



RUTGERS POLICY

Section: 100.2.3

Section Title: Healthcare Compliance Policies

Policy Name: Fair Market Valuation

Formerly Book: 00-01-15-60:15

Approval Authority: RBHS Chancellor

Responsible Executive: Chief Healthcare Compliance Officer

Responsible Office: RBHS Office of Ethics Compliance & Corporate Integrity

Originally Issued: 12/15/2009

Revisions: 7/1/2013

Errors or changes? Contact: RBHS Office of Ethics Compliance & Corporate Integrity, 973-972-8093

1. **Policy Statement**

Rutgers University complies with laws and regulations that require that the value of certain goods and services be determined in accordance with specific fair market valuations. This policy provides guidance as to how the fair market value of goods and services may be determined in transactions with a Potential Referral Source (as defined below) and a school, unit or department that is a part of Rutgers Biomedical and Health Sciences as well as any other Rutgers University school, unit or department that bills federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities").

2. **Reason for Policy**

To ensure continued compliance with the requirements that transactions between Related Healthcare Entities and a Potential Referral Source (as defined below) are made at fair market value in order to comply with Stark Law (42 U.S.C. § 1395nn), the Anti-kickback Statute (42 U.S.C. § 1320(a)-7b(b)) and state law.

3. **Who Should Read This Policy**

This policy should be read by employees of the schools, units and departments that are a part of Rutgers Biomedical and Health Sciences as well as other Rutgers schools, units and departments that bill federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities"). The employees of other University departments that support the Related Healthcare Entities in contracting for goods and services, including but not limited to Rutgers Finance, University Procurement and the Office of the Senior Vice President and General Counsel, should also read this policy.

4. **Related Documents**

- A. Corporate Integrity Agreement dated September 25, 2009 between UMDNJ and the Office of Inspector General of the Department of Health and Human Services as amended by a Letter Agreement, UMDNJ-Rutgers University dated May 1, 2013 ("CIA").
- B. Policy 100.2.7 Focus Arrangement Database and Approval
- C. Policy 100.2.1 General Statement on Agreements with Referral Sources
- D. Policy 100.2.4 Professional Services Agreements
- E. Policy 10.1.9 Research Grant and Contract Administration, Support, and Management
- F. Policy 20.1.11 Purchasing Policy
- G. Policy 20.1.16 Policy on Notification and Approval of Certain Contracts Awarded without Competitive Bids or Proposal
- H. Policy 20.1.17 Engagement and Payment of Professional Services Provider Policy
- I. Policy 40.2.12 Gratuities, Guests, Gifts and Use Of University Resources
- J. Policy 40.2.5 Consulting or Other Personal Services, Intellectual Property, Honoraria and Other Miscellaneous Activities Policies and Procedures for Payment
- K. Policy 50.3.13 Signatory Authority

5. **Contacts:**

RBHS Office of Ethics, Compliance and Corporate Integrity 973-972-8093
Rutgers Office of the Senior Vice President and General Counsel 848-932-7697

6. **The Policy**

100.2.3 FAIR MARKET VALUATION

Any transaction with an Actual or Potential Referral Source is to be at fair market value. Whenever a Related Healthcare Entity requires a fair market valuation in order to comply with Federal or State laws and regulations or with its own policies and procedures, no conflict of interest, such as the ability of one party to refer patients or other business to the other, may affect the terms of the transaction or the valuation.

Definition of Actual Referral Source

An actual source of healthcare business or referrals to a Related Healthcare Entity, or between a Related Healthcare Entity and a physician (or a physician's immediate family member as defined at 42CFR Sec.411.351) –include, but are not limited to, another Physician, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence or make referrals.

Definition of Potential Referral Source

A potential source of healthcare business or referrals to a Related Healthcare Entity or between a Related Healthcare Entity and a physician (or a physician's immediate family member as defined at 42CFR Sec.411.351) –include, but are not limited to, another Physician, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence or make referrals.

Procedure

Prior to executing any transaction with an Actual or Potential Referral Source, the Related Healthcare Entity's relevant business unit must determine and secure appropriate supporting documentation that any compensation given or received in the transaction is at fair market value. At a minimum, the following considerations must be included in any fair market value analysis.

Definition of Fair Market Value

For rental property purposes, fair market value means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party

(either the lessor or lessee) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid or other federal health care programs..

For personal services and employment purposes, fair market value means the value in arms-length transactions, consistent with the compensation that would be included in a services agreement, as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party at the time of the service arrangement.

- A. Determination of the compensation under fair market principles will begin with a range of benchmark payments, as described below. The appropriate value to select from within the range for a given transaction depends on individual factors. For example, a physician with a considerable experience in an area or a historically documented high level of personal productivity could receive compensation on the high end of the range. Similarly, where office space to be leased is in below standard condition for the market, the lease rate charged may be in the low end of the range.
1. Comprehensive. Any fair market valuation must specifically list what is included in the valuation. Items and services included in the valuation must match those provided for in the agreement and must also match those items and services actually provided to the referral source.
 2. Consideration of Facts and Circumstances. All valuations should provide a thorough analysis of the facts and circumstances of the underlying transaction in comparison to industry benchmark data (i.e., MGMA, AAMC, Sullivan Cotter). In certain circumstances, comparing payments against objective benchmark measures or industry practices does not guarantee that a payment meets the standard of fair market value.
- B. Rental or Lease of Space or Equipment
1. Limitations. Any rental arrangements between a hospital and physician or otherwise between referral sources may be used as data points in calculating fair market rent, but should not be used exclusively. Rental payments may reflect the value of any similar commercial property with improvements or amenities of a similar value, regardless of why the property was improved.
 2. Calculating FMV for a Lease of Space. The fair market value in a lease for space will equal the product of the number of square feet in the space leased and the market value of such property for general commercial purposes. The leased space should include exclusive use space, plus allocated shared space, plus allocated building common space, adjusted for time utilized if used less than full time. Fair market value comparisons should further consider the condition of the space, amenities and services, including outfitted with cabinetry and lighting, furniture, utilities of the occupied and common space, housekeeping, maintenance and hazardous waste disposal, property and liability insurance, telecommunication and internet accessibility. In addition, landlord's overhead and margin factors may be considered.
 3. Calculating FMV for a Lease of Equipment. Generally, many of the above considerations regarding a lease of space apply to a lease of equipment. However, in the case of equipment, due to the nature of medical equipment, sometimes all of the comparables or market values of a transaction type involve entities in a position to refer or generate business to each other. In such cases, one method of calculating fair market value would be to add factors for equipment maintenance and repair, overhead and margin of comparable medical equipment.

C. Personal Service Agreements and Employment Agreements

In calculating fair market value, the nature of the services to be provided must be considered. Fair market value of administrative and teaching services may or may not be similar to the fair market value of clinical services. Cost factors for professional liability insurance at fair market value should be considered and added to professional services agreements for clinical services.

If an hourly rate is used to determine a physician or staff's annual salary, the rate should be multiplied by a number of hours that accurately reflects the time actually worked by the physician or staff each year.

D. If any transaction with a Potential Referral Source is a Focus Arrangement the Focus Arrangements Database Policy and Focus Arrangements Approval Procedure apply and must be followed. The definition of "Focus Arrangement" is found in Section II C 2 the Corporate Integrity Agreement dated September 25, 2009 between UMDNJ and the Office of Inspector General of the Department of Health and Human Services as amended by a Letter Agreement, UMDNJ-Rutgers University dated May 1, 2013 ("CIA").

"Focus Arrangement" shall mean every arrangement that:

- a. involves, directly or indirectly, the offer or payment of anything of value and is between UMDNJ and any actual source of health care business or referrals to UMDNJ; or b. is between UMDNJ and a physician (or a physician's immediate family member (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5) to UMDNJ for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).

Provided, however, that any Arrangement that satisfies the requirements of 42 C.F.R. § 411.356 (ownership of investment interests), 42 C.F.R. § 411.357(g) (remuneration unrelated to the provision of designated health services), 42 C.F.R. § 411.357(i) (payments by a physician for items and services), 42 C.F.R. § 411.357(m) (medical staff incidental benefits), 42 C.F.R. § 411.357(o) (compliance training), 42 C.F.R. § 411.357(q) (referral services), 42 C.F.R. § 411.357(s) (professional courtesy), 42 C.F.R. § 411.357(u) (community-wide health information systems), or any exception to the prohibitions of 42 U.S.C. § 1395nn enacted following the Effective Date of this CIA does not require a written agreement shall not be considered a Focus Arrangement for purposes of this CIA."

E. The RBHS Office of Ethics, Compliance and Corporate Integrity will educate responsible parties on the laws, regulations and policies regarding the need for fair market value determinations, will monitor and review agreements, will review the fair market value documentation attached to agreements and attest to the appropriateness and reasonableness of the methodology used by the business units as reflected in the documentation provided by the business units for the services rendered under such agreement and will assist the responsible dean or vice president with remediating such agreements when potential violations of this policy are detected.