



RUTGERS POLICY

Section: 100.2.4

Section Title: Healthcare Compliance Policies

Policy Name: Professional Services Agreements

Formerly Book: 00-01-15-60:10

Approval Authority: RBHS Chancellor

Responsible Executive: Chief Healthcare Compliance Officer

Responsible Office: RBHS Office of Ethics Compliance and Corporate Integrity

Originally Issued: 12/15/2009

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

1. **Policy Statement**

This policy provides guidance to schools, units and departments that are a part of Rutgers Biomedical and Health Sciences as well as other Rutgers University schools, units and departments that bill federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities") as to how to execute certain types of professional services agreements with Providers (as defined herein).

2. **Reason for Policy**

To provide guidance to ensure that professional services agreements between Related Healthcare Entities (on behalf of its operating units, physicians, physician entities, nurses, and other professionals) and Providers (as defined herein) continue to meet the requirements of the Stark Law, the federal Anti-Kickback Statute, any relevant state laws and associated regulations and directives.

3. **Who Should Read This Policy**

- A. This policy applies to and should be read by employees of the schools, units and departments that are a part of the Rutgers Biomedical and Health Sciences (RBHS) as well as other University schools, units and departments that bill federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities".) 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.
- B. Although this policy is written so as to provide guidance for executing Professional Services Agreements in which Related Healthcare Entity Professionals are providing health care-related services to a Provider (see, for example, Section V. Procedure, Paragraph C: Related Healthcare Entities shall provide the Provider with a written statement or other documentation substantiating the services that have been rendered prior to each payment.),

this policy should be and is intended to be construed to apply also when the Provider is providing health care-related services to Related Healthcare Entities. In such cases, the guidelines set forth in this policy shall apply equally to a Provider.

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
- C. Policy 100.2.1 - General Statement on Agreements with Referral Sources
- D. Policy 100.2.3 - Fair Market Valuation
- E. Policy 20.1.11 - Purchasing Policy
- F. Policy 20.1.16 - Policy on Notification and Approval of Certain Contracts Awarded without Competitive Bids or Proposal
- G. Policy 20.1.17 - Engagement and Payment of Professional Service Provider Policy
- H. Policy 40.2.12 - Gratuities, Guests, Gifts and Use Of University Resources
- I. Policy 40.2.5 - Consulting or Other Personal Services, Intellectual Property, Honoraria and Other Miscellaneous Activities Policies and Procedures for Payment
- J. 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**

100.2.4 Professional Services Agreements

All Professional Services Agreements, as defined below, must be in writing, for at least a period of one year, signed by the parties, and provide for fair market value payments that are set in advance for the services to be rendered. Payments shall not be determined in a manner that takes into account the volume or value of any referrals or other business generated between the Provider and the Related Healthcare Entity. The Professional Services Agreement shall contain one or more provisions to the effect that no written or oral understanding exists between the parties to the effect that patient referrals are a part of the agreement, arrangement and/or financial relationship.

Procedure

Definitions

Professional Service Agreements Defined: Any arrangement under which services, including but not limited to clinical or administrative services are provided by a Provider (as defined below) to another entity.

Provider(s) Defined: Providers of health services or business including, but not limited to, facilities and other entities and individuals with whom RBHS Professionals may enter into agreements to provide goods and services.

- A. Professional Services Agreements must be reviewed and approved by a dean, chief executive officer and the Office of Senior Vice President and General Counsel prior to execution. In most cases, this approval should be evidenced by signatures on an applicable term sheet or approval form. These reviews and approvals must be obtained even if the Agreement complies in all respects with Rutgers and RBHS policies. .
- B. Reviews and approvals also must be obtained for amendments to existing Professional Services Agreements. No payments shall be made prior to obtaining appropriate approvals.

- C. Related Healthcare Entity Professionals shall provide the Provider with a written statement or other documentation substantiating the services that have been rendered prior to each payment. Such written statement (typically a time sheet or faculty time and effort report in a format acceptable to the Related Healthcare Entity shall provide a level of detail of the services normally expected of an outside vendor of professional services. Such statement will include the date of the service and a description of the services rendered. There shall be an articulated expectation that all time shall be documented as and when worked. In addition, the Related Healthcare Entity Professional shall record and report any time that exceeds any applicable monthly cap.
- D. All separate arrangements relating to the provision of professional medical and other services between the Provider and the Related Healthcare Entity Professional should incorporate each other by reference or cross-reference a master list of contracts that is maintained and updated centrally and is available for review upon request.
- E. The provisions in the Professional Services Agreement shall conform to applicable Stark Law exceptions and/or Anti Kickback Statute safe harbors, which set forth parameters regarding contract terms including, but not limited to:
- i. The term of the Professional Services Agreement;
 - ii. The services to be rendered. Services may be detailed in a job description. The Provider shall contract only for services that are reasonable and necessary for the arrangement's commercially reasonable business purposes. The Agreement with a Provider shall not include payment for services that:
 - a. are not required for the operation of the Provider;
 - b. regularly accompany the professional services being rendered by the Related Healthcare Entity Professional;
 - c. are required pursuant to Provider's medical staff bylaws to be rendered by the Related Healthcare Entity Professional without payment;
 - d. involve counseling or promoting activities that violate state or federal law.
 - iii. There are no other arrangements for the provision of professional services, whether oral or written, with the Related Healthcare Entity Professional. Payment may not take into account referrals or other business generated between the parties.
 - iv. The payments pursuant to the Professional Services Agreement represent fair market value for the services to be rendered. Payment methodology and rates must be established at fair market value at the inception of the Professional Services Agreement (See Fair Market Valuation policy) and may not change during the first twelve months of the Professional Services Agreement term. Fair market value should be periodically assessed for compliance purposes.
 - v. In circumstances where the service fees are affected/adjusted to promote a business related benefit, community need or altruistic purpose, the Provider must document and justify the business related benefit, community need or other rationale for the services being requested in the Agreement.
- F. Commitments under the terms of the Agreement should not be made until written approvals have been obtained from a dean, chief executive officer, and the Office of the Senior Vice President and General Counsel. Upon successful completion of negotiations, the Agreement shall be executed in accordance with Rutgers Signatory Authority policy. The Agreement must be signed by duly authorized signatories of each party before any services are provided and before any payments are made and received.

- G. To the extent the Professional Services Agreement is a Focus Arrangement, as such is defined under the Corporate Integrity Agreement between UMDNJ and the Department of Health and Human Services Office of Inspector General, dated September 25, 2009 as amended by a Letter Agreement, UMDNJ-Rutgers University dated 5/1/2013 the Focus Arrangements Database Policy and Focus Arrangements Approval Procedure apply and must be followed.
- H. The Office of the Senior Vice President and General Counsel will ensure that fair market value documentation is attached to the Professional Services Agreement, and that the Professional Services Agreement satisfies the requirements of state and federal law. A copy of this documentation will be maintained with the Professional Services Agreement.
- I. The RBHS Office of Ethics, Compliance and Corporate Integrity will educate responsible parties on the laws, regulations and policies applicable to Professional Services Agreements and will monitor and review such Professional Services Agreements; review the reasonableness of the methodology employed to establish the fair market value that is attached to the Professional Services Agreement; evaluate the Professional Services Agreement's compliance with applicable state and federal law; and assist the responsible dean or chief executive officer with remediating such Professional Services Agreements when potential violations of this Policy are detected.