



POLICY TITLE: Potential Referral Sources	SYSTEM POLICY AND PROCEDURE MANUAL
POLICY #: 800.12	CATEGORY: Compliance and Ethics
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Prepared by: Office of Corporate Compliance	Notations:

GENERAL STATEMENT of PURPOSE

The purpose of this policy is to ensure that the process for evaluating and approving agreements for professional services and other business arrangements between the hospitals of Northwell Health, Inc. (“Northwell”) and Potential Referral Sources (as hereinafter defined) supports the compensation philosophy of the Board of Trustees Committee and complies with applicable federal and state laws.

The Board of Trustees Committee has charged management with ensuring that compensation to Potential Referral Sources aligns with the following guiding principles of the compensation philosophy. Compensation to Potential Referral Sources will:

1. Encourage the highest quality of care possible for the patients of Northwell.
2. Comply with applicable state and federal laws.
3. Support the growing community needs within the communities Northwell serves.
4. Recognize the evolving nature of health care reform and reimbursement in the methodologies used to develop compensation programs.

POLICY

Employment, independent contractor, and other compensation arrangements between Northwell and Potential Referral Sources shall be commercially reasonable, result from arm’s-length negotiations, and be consistent with Fair Market Value. In the event a Northwell Physician is offered compensation that is contingent upon the achievement of certain performance measures, those performance measures shall be structured to be consistent with the promotion of quality medical care.

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Health; faculty and students of the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell conducting research on behalf of the Zucker School of Medicine on or at any Northwell Health facility; and the faculty and students of the Hofstra Northwell School of Graduate Nursing and Physician Assistant Studies.

DEFINITIONS

Board of Trustees Committee – The Compensation Committee of the Board of Trustees. The members of the Board of Trustees Committee shall include only disinterested individuals who have no conflict of interest with respect to the proposed arrangement.

Board of Trustees Sub-Committee – A sub-committee on physician compensation of the Board of Trustees Committee.

Clinical Physician – A Clinical Physician who provides any clinical services either within or outside the scope of his or her employment or engagement by Northwell and who is a licensed or registered (i) doctor of allopathic medicine or osteopathy, (ii) a doctor of dental surgery or dental medicine, (iii) a doctor of podiatric medicine, (iv) a doctor of optometry, or (v) a chiropractor.

Clinical Disqualified Person – A Disqualified Person who is a Clinical Physician.

Compensation & Contracting Committee – A committee comprised of the Chief Medical Officer of Northwell, the Senior Vice President & Chief Human Resources Officer, the Senior Vice President & Chief Legal Officer, the Senior Vice President & Chief Corporate Compliance Officer, the Senior Vice President of Ambulatory Strategy and Business Development, and the Senior Vice President of Ambulatory Services.

Compensation & Contracting Services – A Northwell business group managing and coordinating compensation and contracting between Northwell and Potential Referral Sources.

Designated Health Services – Designated Health Services include 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.

Disqualified Person – A Disqualified Person is any individual who was at any time during the 5-year period up to and including the date of proposed employment or engagement, or who shall be after the date of proposed employment or engagement, in a position to exercise substantial influence over the affairs of the organization. For the purposes of this policy, such Disqualified Persons may include, but are not limited to, Trustees who receive any

compensation from Northwell, Officers (defined as Executive Vice Presidents, Senior Vice Presidents and above), Regional Executive Directors, Hospital Executive Directors and Clinical Service Line Senior Vice Presidents, Hofstra Northwell School of Medicine Chairs and Substantial Contributors (as hereinafter defined). Department Chairs, Executive Directors and other individuals also may be Disqualified Persons depending on whether they are in a position to exercise such substantial influence, which is a factual determination made on a case-by-case basis. Also included in the definition are the following family members of such persons: spouses, siblings (by whole or half blood), spouses of siblings, ancestors, children (including legally adopted children), grandchildren, great grandchildren and the spouses of children, grandchildren and great grandchildren.

Fair Market Value – Fair Market Value compensation is the compensation that would result from *bona fide* bargaining between well-informed parties to an agreement, neither of whom is compelled to buy or sell, and who are not otherwise in a position to generate business for each other. Usually, Fair Market Value compensation is that which has been included in *bona fide* agreements with comparable terms at the time of the agreement, where the compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals between the parties.

Family Member – A Family Member is any of the following family members of a Potential Referral Source: spouse; parent, child, or sibling; stepparent, stepchild, or stepsibling; parent-in-law, child-in-law, or sibling-in-law; grandparent or grandchild; and grandparent's or grandchild's spouse.

Northwell Physician – A Physician who is employed by a Northwell Hospital on a full-time, part-time or per diem basis.

Physician – A Physician is a:

- (a) licensed or registered:
 - (i) doctor of allopathic medicine or osteopathy,
 - (ii) doctor of dental surgery or dental medicine,
 - (iii) doctor of podiatric medicine,
 - (iv) doctor of optometry,
 - (v) chiropractor; or
- (b) professional corporation owned or controlled by one or more persons described in (a).

Potential Referral Sources – A Physician, to the extent that any such individual/entity is in a position to make a referral to Northwell or direct another person or entity to make such a referral to Northwell, or receive such a referral from Northwell. For the purposes of this policy, a Potential Referral Source also includes a Family Member (compensation arrangements with such individuals shall be developed in accordance with the procedure set forth below). For the purposes of this policy, a Potential Referral Source shall include a Clinical Disqualified Person as defined in the Corporate Human Resources' Disqualified Persons Policy.

Professional Services Agreement – A Professional Services Agreement is any agreement for professional services between Northwell and Potential Referral Sources, including, but not limited to: (a) full-time employment agreements, (b) part-time employment agreements, (c) administrative employment agreements, (d) per diem employment agreements, (e) on-call agreements, (f) clinical, administrative and teaching services agreements, and (g) leased employee agreements.

Quorum – A quorum of the Compensation & Contracting Committee shall consist of the written approval of the Senior Vice President & Chief Human Resources Officer, the Senior Vice President & Chief Legal Officer and the Senior Vice President of Ambulatory Strategy and Business Development.

Service Line SVP – The Senior Vice President of a Northwell clinical service line.

Space/Equipment Agreements – A Space/Equipment Agreement is any agreement relating to the lease, sublease, licensing of space or the sale of equipment between Northwell and Potential Referral Sources, including, but not limited to (a) leases, (b) subleases, (c) sessional license agreements, (d) assignments of leases, subleases and license agreements and (e) bills of sale.

Substantial Contributor – A Substantial Contributor is any person who contributed or bequeathed an aggregate amount of more than \$5,000 to a Northwell Hospital, if such amount is more than two percent (2%) of the total contributions and bequests received by such Northwell Hospital before the close of the taxable year of such Northwell Hospital in which the contribution or request is received by such Northwell Hospital from such person.

Total Compensation – Total Compensation includes all compensation provided by Northwell to a Potential Referral Source or all compensation provided by a Potential Referral Source to Northwell, including but not limited to salary, incentive compensation, bonuses and benefits; provided, however, the Fair Market Value determination will analyze benefits to the extent compensation in the applicable external benchmark surveys incorporates benefits or the applicable formal valuation opinion addresses benefits. If a Potential Referral Source has more than one agreement for the provision of professional services with Northwell, Total Compensation includes the aggregate compensation paid pursuant to all agreements. If a Potential Referral Source has Professional Services Agreements and Space/Equipment Agreements, the compensation for the Space/Equipment Agreements shall be separately reviewed by Ambulatory Services and/or Physical Assets for fair market value and commercial reasonableness.

PROCEDURE

I. PROCEDURES FOR PROFESSIONAL SERVICES AGREEMENTS

A. Arrangements with Independent Contractors

If Northwell is engaging a Potential Referral Source as an independent contractor to provide services, or the Potential Referral Source is engaging Northwell to provide services as

an independent contractor, Northwell shall not (a) permit a Potential Referral Source to provide services, (b) provide services to a Potential Referral Source, (c) make a payment to a Potential Referral Source, or (d) accept payment from a Potential Referral Source prior to the full execution of a final written agreement among the applicable Hospital or officer of the captive professional corporation, if applicable, Northwell and Potential Referral Source.

Arrangements between Northwell and Potential Referral Sources engaged as independent contractors shall have a written agreement setting forth the terms and conditions of such arrangement. No written agreement engaging a Potential Referral Source as an independent contractor shall be dated prior to the date on which it is executed by the parties.

B. Arrangements with Employees

Arrangements between Northwell and Potential Referral Sources for employment by Northwell should have a written agreement setting forth the terms and conditions of such arrangement. Such written agreement should be dated prior to the date on which it is executed by the parties; however, the foregoing shall not preclude such an agreement from specifying an effective date earlier than the execution date. The prior approval of the Business Development SVP is required for any employment agreement with a Northwell Physician specifying an effective date earlier than the execution date.

C. Written Agreements

All written agreements with Potential Referral Sources shall be prepared by Compensation & Contracting Services. All such written agreements shall be reviewed by Human Resources for Fair Market Value and supported by commercially reasonable business justifications. Such agreement shall be signed by the Potential Referral Source, the Business Development SVP on behalf of Northwell, the Service Line SVP or Medical School Chair, and an officer of the captive professional corporation, if applicable. An original copy of all agreements with a Potential Referral Source shall be maintained in Human Resources. Electronic access to copies of these signed contracts shall be provided to Human Resources, Office of Legal Affairs and Office of Corporate Compliance.

D. Commercial Reasonableness Assessment

Compensation paid by Northwell to all Potential Referral Sources and received by Northwell from 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 Business Development SVP.

If Northwell is employing a Potential Referral Source as an employee to provide services or if Northwell is engaging a Potential Referral Source as an independent contractor to provide services, one or more commercially reasonable business justifications shall be documented prior to the employment of any Potential Referral Source as an employee or engagement of any Potential Referral Source as an independent contractor. Commercially reasonable business justifications may include, but are not limited to, the following:

1. Fulfills Northwell mission;
2. Fulfills community needs;
3. Replacement for an existing position;
4. New budgeted position that is necessary to satisfy Northwell's need for clinical services, administrative services and/or teaching services.

If the Potential Referral Source is engaging Northwell to provide the services of an employed Northwell Physician as an independent contractor to the Potential Referral Source, one or more commercially reasonable business justifications shall be documented prior to such engagement. Commercially reasonable business justifications may include, but are not limited to, the following:

1. Northwell Physician is underutilized at Northwell facilities;
2. The Potential Referral Source has specifically requested a specific Northwell Physician based on their prior clinical relationship;
3. Northwell Physician would gain expertise in providing clinical services to a different patient population than he or she customarily treats as an employee of Northwell.
4. Northwell Physician would provide services to an underserved population.

In addition, the Business Development SVP may also utilize Northwell internal equity benchmarks to justify whether the proposed arrangement with a Potential Referral Source is commercially reasonable.

E. Fair Market Value

Compensation paid by Northwell to all Potential Referral Sources and received by Northwell from all Potential Referral Sources shall be consistent with Fair Market Value. Fair Market Value shall be determined and documented pursuant to the following procedure and prior to the execution of final documents evidencing the arrangement between Northwell and the Potential Referral Source.

First, an appropriate compensation model that is consistent with the compensation philosophy of the Board of Trustees Committee and Northwell's business purposes in entering the arrangement shall be selected and documented.

Except for productivity based incentive compensation to employees on the basis of their personally performed services and similar incentive compensation programs for which there is an exception under the federal Ethics in Patient Referrals Act, also known as the Stark Law (42 U.S.C §1395nn), compensation shall not be determined in any manner that takes into account the value or volume of referrals or other business generated between the parties.

Second, the considerations supporting the determination of the compensation level shall be documented in each Potential Referral Resource's Human Resources file. Determination of the compensation level must take into account either the Total Compensation that Northwell would pay to the Potential Referral Source or the Total Compensation that the Potential Referral Source would pay to Northwell and shall be based upon external benchmarks (described below).

The external benchmarks upon which Fair Market Value determinations shall be based shall align with the compensation arrangement selected and consist of survey data from reliable, industry-recognized independent third-party sources (if available), including but not limited to the following:

1. Medical Group Management Association (MGMA)
2. Sullivan, Cotter & Associates, Inc.
3. American Medical Group Association (AMGA)
4. Association of American Medical Colleges (AAMC)

Conducting an analysis to determine whether the proposed compensation is Fair Market Value based on external benchmarks is the responsibility of Human Resources.

Approval of Compensation

Below the 25th Percentile Approval Process for Part-Time and Per Diem Arrangements

If the Total Compensation to be provided to or by the Potential Referral Source who is employed by a Northwell Hospital on a part-time or per diem basis falls below the 25th percentile of appropriate comparable market data as established by external benchmark surveys, the Business Development SVP may approve proceeding with the proposed arrangement. If the Business Development SVP approves proceeding with the proposed arrangement, the Business Development SVP shall document the assessment.

Between the 25th and 75th Percentile Approval Process

If the Total Compensation to be provided to or by a Potential Referral Source falls between the 25th and the 75th percentile of appropriate comparable market data as established by external benchmark surveys, then the Business Development SVP may approve proceeding with the arrangement. In appropriate circumstances as determined by the Business Development SVP, the arrangement also shall be reviewed by the HR SVP and/or by the Office of Legal Affairs.

Above the 75th Percentile and Clinical Disqualified Person Approval Process

If a proposed arrangement involves (a) a Clinical Disqualified Person, (b) Total Compensation to be provided to or by a Potential Referral Source that falls above the 75th percentile of appropriate comparable market data as established by external benchmark surveys, or (c) any other circumstance as deemed appropriate at the discretion of the Business Development SVP, then the Business Development SVP will submit the proposed arrangement together with all material supporting documentation and a formal valuation opinion obtained from an independent third party consultant for review to the Compensation & Contracting Committee; provided, however, certain exceptions to the foregoing may apply as specifically set forth in the immediately following paragraph. If a Quorum of the Compensation & Contracting Committee approves proceeding with the arrangement, then it shall submit the proposed arrangement for review by the Executive Vice President, Chief Operating Officer. If the Executive Vice President, Chief Operating Officer approves proceeding with the proposed arrangement, then the

arrangement shall be submitted to the Board of Trustees Committee or to the Board of Trustees Sub-Committee for final approval. In reviewing the arrangement, the Board of Trustees Sub-Committee or the Board of Trustees Committee, as the case may be, shall be provided and rely upon all previously prepared supporting documentation and the formal valuation opinion received from the independent third party consultant, inclusive of appropriate comparability data. The basis for the decision of the Board of Trustees Sub-Committee or Board of Trustees Committee shall be fully and contemporaneously documented in the minutes of the meeting.

Except with respect to a Clinical Disqualified Person, if the Total Compensation to be provided to or by a Potential Referral Source falls between the 75th and the 90th percentile of appropriate comparable market data as established by external benchmark surveys and (i) the proposed arrangement includes productivity-based incentive compensation (either based on work relative value units or collections for personally provided services) and the ratio of Total Compensation to productivity falls below the 60th percentile of appropriate comparable market data as established by external benchmark surveys, (ii) the Potential Referral Source devotes eighty percent (80%) or more of his/her full-time efforts to the performance of administrative duties on behalf of a Northwell Hospital, or (iii) the Potential Referral Source is being employed by Northwell as a hospital-based physician pursuant to a compensation model previously approved by the Compensation & Contracting Committee, then a formal valuation opinion obtained from an independent third-party consultant and review by the Compensation & Contracting Committee shall not be required and the Business Development SVP may approve proceeding with the proposed arrangement.

Potential Referral Source Family Member Approval Process

If a proposed arrangement involves a Family Member who is not a Physician, then Human Resources will submit the proposed arrangement together with all material supporting documentation and a Fair Market Value based on appropriate comparable market data as established by external benchmark surveys for review to the HR SVP. The HR SVP shall determine whether to proceed with the proposed arrangement.

Modification

Whenever there is a proposed modification to the compensation or responsibilities of a Potential Referral Source, and prior to the renewal of any compensation arrangement for such an individual, Business Development SVP and Human Resources shall review each such arrangement to ensure that such individual's compensation arrangement is consistent with Fair Market Value and the procedures set forth in this policy. Such modification or renewal shall be subject to review and approval as described above.

II. PROCEDURES FOR SPACE/EQUIPMENT AGREEMENTS

A. Written Agreement

If Northwell is contracting with a Potential Referral Source to provide space or equipment, Northwell shall not permit a Potential Referral Source to provide space or equipment nor payment

to be made to a Potential Referral Source prior to the execution of a final written agreement by the Potential Referral Source and authorized signatory of Northwell.

B. Fair Market Value

Space/Equipment Agreements between Northwell and a Potential Referral Source shall be consistent with Fair Market Value.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

- Ethics in Patient Referrals Act, also known as the Stark Law, 42 U.S.C. § 1395nn
- N.Y. Pub. Health Law § 238 Code of Ethical Conduct
- Federal Anti-kickback statute, 42 U.S.C.A. § 1320a-7b
- Civil Monetary Penalties, 42 U.S.C.A. § 1320a-7a(b)(1)

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES

N/A

ATTACHMENTS

N/A

FORMS

N/A

<u>APPROVAL:</u>	
Northwell Health Policy Committee	7/26/18
System PICG/Clinical Operations Committee	9/6/18

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