

DEPARTMENT: Legal	POLICY DESCRIPTION: Physician Purchasing Items or Services from the Facility
PAGE: 1 of 3	REPLACES POLICY DATED: 10/15/02, 11/1/05, 01/01/06, 3/1/07, 3/1/08, 8/1/09
EFFECTIVE DATE: February 1, 2011	REFERENCE NUMBER: LL.021
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: Any Company-affiliated facility, including, but not limited to, a hospital, ambulatory service center, home health agency, outpatient imaging centers, and any corporate department, from which a physician or physician group purchases items or services provided by the facility or corporate department.

PURPOSE: To establish guidelines under which a physician or physician group may purchase items or services from a facility or corporate department.

POLICY: Subject to the requirements of Policy LL.012 (Physician Access to Vendor Agreements), any physician or physician group may purchase items or services from a facility or corporate department at fair market value. In order to clearly meet an exception to the Stark Law, the parties should have a written agreement signed by the physician and the facility administration in advance of any purchase. The writing must set out the timeframe of the arrangement and the compensation. Compensation must be set in advance, consistent with fair market value, and not take into account the volume or value of referrals or other business generated by the referring physician.

This policy will apply, for example, to a physician purchasing (a) instrument sterilization services from the facility, or (b) other items or services on a regular basis such that the facility creates a “commercial” or “industrial account” through which the physician is invoiced or billed monthly for such items or services.

Generally speaking, if services (as opposed to items) are purchased under this policy, the physician or physician group is to be provided such services on-site at the facility rather than in the physician’s medical office or other practice location. Services to be provided in the physician’s or physician group’s medical office or other practice location are generally governed by other policies (e.g., management services are governed by the Physician Management Services Agreements/ Business Office Services Agreements/HCAPS Contract Services Policy, LL.005).

If a physician wishes to purchase laboratory related services from a hospital, this policy would not apply. Instead, refer to the guidance and form agreements in the Laboratory – Marketing Practices Policy, REGS.LAB.023.

This policy does not permit a physician to purchase items, supplies, drugs or pharmaceuticals from a facility that were purchased under a HPG vendor contract unless such sale is in compliance with the Physician Access to Vendor Agreements Policy, LL.012, which should be consulted and followed in conjunction with this policy LL.021.

This policy does not apply to cafeteria meals, physician parking, meals or refreshments in the doctor’s lounge, CME of less than 1½ hours in duration, or other incidental benefits provided by a facility to a physician in compliance with the Business Courtesies to Potential Referral Sources Policy, EC.005.

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This policy does not apply to facilities leasing or “sharing” clinical or non-clinical staff or space with a physician in the facility’s medical service location. Such sharing or leasing of staff must comply with the Provider-Based Program Development and Operation Policy, LL.019. Sharing or leasing of space must comply with the Use of Facility-Owned Space by Potential Referral Sources Policy, LL.024.

The facility should consult with the Tax Department as to whether sales taxes are required to be collected from the physician under the state’s sales tax law for any sales of items or services to a physician.

PROCEDURE:

1. In order to clearly meet an exception to the Stark Law, all physicians or physician groups purchasing items or services from a facility as set forth hereunder should sign a written agreement setting forth in detail the payment amount and the items or services to be purchased. Attachments A and B of this policy provide two possible templates for such a written agreement. Attachment A is for one-time purchases of items or services that the facility does not expect to repeat. Attachment B is for purchases that the facility expects will be repetitive.
2. The purchase price to be paid by the physician for the items or services must be consistent with fair market value and set in advance. Fair market value is the value in arm’s-length transactions, consistent with the general market value. General market value is the price that an item 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. In general, fair market value for an item or service provided between a hospital and physician should be the price it would cost to purchase the item or service from an outside entity rather than the cost to the provider. The agreement must set forth the pricing for at least one year periods (the pricing can change within that one year period, but the parties must agree to it in advance). The payment amount should include the collection of sales taxes where required by state sales tax laws.
3. Prior to contracting with such physicians, consistent with the Prohibition Against Contracting with Any Ineligible Person Policy, MM.001, a review of the General Service Administration’s List of Parties Excluded from Federal Programs (the “GSA List”) and the HHS/OIG List of Excluded Individuals/Entities (the “OIG Sanction Report”) must be conducted. Such agreements are not to be entered into with physicians who are listed on the GSA List or the OIG Sanction Report.
4. All written agreements must be reviewed and approved by the facility’s assigned Operations Counsel.

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5. The CEO of the facility will be required to certify with respect to each such written agreement executed that:
- a. the payment is fair market value for the indicated items or services;
 - b. the items or services are the only items and services covered by the written agreement;
 - c. the sale of the items or services by the facility to the physician is not conditioned upon the physician referring or admitting any patients to, or ordering tests or procedures to be performed at, the facility.

REFERENCES:

1. 69 Fed. Reg. 16054 (March 26, 2004)
2. Business Courtesies to Potential Referral Sources Policy, [EC.005](#)
3. Physician Management Services Agreements/ Business Office Services Agreements/HCAPS Contract Services Policy, [LL.005](#)
4. Physician Access to Vendor Agreements Policy, [LL.012](#)
5. Laboratory – Marketing Practices Policy, [REGS.LAB.023](#)
6. Prohibition Against Contracting with Any Ineligible Person Policy, [MM.001](#)
7. Use of Facility-Owned Space by Potential Referral Sources Policy, [LL.024](#)

AGREEMENT AS TO PHYSICIAN PURCHASING ITEMS OR SERVICES FROM THE FACILITY

NOTE: This Agreement must be completed, signed and dated PRIOR to the acceptance of any payment or delivery of any goods or services. Prior approval must be obtained in accordance with Facility's policies and procedures.

Physician shall pay Facility the amount of _____ Dollars (\$_____) for the following items or services provided by the Facility to the undersigned Physician. These items or services are more fully described as: _____

_____ at the rate of _____.

This payment is fair market value for the indicated items or services; these items or services are the only items and services covered by this Agreement. In the event services (as opposed to items) are purchased hereunder, the Physician must be provided such services on-site at the Facility rather than in the Physician's medical office or other practice location.

The parties agree and acknowledge that the sale of the items or services by the Facility to the Physician is not conditioned upon the Physician referring or admitting any patients to, or ordering tests or procedures to be performed at, Facility. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself/herself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC Section 1320a-7b).

Facility Administrator

Physician

Date

(print name)

Approved as to Form:

Reviewed and Approved:

Operations Counsel

Division or Market President

Date

Date

The following list and/or the Referral Source Contract Control Log maintained by the Facility constitutes a list of all services furnished by the physician (or an immediate family member of the physician) to the entity as of the date of this Agreement:

Name of Contract Party	Relation to Physician Source of Referrals	Description of Contract	Start of Term	End of Term

**CERTIFICATE
AGREEMENT AS TO PHYSICIAN PURCHASING ITEMS OR SERVICES FROM FACILITY**

This Agreement as to Physician Purchasing Items or Services from Facility (the "Agreement") is entered into by and between _____ d/b/a _____ ("Facility") and _____, ("Physician") dated _____, 20 ____.

The undersigned hereby certifies that:

1. I have reviewed the Agreement described above;
2. The compensation arrangement under the Agreement is established at fair market value for the indicated items or services;
3. The items or services described in the Agreement are the only items or services covered by the written agreement; and
4. The sale of the items or services by the Facility to the Physician is not conditioned upon the Physician referring or admitting any patients to, or ordering tests or procedures to be performed at, Facility.

Facility Chief Executive Officer

Facility I.D. No.

Date:

The undersigned Senior Vice President of the Facility hereby certifies that:

1. I have reviewed the Agreement described above and hereby approve the terms thereof;
2. Based upon the certification of the Facility Chief Executive Officer, as well as any personal knowledge I may have of the Facility's market, to the best of my information and belief, the compensation arrangement under the Agreement is established at fair market value for the indicated items or services.

Senior Vice President

Date:

The Agreement is hereby approved as to form:

Facility Legal Counsel

Date:

AGREEMENT AS TO PHYSICIAN PURCHASING ITEMS OR SERVICES FROM THE FACILITY

This Agreement as to Physician Purchasing Items or Services from the Facility (the "Agreement") is entered into by and between _____ d/b/a _____ ("Facility") and _____ ("Physician"), dated _____, 20 ____.

Physician provides health care services in _____, _____, and is in need of certain items or services, which can be obtained from Facility.

Facility is willing to provide the following described items or services to Physician:

Physician agrees to pay the following fee to Facility for such items or services:

Facility agrees to submit itemized billing monthly to Physician. Physician agrees to pay Facility on a Net 30 day billing cycle. If Physician is in default of payment, Facility reserves the right to cease providing items or services to Physician. In the event services (as opposed to items) are purchased hereunder, the Physician must be provided such services on-site at the Facility rather than in the Physician's medical office or other practice location.

Term. This Agreement is for a term of one (1) year which begins on the _____ day of _____, 20 ____ (the "Effective Date") and will expire on the _____ day of _____, 20 ____.

Termination. Either party may terminate this Agreement, without cause, by providing not less than 30 days written notice stating the intended date of termination. If this agreement is terminated prior to the one (1) year anniversary of the Effective Date, the parties will not enter into the same or similar agreement until such anniversary date has passed.

Regulatory Compliance. Facility shall provide all items and services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to Facility, including, without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations, the Medicare/Medicaid conditions of participation and any amendments thereto.

Change of Circumstances. In the event (i) Medicare, Medicaid, any third party payor, or any federal, state or local legislative or regulatory authority adopts any law, rule, regulation, policy, procedure or interpretation thereof, which establishes a material change in the method or amount of reimbursement or payment for items or services under this Agreement, or if (ii) any or all of such payors/authorities impose requirements, which require a material change in the manner of either party's operations under this Agreement and/or the costs related thereto, then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstances while

preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days' prior written notice.

Representation and Warranty. Physician represents and warrants to Facility that Physician (i) is not currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f)(the Federal health care programs"); (ii) is not convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Physician being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Physician shall immediately notify Facility of any change in the status of the representation and warranty set forth in this section. Any breach of this section shall give Facility the right to terminate this Agreement immediately for cause.

Indemnification. Each party shall indemnify, hold harmless and defend the other party, its officers, directors, employees and representatives from and against any liability, claim, cause of action, and expenses (including reasonable attorneys' fees), whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of a breach of the indemnifying party's obligations under this Agreement or the performance of any intentional acts, negligent acts or omissions by such indemnifying party or its agents or employees.

Insurance. Each party shall obtain and maintain, at its sole cost and expense, professional and general liability insurance in the minimum amount of One Million Dollars (\$1,000,00) per occurrence and Three Million Dollars (\$3,000,000) per annual aggregate. At the request of a party, the other party shall furnish satisfactory evidence of such liability insurance coverage. Each party shall notify the other party thirty (30) days prior to any material change in or termination of such insurance.

Confidential Information. Physician hereby covenants and agrees with the Facility that Physician will protect and not, directly or indirectly, use for Physician's own benefit or financial gain, or disclose to any other party any Confidential Information (as defined below) without the prior written consent of the Facility, except as compelled by law. "Confidential Information" means, without limitation, information relating to the Hospital, its patients (including patient medical records), financial or business records, agreements (including this Agreement), or any other information or material which derives economic value, actual or potential, from not being generally known to other persons or is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. This section shall survive the termination of this Agreement.

HIPAA Requirements. Physician agrees to comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administration Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA") and any current and future regulations promulgated under the HITECH Act or HIPAA, including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements."

Physician agrees not to use or further disclose any "Protected Health Information," including "Electronic Protected Health Information," (as such terms are defined in the HIPAA Requirements) other than as permitted by HIPAA Requirements and the terms of this Agreement.

Physician will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

Regulatory Requirements. The parties expressly agree that nothing contained in this Agreement shall require Physician to refer or admit any patients to, or order any items or services from Facility. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC Section 1320a-7b).

No Assignment; Binding Effect. Physician shall not assign this Agreement to any other party or parties without the prior written consent of the Facility.

Governing Law. The laws of the state in which Facility is located shall govern this Agreement.

Required Approvals. Neither this Agreement nor any amendment or modification hereto shall be effective or legally binding upon Facility, or any officer, director, employee or agent thereof, unless and until it has been reviewed and approved in writing by a Senior Vice President of Facility's owner and by Facility's Legal Counsel.

Other Agreements. The following list and/or the Referral Source Contract Control Log maintained by the Facility constitutes a list of all services furnished by the physician (or an immediate family member of the physician) to the entity as of the date of this Agreement:

:

Name of Contract Party	Relation to Physician Source of Referrals	Description of Contract	Start of Term	End of Term

Physician:

Facility:

By: _____

By: _____

Title: _____

Title: _____
Facility Chief Executive Officer

Date: _____

Date: _____

TIN: _____