises/equipment leased between the parties for the term of the lease;
 9. the lease would be commercially reasonable even if no referrals were made between the parties;
 10. notwithstanding the “exclusive use” requirements set forth in paragraph (7) above, subleases are permissible as long as the lessee (or sublessee) does not share the rented space or equipment with the lessor (or anyone related to lessor) when it is rented or used by the lessee (or sublessee);
 11. a month-to-month holdover tenancy is allowed if it is on the same terms and conditions as the prior one-year (at a minimum) agreement, so long as the rent amount continues to be fair market value and the month-to-month holdover should generally not exceed six (6) months, provided however that the rent may include a premium during the holdover period if the agreement in effect immediately prior to the holdover states the premium amount to be charged, which amount was approved at the inception of the lease; and
 12. if the lessor provides tenant improvements for the benefit of a Physician tenant that are

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unlikely to be chargeable to a subsequent tenant, the lessor should allocate the entire cost of the tenant improvements to the lessee. Improvements the lessor reasonably expects would be chargeable to subsequent lessees may be allocated over the expected useful life of the improvements.

Appraisals

All Real Property Transactions that involve the lease of space to or from a Referral Source must be in the range of Fair Market Value established in writing in the last eighteen (18) months by one third party appraiser. All Real Property Transactions that involve the sale, purchase or long-term ground lease to or from a Referral Source must be in the range of Fair Market Value established in writing in the last year by one third party appraiser.

PROCEDURE:

As to leases, the CEO of each facility must certify that:

1. except as disclosed in the certification, there are no other arrangements, written or oral, with the Referral Source;
2. the lease payments represent Fair Market Value as established in the last 18 months in writing by one third party appraiser;
3. the lease terms are commercially reasonable and not determined in a manner that takes into account the volume or value of referrals or other business generated between the parties; and
4. the aggregate space rented does not exceed that which is necessary to accomplish the commercially reasonable business purpose of the rental.

The Approving Authority must certify that the terms of the equipment lease are commercially reasonable and in accordance with this Policy.

DEFINITIONS:

“**Affiliate**” means any person or entity Controlling, Controlled by or under common Control with any person or entity.

“**Approving Authority**”, for purposes of the equipment lease provisions of this Policy, is the Division President, except where the Division President is also the CEO of the facility, in which case approval should come from the next highest position.

“**Control**” means the direct or indirect power to govern the management and policies of an entity; or the power or authority through a management agreement or otherwise to approve an entity’s transactions (includes Controlled, Controlling).

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“Fair Market Value” of: (a) rental space means the value of the rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee. (For example, when Company facilities are the lessor/landlord, they should factor in the value to Physician tenants of proximity or convenience to them when charging rent in leases with Physician tenant referral sources. In contrast, when Company facilities rent from Physician lessors/landlords, convenience or proximity shall not be a factor in the rental payment amount paid by the facility.) For purposes of this definition, a rental payment does not consider intended use if it considers costs incurred by the lessor in developing or upgrading the property or maintaining the property or its improvements.

(b) the sale or purchase of real estate means the value in arm's-length transactions, consistent with the general market value. "General market value" means the price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party on the date of acquisition of the asset. Usually, the fair market price is the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition where the price has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals.

(c) rental equipment means the value of equipment for general commercial purposes (not taking into account its intended use), and shall not consider the additional value that one party would attribute to the sources of referrals or business otherwise generated. Fair market value of equipment shall not be determined using a formula based on:

- (1) a percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed on or business generated through the use of the equipment; or
- (2) per click or per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.

All such determinations of fair market value should also be consistent with the Fair Market Valuation Policy LL.025.

“Immediate Family Member” of a Physician means: a spouse; natural 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 the spouse of a grandparent or grandchild.

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“Person” means any one or more natural persons, corporations, partnerships, limited liability companies, firms, trusts, trustees, governments, governmental authorities, facilities or other entities.

“Physician” means a doctor of medicine, osteopathy, dental surgeon, dental medicine, podiatric medicine, or optometry, as well as a chiropractor.

“Real Property Transaction” means any transaction, lease, or agreement involving real property including, but not limited to, the following: sales or purchases; leases or subleases (whether new, a renewal or an early termination); easements; time-share or space distribution agreements; ground leases; and construction or renovation, including but not limited to, hospitals, ASCs, medical office buildings, parking garages, urgent care centers, outpatient facilities and other facilities or buildings. Notwithstanding the foregoing, “Real Property Transaction” does not include the granting of, or modifications to, a deed of property necessary for, or easement for: (i) public road or public road right-of-way, (ii) storm water drainage, or (iii) utilities (including electricity, gas, water, sewer or telecommunications) to a utility provider, a municipality, or other governmental entity, when (1) the deed, easement, or modified easement is being requested by a utility provider, municipality, or other governmental entity in connection with a Company-related construction or development project, or the primary beneficiary of the public road right-of-way, storm water, or utility improvements or services to be made or provided in connection with such deed, easement, or modified easement is an HCA Affiliate, (2) the deed, easement or easement modification documents have been either prepared or approved by an attorney approved by Managing Counsel, Real Estate, and (3) such attorney has concluded that granting or modifying of such deed or easement would be customary or necessary in connection with the public road right-of-way, storm water, or utility improvements or services to be provided in connection with such deed or easement, or the Company-related construction or development project. Further, notwithstanding the foregoing, a Real Property Transaction does not include an M&A Transaction. “M&A Transaction” means a transaction that is an acquisition of a business from a person or entity by the Company or an HCA Affiliate overseen by the Company Corporate Development Department or the Company Special Assets Group under Company Corporate Treasury. An M&A Transaction includes all aspects of the M&A Transaction through the closing.

“Referral Source” means: (a) a Physician, an Immediate Family Member of a Physician or an entity owned in whole or in part by a Physician (such as a physician medical group/practice, a Physician-owned health care facility and/or a Physician-owned real estate company); or (b) any other Person (as hereinafter defined), entity or facility who either (i) makes, is in a position to make, or could influence the making of referrals of patients or business to any HCA Affiliated health care facility or entity; (ii) has a provider number issued by Medicare, Medicaid or any other government health care program; (iii) provides services to patients who have conditions that

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might need to be referred for clinical or medical care to any HCA Affiliated health care facility or entity; or (iv) participates in any way in directing, recommending, arranging for or steering patients to any HCA Affiliated health care provider, facility or entity. For purposes of this policy, “Referral Source” does not include an entity that has certified that it is wholly owned, either directly or indirectly, by a Real Estate Investment Trust (“REIT”) that either (a) is publicly traded; or (b) has no direct or indirect Physician ownership interest (or Immediate Family Member of a Physician ownership).

“**Compensation is “set in advance”** if the aggregate compensation, a time-based or per unit of service based (whether per-use or per-service) amount, or a specific formula for calculating the compensation is set in an agreement between the parties before the furnishing of the items or services for which the compensation is to be paid. The formula for determining the compensation must be set forth in sufficient detail so that it can be objectively verified, and the formula may not be changed or modified during the course of the agreement in any manner that reflects the volume or value of referrals or other business generated by the referring Physician.

REFERENCES:

1. 42 U.S.C. § 1320a-7b
2. 42 C.F.R. § 1001.952(b) and (c)
3. 42 U.S.C. § 1395nn(e)(1)
4. 60 Fed. Reg. 41914 (Aug. 14, 1995)
5. 63 Fed. Reg. 1659 (Jan. 9, 1998)
6. 66 Fed. Reg. 945 (January 4, 2001)
7. 69 Fed. Reg. 16054 (March 26, 2004)
8. HCA Healthcare [Accounting Policy Guide #4](#), Accounting for Leases
9. Global Anti-Corruption Policy, [LL.AC.001](#)
10. Use of Facility-Owned Space by Physicians Policy, [LL.024](#)
11. Fair Market Valuation Policy, [LL.025](#)