

POLICY TITLE: Office Space and Equipment Leases with Physicians and Other Potential Referral Sources	ADMINISTRATIVE POLICY AND PROCEDURE MANUAL
POLICY #: 800.14	CATEGORY: Compliance and Ethics
System Approval Date: 9/15/16	Effective Date: 6/09
Site Implementation Date: 10/28/16	Last Reviewed/Approved: 4/11
Prepared by: Office of Corporate Compliance	Superseded Policy(s)/#/Notations: N/A

GENERAL STATEMENT of PURPOSE

The purpose of this policy is to ensure that Lease Arrangements between Northwell Health and Potential Referral Sources are commercially reasonable, result from an arm’s-length negotiation, and rental payments and other terms are consistent with fair market value.

POLICY

Northwell Health is obligated to comply with the federal Ethics in Patient Referrals Act and related regulations, also known as the Stark Law, and New York’s companion statute. See 42 U.S.C. § 1395nn; 42 C.F.R. §§ 411.350-357 and N.Y. Pub. Health Law § 238-a. The Stark Law prohibits a Practitioner from referring Medicare or Medicaid patients for the provision of Designated Health Services to entities with which the Practitioner, or a Family Member of a Practitioner, has a financial relationship, unless an exception applies.

The procedures described below for the rental of office space and equipment are intended to ensure that such Leases Arrangements are consistent with the requirements set forth in the Stark Law exceptions.

SCOPE

This policy applies to all members of the Northwell Health workforce including, but not limited to: employees, medical staff, volunteers, students, physician office staff, and other persons performing work for or at Northwell Health; faculty and students of the Hofstra Northwell School of Medicine conducting Research on behalf of the School of Medicine on or at any Northwell Health facility; and the faculty and students of the Hofstra Northwell School of Graduate Nursing & Physician Assistant Studies.

DEFINITIONS

Click Fee: Payment based on a unit of service.

Designated Health Services: includes clinical laboratory services; physical therapy, occupational therapy and out-patient 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: 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.

Fair Market Value of Equipment: means the value of equipment for general commercial purposes, and shall not take into account the additional value that either party would attribute to the sources of referrals or business otherwise generated for which payment may be made in whole or in part under the Medicare or Medicaid health care programs.

Fair Market Value of Rental Space: means the value of the rental property for general commercial purposes, and shall not take into account the additional value that either party would attribute to the property as a result of its proximity or convenience to source(s) of referrals or business otherwise generated for which payment may be made in whole or in part under the Medicare or Medicaid health care programs.

Family Member: means any family member and includes, but is not limited to, husband or wife; birth or adoptive parent, child or sibling, stepparent, stepchild, stepbrother, or stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, uncle, aunt, cousin, grandparent or grandchild; and spouse of a grandparent or grandchild.

Lease Arrangement: means an arrangement, including license agreements, pursuant to which a Health System entity enters into a lease, sublease, or license for the use of medical office space or equipment as a lessor or lessee.

Potential Referral Source: 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.

Practitioner: means a licensed or registered doctor of allopathic medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, a nurse, a mid-wife, physician assistant, physical therapist or optometrist.

PROCEDURE/GUIDELINES

All Leases Arrangements between Northwell Health and a Practitioner or other Potential Referral Source shall be reviewed by the Office of Legal Affairs and comply with the following:

1. The terms of the Lease Arrangement shall be set forth in a written lease, which shall be signed by both the lessor and the lessee before the lessee begins occupying the space or using the equipment, and before payments are made, and which shall specify the space/equipment subject to lease; and
2. The term of the Lease Arrangement shall be at least one (1) year, provided that the lease agreement may allow for it to be terminated during the original term, with or without cause, as long as the parties do not enter into another lease for the same space/equipment during the first year of the original term of the agreement; and
3. The rental payments shall:
 - a. be set in advance;
 - b. be consistent with a Fair Market Value, and supported by documentation; and
 - c. not be determined in a manner that reflects the volume or value of referrals or business otherwise generated between the parties; and
4. Per-click arrangements are not preferred but may be permissible under certain limited circumstances if approved by the Office of Legal Affairs; and
5. If the Lease Arrangement contemplates sessional use of the space/equipment, then the lease and/or license agreement shall specify the exact schedule and precise length of the period of use and payment for each time period; and
6. The space/equipment leased or rented shall not exceed that which is reasonable and necessary for the commercially reasonable business purposes of the tenant/lessee; and
7. The space/equipment shall be used exclusively by the tenant/lessee when being used by the tenant/lessee, except that space leases can provide for prorated payments and shared use of common areas; and
8. The terms of the Lease Arrangement would be commercially reasonable even if no referrals were made between the parties; and
9. The lease may allow a month-to-month holdover tenancy for up to six (6) months, if it is on the same terms and conditions as the prior one-year agreement, although the rent may include a premium during the holdover period if the agreement in effect immediately prior to the holdover states the premium amount to be charged; and
10. If the lessor provides improvements to the space for the benefit of a lessee who is a Practitioner, and such improvements are unlikely to be chargeable to a subsequent tenant, then the Lease Arrangement should allocate the entire cost of the improvements

to the lessee. Improvements the lessor reasonably expects would be chargeable to subsequent tenants may be allocated over the expected useful life of the improvements.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

42 U.S.C. § 1395nn
42 C.F.R. § 411.357
N.Y. Pub. Health Law § 238-a
Northwell Health Policy #800.04 - Gifts and Interactions with Industry
Northwell Health Policy #800.10 – Business Courtesies to Potential Referral Sources
Northwell Health Policy #800.12 – Potential Referral Sources
Northwell Health Policy #800.16 – Professional Courtesies
Northwell Health Code of Ethical Conduct

CLINICAL REFERENCES

N/A

FORMS

N/A

ATTACHMENTS

N/A

<u>APPROVAL:</u>	
System Administrative P&P Committee	8/25/16
System PICG /Clinical Operations Committee	9/15/16

Standardized Versioning History:

*=Administrative Policy Committee Approval; ** =PICG/Clinical Operations Committee Approval

6/9/09* 6/25/09**

4/12/11* 4/28/11**