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 Assistant VP
 Compliance &
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 Area Corporate
 Compliance
 Applicability Erie County
 Medical Center
 References CORP-022

Physician Compensation Policy

I. Policy

It is Erie County Medical Center Corporation ("ECMCC")'s policy is to ensure an appropriate process for evaluating and approving payment to potential referral sources, including physician and mid-level providers, of ECMCC, consistent with applicable federal and state laws, including the Stark Law (42 U.S.C. § 1395nn) and the Anti-kickback Statute (42 U.S.C. § 1320a-7b). This policy applies to any arrangement, transaction or contract ("Proposed Transaction") between ECMCC and a Potential Referral Source, including but are not limited to professional services agreements (both clinical and administrative), employment agreements, practice acquisitions, joint ventures, and leases. Each Proposed Transaction must be negotiated and administered in compliance with federal and state laws and regulations, and must be documented in a written contract that is signed by all of the parties. Compensation must be negotiated at arms length, consistent with fair market value, commercially reasonable, set in advance, and not determined in a manner that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties.

II. Definitions

- **Anti-kickback Statute ("AKS")** is a federal criminal statute that prohibits anyone (not just a physician) from offering, paying, soliciting or receiving anything of value in an effort to (1) induce or reward the referral of Federal health care program business and (2) purchase, lease, or order of, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. The types of remuneration include any gifts, kickback, bribe, or rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. With respect to violations of

AKS, a person need not have actual knowledge of the statute or specific intent to commit a violation; knowing and willful intent must be proven. Violation of AKS may result in imposition of criminal penalties, civil monetary penalties, program exclusion, and liability under the False Claims Act (31 U.S.C. 3729–33). Exceptions to the AKS exist that, if strictly adhered to, make an arrangement automatically deemed compliant.

- **Commercially Reasonable** means that the Proposed Transaction furthers a legitimate business purpose of the parties to the arrangement and is sensible, considering the characteristics of the parties, including their size, type, scope and specialty. An arrangement may be Commercially Reasonable even if it does not result in profit for one or more of the parties.
- **Designated Health Services (“DHS”)** means any of the following services: clinical laboratory services; physical therapy, occupational therapy, and outpatient speech-language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.
- **Fair Market Value (“FMV”)** must reflect an arm’s length transaction, whereby the compensation has not been determined in any matter that takes into account the volume or value of anticipated or actual referrals.
- **Medical Director** means a physician who provides administrative oversight or support for ECMCC relative to a particular department or function within ECMCC. Medical Directors include Chiefs of Service.
- **Potential Referral Sources** include anyone or any entity in a position to refer to ECMCC, including physicians, to the extent that any such individual/entity is in a position to make a referral to ECMCC or direct another person or entity to make such a referral to ECMCC, or receive such a referral from ECMCC provided. A Potential Referral Source also includes a family member if that Potential Referral Source.
- **Stark Law (“Stark”)** is a federal statute that prohibits a physician from referring Medicare patients for Designated Health Services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies. Stark further prohibits an entity that provides DHS from submitting claims to Medicare for those services resulting from a prohibited referral. It is a strict liability statute: the lack of intent to make a prohibited referral is not a defense. Certain "safe harbors" exist that provide exemption from Stark liability, but the requirements of the safe harbors must be strictly adhered to or liability will be automatic.

III. Procedure

1. **Contractual Requirement.** Prior to the provision of any services by a Potential Referral Source, or leasing of space to any Potential Referral Source, ECMCC requires the execution a written contract detailing the terms of the Proposed Transaction (the "Agreement"). All Agreements shall be prepared under the direction of the Office of General Counsel and supported by the Fair Market Value and Commercial Reasonableness Assessments described below. Agreements should be signed prior to the commencement of services by an ECMCC authorized signatory and the Potential Referral Source. Copies of all Agreements shall

be maintained by the Office of General Counsel.

2. **Volume or Value of Referrals.** All Proposed Transactions shall be negotiated at arms length and shall not take into account the volume or value of referrals between the parties. This requirement does not prohibit productivity-based incentive compensation on the basis of a provider's personally performed services or similar incentive compensation programs for which there is an exception under the Stark Law.
3. **Fair Market Value Assessment.**
 1. Each Proposed Transaction ECMCC-direct hire physician shall be timely reviewed by the ECMCC Compliance Department to determine whether the Proposed Transaction is Fair Market Value. Fair Market Value shall be determined and documented prior to the execution of final Agreements between ECMCC and the Potential Referral Source. Fair Market Value shall be based primarily on external benchmarks consisting of survey data from reliable, industry-recognized independent third-party sources (the "Surveys"). Currently, ECMCC utilizes blended Survey data compiled from the Medical Group Management Association Provider Compensation Survey, the American Medical Group Association Medical Group Compensation and Productivity Survey, and the Sullivan Cotter & Associates Physician Compensation and Productivity Survey. In instances where a Proposed Transaction is with a physician practice or group, overhead costs for the practice may be additional to the physician compensation described within the Surveys.
 2. **Compensation <75th percentile.** If based on the Surveys the proposed compensation is below the 75th percentile, the Compliance Department may approve the proposed compensation based solely on the Surveys. In some instances, however, additional information may need to be reviewed before making a determination of Fair Market Value; Proposed Transactions under the 75th percentile are not per se Fair Market Value.
 3. **Compensation >75th but <90th percentile.** If based on the Surveys the proposed compensation is above the 75th percentile but below the 90th percentile, the proposed fee structure may be sent to an outside third party valuation consultant for a determination of Fair Market Value. In the event ECMCC believes there are particular reasons for a proposed compensation above the 75th percentile but below the 90th percentile (for example, a documented absence of any other provider in the Buffalo market who can provide the services, or emergent need for coverage in order to ensure continuity of care), and is not able due to time constraints or does not feel it a prudent use of public resources to obtain a third party valuation, ECMCC shall document clear and articulate findings for the approval of the compensation that include its rationale for the FMV determination as well as for not obtaining a third party valuation. This documentation shall be prepared in cooperation with the Compliance Department and must be approved by the General Counsel and the Chief Operating Officer of the Corporation.
 4. **Compensation >90th percentile.** If based on the Surveys the proposed compensation is above the 90th percentile, the proposed fee structure and any additional information relevant to the analysis shall be sent to an outside third party valuation consultant for a determination of Fair Market Value. The Proposed Transaction shall only be approved upon a favorable finding by the valuation

consultant.

5. A record of the determination of Fair Market Value, including any additional documentation outlined in Sections 3.3 and 3.4 above, shall be maintained by the Compliance Department.

4. **Commercial Reasonableness Assessment.**

1. Compensation paid by ECMCC to all Potential Referral Sources shall be Commercially Reasonable. Assessing and documenting whether there are Commercially Reasonable business justifications to enter into the proposed arrangement is the responsibility of the relevant business owner.
2. Commercially Reasonable does not mean a Proposed Transaction must be profitable to ECMCC; the evaluation may take into account other factors, such as the availability of physicians within the specialty area within ECMCC's geographic location, a need to fulfill a specific mission of ECMCC or an identified community need, and replacement of an existing position. If a renewal of an existing contract, RVUs generated by the physician(s) in question may also be considered. (For example, it may not be Commercially Reasonable for a physician who generates RVUs at the 25th percentile to be compensated at the 70th percentile absent extenuating circumstances.)
3. Any documentation provided supporting Commercial Reasonableness shall be maintained by the Compliance Department.
5. **General Counsel Review.** Upon determination that the Proposed Transaction is compliant from a Stark and Antikickback Statute perspective, the Proposed Transaction, and the Agreement itself, shall be further reviewed by the Office of General Counsel.
6. **Modifications to Agreements.** Whenever there is a proposed modification to the compensation or responsibilities of a Potential Referral Source either during the term of the Agreement or at the time of renewal of any Agreement, the relevant business owner shall review the Agreement to ensure that any modifications to the compensation are Fair Market Value and Commercially Reasonable. Any modifications shall be subject to review and approval as described above.
7. **Medical Directorships.** When engaging a physician for an administrative role, such as a medical directorship or Chief of Services position, the Medical Director must provide on an ongoing basis accurate and prompt timesheets for the services rendered related to his/her Medical Director duties. The timesheet should include the date of the service, a description of the services rendered and, if appropriate, to whom and where the services were rendered. There should be an articulated expectation that all time should be recorded timely. Failure to provide such timesheet may result in withholding of payment by ECMCC. The Vice President overseeing the department of the Medical Director must approve timesheets before payment will be made. A periodic review by the Compliance Department of the timesheets will be conducted to ensure compliance with the Agreement.

IV. Reporting and Investigation of Violations

Any individual who becomes aware of any activity that may be a violation of this policy, AKS or Stark should report the potential violation to the ECMCC Compliance Officer. If the Compliance Officer

becomes aware of any activity that may violate AKS or Stark, the Compliance Officer, in coordination with the appropriate departments, shall conduct an appropriate review or investigation of the activity. Following investigation, the Compliance Officer shall if necessary report the noncompliance to regulatory authorities. Violators of this policy may also be subject to disciplinary action as outlined in ECMCC's noncompliance disciplinary policies.

Reference:

- 42 USC § 1320a-7b(b);
- 42 C.F.R. § 1001.952(a)-(v);
- 42 U.S.C. § 1395nn(e)(3);
- Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6402(f)(2), 124 Stat 119 (2010).

ECMCC has developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations from these policies and procedures may be warranted in actual practice based upon individual patient characteristics and clinical judgment in unique care circumstances.

Approval Signatures

Step Description	Approver	Date
	Joseph Giglia: General Counsel	Pending
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	10/2024
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Applicability

Erie County Medical Center