



The Arc Mid-Hudson  
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**POLICY STATEMENT**

Topic: Contractual/Financial Arrangements with Physicians \_\_\_\_\_ Date Effective: 9/1/2021 \_\_\_\_\_

Revised  New Section: Corporate Compliance Number: 10.22

Date: 3/13/2023 Approved by: Jemme

**POLICY**

To help meet the goals of The Arc Mid-Hudson (“Arc Mid-Hudson”) and to provide the best services to the individuals it supports, Arc Mid-Hudson may from time to time enter into financial arrangements with physicians. If a physician is also a source of referrals of clients to Arc Mid-Hudson certain laws may regulate the relationship. The Arc Mid-Hudson has established this Policy to ensure that any such contractual/financial arrangements are structured in compliance with relevant federal and state laws, fulfill the mission of Arc Mid-Hudson and are in the best interests of the Agency and the people it supports. This Policy addresses three categories of potential financial relationships with physicians who also act as referral sources: (i) employment agreements; (ii) personal services agreements; and (iii) equipment and space rental arrangements.

**SCOPE**

This Policy applies to all physician: (i) employment agreements; (ii) personal services agreements; and (iii) equipment and space rental arrangements between Arc Mid-Hudson and a physician or physician group if the physician is a source of referrals. If Arc Mid-Hudson desires to enter into an arrangement with such a physician that is not specifically authorized by this Policy, prior written approval must be obtained from the Compliance Officer.

## PROCEDURE

### **A. General Principles**

1. The Arc Mid-Hudson shall inform and educate personnel who are involved with physician financial arrangements regarding this Policy through the Corporate Compliance Program mandatory training requirements.
2. If an arrangement is initiated by Arc Mid-Hudson, the Compliance Officer must review the arrangement (and any corresponding written or verbal offers or arrangements) before the arrangement is discussed with a physician. All physician-initiated proposals for financial arrangements with Arc Mid-Hudson must be presented to and approved by the Compliance Officer before any binding commitments are made. In no event shall any amounts be paid to any physician or physician group except pursuant to a signed written agreement that has been reviewed and approved in accordance with this Policy.
3. All arrangements must be in writing and must be presented to the Compliance Officer for review prior to execution. The Compliance officer, at their discretion, may submit any such agreement to internal or external legal counsel for review. Under no circumstances are Arc Mid-Hudson's funds or resources to be paid or provided to any physician who is a referral source pursuant to an oral agreement or a written agreement that has not been reviewed by the Compliance Officer.
4. All arrangements must be undertaken without regard to the value or volume of physician referrals and must not include any intention to induce referrals.

### **B. Employment Agreements**

It is not our policy to hire physicians as employees. As such, there will be no employment agreements with physicians.

### **C. Personal Service Agreements**

1. The Arc Mid-Hudson may wish to enter into contractual arrangements with physicians. Such arrangements could include contracts for services as a Medical Director or consultant. Such arrangements are referred to as "Independent Contractor Agreements," and they require compliance with this Policy as well as all Human Resources and Finance Department policies.
2. All Independent Contractor Agreements with physicians must be approved by the Compliance Officer pursuant to Section A of this Policy and must meet the following requirements:

- a) The agreement must be in writing and signed by the parties;

Name of Document: Contractual/Financial Arrangements with Physicians 10.22

Date last updated: 3/13/2023

Updated by: T.Blair

- b) The agreement must specify with particularity the services to be provided and cover all the services provided by the physician to Arc Mid-Hudson;
  - c) If the agreement provides for services on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement must specify exactly the schedule of such intervals, their precise length, and the exact charge for such intervals. The only exception to this requirement is for agreements for Medical Director services providing for compensation on an hourly basis; for these Medical Director agreements, time records must be kept, and the physician must submit invoices in order to receive payment for services rendered;
  - d) The agreement must have a term of at least one year, subject to Section C.5., below;
  - e) The agreement must provide the maximum compensation paid to the physician over the term of the agreement, except in the case of per-hour compensation arrangements for Medical Director Services described in Section C.2.c., above. Compensation must be set in advance and be consistent with fair market value in an arms-length transaction as determined by the analysis completed pursuant to Section A of this Policy;
  - f) Compensation must not be determined or modified in a manner that takes into account the volume or value of any referrals or other business generated between Arc Mid-Hudson and the physician;
  - g) The services performed under the agreement must not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law; and
  - h) The maximum services contracted for must not exceed those which are reasonably necessary to accomplish the commercially reasonable business purpose of the services, and the amount of hours worked must fall within the maximum amount of allowable hours set forth in the Independent Contractors Agreement.
3. The Finance Department or designee shall be responsible for conducting a determination of whether the compensation included in an Independent Contractor Agreement is consistent with the fair market value for the services being provided under the agreement. Amounts may vary depending upon the particularities of the physician's education, expertise, experience and geographic location. A written assessment of the determination that the compensation is consistent with fair market value, and any relevant supporting documentation, should be kept on file by the Compliance Officer. Fair market value shall be supported by an independent determination of fair market value or by reference to an industry-recognized benchmark.
4. After review by the Compliance Officer in consultation with the Chief of Legal Affairs, the Independent Contractor Agreement may be approved and executed by the Chief Clinical Officer.

Name of Document: Contractual/Financial Arrangements with Physicians 10.22

Date last updated: 3/13/2023

Updated by: T.Blair

5. If the term of the agreement is for less than one year or if the agreement is terminated with or without cause prior to the end of the first year of the agreement, then the parties may not enter into a similar agreement until the one-year term has passed.
6. The Finance Department shall be responsible for maintaining the fully executed copies of the Independent Contractor Agreements. A copy shall also be sent to the Compliance Officer.

#### **D. Equipment and Space Rental Arrangements.**

1. The Arc Mid-Hudson has determined that it may wish to enter into lease agreements with certain physicians whereby these physicians lease either office space or equipment from Arc Mid-Hudson. Such arrangements are referred to as “lease agreements” or “rental agreements,” and they require compliance with this Policy.
2. All lease agreements with referring physicians must be approved by the Compliance Office pursuant to Section A of this Policy and must meet the following requirements:
  - a) The agreement must be in writing and signed by the parties;
  - b) The agreement must specify with particularity the equipment / space covered; if the lease is intended to provide the lessee with access to the equipment / space for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease must specify exactly the schedule of such intervals, their precise length, and the exact rent for such intervals;
  - c) The agreement must have a term of at least one year, subject to Section D.5., below;
  - d) The equipment / space must be used exclusively by the physician and, while in use by the physician, cannot be shared or used by Arc Mid-Hudson or any person or entity related to Arc Mid-Hudson;
  - e) The agreement must provide for aggregate compensation paid over the term of the agreement, set in advance, and consistent with fair market value in an arms-length transaction as determined by the analysis completed pursuant to Section D.3. of this Policy;
  - f) Compensation must not be determined or modified in a manner that takes into account the volume or value of any referrals or other business generated between Arc Mid-Hudson and the physician;
  - g) The lease must be commercially reasonable even if no referrals were made between Arc Mid-Hudson and the physician;
  - h) The lease may not provide for services to be performed under the agreement that involve the counseling or promotion of a business arrangement or the activity that violates any state or federal law; and
  - i) The aggregate equipment / space leased may not exceed that which is reasonable and necessary for the legitimate business purposes of the lease and

Name of Document: Contractual/Financial Arrangements with Physicians 10.22

Date last updated: 3/13/2023

Updated by: T.Blair

the lease must set out all of the equipment / space leased between the physician and Arc Mid-Hudson.

3. The Finance Department or designee shall determine whether the payments made under the lease agreement are consistent with the fair market value for the office space or equipment being provided under the agreement. For purposes of determining the fair market value of space rentals, fair market value means the value of rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (Arc Mid-Hudson or the physician) would attribute to the property as a result of its proximity or convenience to sources of referrals. For purposes of determining the fair market value of equipment, fair market value means the value of equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (Arc Mid-Hudson or the physician) would attribute to the equipment as of result of its proximity or convenience to sources of referrals. A written assessment of the determination that the compensation is consistent with fair market value must be kept on file by the Corporate Compliance Office.
4. After review by the Chief of Legal Affairs and the Compliance Officer, the lease agreements may be approved and executed by The Chief Clinical Officer.
5. If the term is for less than one year or if the agreement is terminated with or without cause prior to the end of the first year of the agreement, then the parties may not enter into a similar agreement until the one-year term has passed.
6. The Finance Department shall be responsible for maintaining the fully executed copies of the lease agreements. A copy shall also be sent to the Compliance Officer.

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