

DEPARTMENT: Legal	POLICY DESCRIPTION: Marketing Physicians
PAGE: 1 of 5	REPLACES POLICY DATED: 9/15/98, 9/1/00, 6/1/02 (CO.001), 3/1/06, 5/1/06, 11/15/06, 5/1/07; 3/15/08
EFFECTIVE DATE: June 1, 2009	REFERENCE NUMBER: LL.023
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: All Company-affiliated facilities including, but not limited to, hospitals, ambulatory surgery centers, home health agencies, physician practices, service centers and all Corporate Departments, Groups and Divisions.

PURPOSE: To establish parameters for marketing and advertising related to non-employed physicians and their practices and to provide guidelines for employees whose responsibilities include such marketing and advertising.

This policy does not establish parameters for marketing and advertising related to physicians employed directly by the marketing entity or its corporate owner. Those practices may be marketed and advertised just as other services of the entity are marketed and advertised.

POLICY: A Company-affiliated facility will only pay the entire cost of advertising that mentions non-employed physicians, or provides marketing services to non-employed physicians when one of the following is true: (i) a contract specifying the services to be provided is signed by the facility providing the marketing services and the physician(s) agrees to pay fair market value for the services he/she receives, or (ii) the advertisement or marketing primarily benefits the community or the Company-affiliated facility.

Facilities may request that non-employed physicians speak at educational events if:

- the speakers are selected in an objective and rotating manner,
- the entity administration ultimately determines the subject matter and time, though any physician or non-physician may submit suggestions, **and**
- the entity is the event host, and is identified in all advertisements as the event host.

When a Company-affiliated entity that does not have its own medical staff (e.g., some home health agencies) plans to advertise an entity other than itself, then the advertising entity must first consult with its Operations Counsel.

Definition:

Entity, solely for purposes of this policy and any attachments thereto, includes all Company-affiliated facilities including, but not limited to, hospitals, ambulatory centers, home health agencies, service centers, outpatient imaging centers, HCAPS practices, and all Corporate Departments, Divisions, Groups and Markets.

Non-Employed Physician, for purposes of this policy, is a physician who is not directly employed by the facility providing the advertising. An individual physician who enters into an employment agreement with an HCA Physician Services practice, which is a subsidiary or division of the corporate owner of the facility, is an employed physician of the facility for purposes of this policy.

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PROCEDURE: A Company-affiliated entity may not pay to advertise or promote a non-employed physician, unless a written agreement is executed in advance by both parties and the physician or physician practice pays the entity fair market value for the services. An advertisement or promotion may include communication through any medium, including but not limited to print, video, or speaking events.

1. Advertisements for Employed Physicians.

A Company-affiliated entity (e.g., an HCA facility) may pay for an advertisement of another Company-affiliated entity (e.g., an HCAPS practice) so long as the two entities are owned by the same corporate owner. For example, a Hospital's marketing personnel may arrange advertising for an HCAPS practice if that practice is a subsidiary or division of the Hospital's corporate owner. The content of the advertisement is not limited. The advertisement may include biographical information, the practice location, practice phone number and images of the physician or practice. Any decision to pay for an advertisement or marketing for an employed practice shall not be based on the volume or value of referrals generated or expected from the advertised physician(s) or their practice.

2. Advertisements with no contract that promote the entity or its services.

For the purposes of this policy, an advertisement which primarily promotes the entity or services or procedures offered by an entity, or community health awareness events does not specifically promote the physician or a private practice. In such cases, and even if the medical practice is not a subsidiary or division of the entity's corporate owner, the Company-affiliated entity may still pay for the advertisement, even if it includes the image, name and specialty of a physician. The physician is not required to sign a contract or to make any payments in such cases. The advertisement should not include the phone number of the physician or physician practice.

The entity must consider all qualified, non-employed physicians for participation in an advertisement, and must use an objective selection process. The selection process should emphasize variety where certain physicians have already participated in previous such advertisements. In no event should a physician's referral value or volume influence the entity's decision whether to include that physician in the advertisement.

Entities must adhere to a consistent method of determining whether an advertisement primarily benefits the entity, a physician(s), or a private practice. The following guidelines should be used to determine whether an advertisement primarily benefits the entity or the physician.

- It always benefits the *entity* if (i) the only mention of any physician(s) is no more than a name, title and image, (ii) those items are not the majority of the advertisement, and (iii) the advertisement is intended to promote the entity or community, not the physician.

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- It usually primarily benefits the *physician* if the *majority* of the advertisement references the physician or the physician group, including any image, contact information and credentials.
- It usually primarily benefits the *physician* if the physician's educational history or work history is included in the advertisement, unless the advertisement is a new physician announcement, as further explained below.
- It may primarily benefit the *physician* if the physician's office address is included in the advertisement. Further analysis and context of the address would have to be considered.

If the Company-affiliated entity and a non-employed physician jointly pay for the advertisement and/or marketing, a proportion of the advertisement equal to the proportion of the payment made by the entity of the total cost of the advertisement must primarily benefit the entity.

No advertisement funded by a Company-affiliated entity may include specific language that instructs the reader to call a particular physician, or provide directions to a physician's office, except for those advertisements paid for by the corporate owner of a medical practice subsidiary or division.

Specific examples of circumstances where entities may advertise for a physician or physician practice without a contract and payment for the services follow:

- Web Site Links.** A Company-affiliated entity may provide a link from its web page to a page of information regarding a particular physician (and may provide assistance in establishing such a page) that may include detailed information about the physician's practice and background information, provided the entity uses a format furnished by Corporate Information and Technology Services (IT&S) which has been approved by the Vice President for Legal Operations.
- Directories.** A Company-affiliated entity may publish and distribute for the community a listing of its medical staff and other physicians credentialed and practicing at the entity. Distribution may be through a website developed and owned by the entity, through conventional mail systems to current and new residents in the market area, or through other deliveries to members of the medical staff, directors and administrators. Such listings may include the name, office address, office phone number, education, work history, awards, languages, gender, specialties and managed care plan(s) of each physician listed.
- Recruiting Agreements.** A Company-affiliated entity may purchase advertisements for newly recruited physicians if the advertising expenditure is consistent with the terms of a current, written marketing addendum to a physician recruiting agreement with the physician and consistent with LL.003, Physician Recruiting Agreements. Any

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advertisements purchased through this method should be documented by the invoice from the physician, evidence that the physician paid the invoice and documentation of the reimbursement made by the facility.

- d. **New Physician Announcements.** A Company-affiliated entity may send formal announcements to its medical staff, the community, or other interested physicians when new physicians affiliate with the entity. It should be clearly apparent to the average reader that the purpose of such announcements is to benefit the entity and the community by notifying them of new physician resources available to assist in patient care. Such announcements should be limited in content to the physician's name, specialty, office address and phone number, and educational/work history. In addition, the announcement should not be published with such frequency that it appears to benefit the physician more than the entity. The size, frequency, content and medium of the announcement should be consistent for all new physicians.
- e. **Entity-Sponsored Speaking Events, including CME Programs.** A Company-affiliated entity may sponsor community educational events, community informational sessions, and entity promotional events that include employed as well as non-employed physicians as authorities on particular areas of discussion. In promoting such events, the entity may refer to a presenting physician's or physician group's name and practice area, but shall identify the entity as the sponsor.

The subject matter, presenter(s), date, location and frequency of the event shall be determined by the entity administration and not due to a request by a physician(s). The entity shall select the speaker from among those candidates who appear most highly qualified to educate in the selected area. Where the entity hosts the same event repeatedly, the same physician(s) should not speak on each occasion, unless they are the only qualified physicians on the medical staff or practicing at the entity. Instead, the opportunity to speak must be extended to all qualified privileged practitioners, though preference may be made for physicians employed by an entity's medical practice subsidiary or division. The entity should select subject matter intended to familiarize the community with the entity, its procedures and services, or a health matter of current concern in the community.

In addition, so long as the arrangement is consistent with the General Statement on Agreements with Referral Sources, Approval Process, Policy, LL.001, and the Professional Services Agreements Policy, LL.002, an entity may reimburse expenses of a physician who participates in an entity-sponsored education or similar program which focuses on, and is of primary benefit to, the entity or the community.

Any compensation paid to the physician to reimburse expenses incurred in participating in the event must be made pursuant to a written agreement that is signed by both the

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speaker and the facility CEO or other approved delegate before any compensable services are provided under the agreement and before any payment is made, unless approved in advanced by Operations Counsel. Any additional compensation made in exchange for speaking at the event must be authorized in advance by the entity CEO, or that person's designee, and the compensation must be within fair market value. A sample form, Physician Speaker Agreement, is attached for situations where the speaker is compensated as reimbursement for expenses and/or additional compensation, and no other applicable written agreement exists between the entity and the physician. For example, this form should be used to pay any compensation or reimburse expenses for physicians speaking at CME programs. The Physician Expense Reimbursement Agreement (PERA) is not the preferred form for such payments.

If a speaker receives a request for further information on the topic, the speaker should suggest that the individual making the request contact the entity for the information. The Company employee recruiting the physician to speak on its behalf must inform the physician-speaker(s) that the physician-speaker(s) may not solicit audience members to his or her private practice. Affirmative marketing, such as giving a business card to all members of the audience or scheduling physician office appointments during or immediately following the presentation, is solicitation to a private practice. However, the physician may provide business cards to attendees upon their individual request for contact information; such an act on request will not be considered solicitation. In addition, facilities may provide attendees with contact information for the speaker(s) at an event, so long as the information is only provided at the event, only to attendees, and includes contact information for all speakers at the event. Contact information should be limited to office phone number, fax number, address, email, and website. Any work or educational history included in materials provided to the attendees must be relevant to the topic of the presentation. Brochures that are sent in advance of the event may contain the name(s) of presenting physician(s), but may not contain additional contact information.

REFERENCES:

42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn;
60 Fed. Reg. 41914 (Aug. 14, 1995); 63 Fed. Reg. 1659 (Jan. 9, 1998)
General Statement on Agreements with Referral Sources, Approval Process, Policy, [LL.001](#)
Professional Services Agreements Policy, [LL.002](#)
Physician Recruiting Agreements Policy, [LL.003](#)
Physician Referral Services Policy, [LL.013](#)

Sample Physician Speaker Agreement

THIS PHYSICIAN SPEAKER AGREEMENT is entered into by and between _____, d/b/a _____ ("Entity") and _____ ("Speaker").

Whereas, Entity is in need of professional services for community education programs and events provided to the interested individuals in Entity's service area;

Whereas, Speaker is a physician duly qualified to speak and present regarding the topic noted in section 1.2 below;

Therefore, in consideration of the mutual agreements set out below, the parties agree as follows:

1. **Speaker's Duties.** Speaker agrees to the following in providing professional speaking services to Entity:

- 1.1. Speak and present at the _____ (name of Presentation) Presentation (the "Presentation") offered by Entity on _____ (date(s) and time(s) of presentation) at _____ (location of presentation) on the topic of _____ (name of topic).
- 1.2. Comply with all State and Federal laws, including the prohibitions against fraud and abuse in connection with the Medicare and Medicaid programs. In so doing, Speaker agrees not to directly solicit program participants for referrals to Speaker's private practice.
- 1.3. Be duly licensed to practice medicine in the State of _____, be certified by an AMA/AOA recognized Board in the specialty of _____ (if applicable), and be accredited or otherwise qualified, as determined by Entity, to speak and present at the Presentation.
- 1.4. Other Services: _____ (e.g., provide handouts, participate in panel discussion)

_____.

2. **Other Affiliations or Arrangements.** Entity strives to insure balance, independence, objectivity, and scientific rigor in all its individually sponsored or jointly sponsored educational activities. All speakers participating in a Presentation are required to disclose to the Entity and the audience any significant financial interest or other relationship currently in effect, or in effect within the last twelve (12) months, with: (1) the manufacturer(s) of any commercial product(s) and/or provider(s) of commercial services discussed in an educational presentation; and (2) any commercial or non-commercial supporters of the Presentation. (Significant financial interest or other relationship includes, but is not limited to, grants, research support, employment, independent contractor relationship, consulting, major stockholder, member of speakers bureau, etc.) The intent of this disclosure is not to prevent a speaker with a significant financial or other relationship from making a presentation, but rather to provide the audience with information on which they can make their own judgments.

It remains for the Entity and audience to determine whether the speaker's interests or relationships may influence the presentation with regard to exposition or conclusion.

- 2.1. Speaker agrees to inform Entity of any affiliation or arrangement that qualifies as a significant financial interest or may present a conflict of interest to Speaker's performance of services under this Agreement.
 - 2.2. At the beginning of the Presentation, Speaker agrees to disclose to the audience any significant financial interest or other arrangement that may be perceived as a conflict of interest. Speaker further agrees to avoid any commercial bias when presenting information about therapeutic products. In the event Speaker discusses or presents an unlabeled use of a commercial product or an investigational use not yet approved for that purpose, then Speaker shall disclose that the product is not labeled for such use or that the product is still under investigation.
 3. **Term.** The term of this Agreement is for the reasonable amount of time needed by Speaker to prepare and make the Presentation on the scheduled date. Speaker may be retained for multiple presentations within a twelve (12) month period provided the compensation and other terms of this Agreement remain the same. This Agreement may be terminated by Entity at any time for any reason or no reason, including if the scheduled Presentation is canceled for any reason.
 4. **Compensation.** The parties agree that Speaker may be compensated an amount not to exceed fair market value for the services provided hereunder (Entity will obtain a valuation for any compensation arrangement in excess of \$150/hour). Speaker shall not bill any individual or entity other than Entity for the services provided by Speaker pursuant to this Agreement. Speaker's sole compensation for the services provided hereunder shall be the following *(check one of the following)*:
 - ☐ The sum of \$_____ per hour, not to exceed a total of _____ hours, for *(check all that apply)*:
 - ☐ Preparation time.
 - ☐ Travel time (if Speaker resides outside of Entity's service area). Travel time is limited to actual travel time or a maximum of eight (8) hours per day.
 - ☐ Presentation time.
 - ☐ Honorarium in the amount of \$_____.
 - ☐ Other: _____.
- Speaker's SSN or TIN: _____.
5. **Reimbursement of Reasonable Expenses.** *(Check if expenses are reimbursed separately from Speaker's compensation)*:

- Subject to the requirements of Section 6.1 of this Agreement, Entity will further reimburse Speaker's reasonable travel, meals, and lodging expenses incurred in connection with the Presentation (travel and lodging must be pre-approved by Entity – please refer to Entity's travel policy as a guideline for determining the reasonableness of expenses).

6. **General Requirements.**

- 6.1. **Time Records and Receipts.** Speaker shall submit complete and accurate time records and receipts documenting all time spent and expenses incurred in providing services pursuant to this Agreement. Such time records and receipts shall be submitted in intervals and on such forms as Entity may reasonably require.
- 6.2. **No Requirement to Refer.** Any payments made by Entity hereunder are fair market value for the services provided and the parties agree that nothing contained herein shall require Speaker to refer or admit patients to, or order any goods or services from, Entity. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct himself/herself/itself in a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 USC § 1320a-7b).
- 6.3. **Access to Records.** As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Speaker shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Speaker is requested to disclose books, documents or records pursuant to this Section for any purpose, Speaker shall notify Entity of the nature and scope of such request, and Speaker shall make available, upon written request of Entity, all such books, documents or records. Speaker shall indemnify and hold harmless Entity if any amount of reimbursement is denied or disallowed because of Speaker's failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If Speaker carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Speaker agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements to 42 USC § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Entity or Speaker by virtue of this Agreement.
- 6.4. **Speaker's Representations and Warranties.** Speaker represents and warrants to Entity that Speaker is not (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) under investigation or otherwise aware of any circumstances which may result in Speaker being excluded from participation in the federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement and Speaker shall immediately notify Entity of any change in the status of the representation and

warranty set forth in this Section. Any breach of this Section shall give Entity the right to terminate this Agreement immediately for cause.

- 6.5. HIPAA. To the extent applicable to this Agreement, Speaker agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160, 162, and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." Speaker agrees to enter into any further agreements as necessary to facilitate compliance with HIPAA.
- 6.6. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements, contracts and understandings, whether written or otherwise, between the parties relating to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. No other understanding regarding the same services provided by this Agreement shall be binding on the parties unless set forth in writing, signed and attached to this Agreement.
- 6.7. Assignment. Speaker shall not assign this Agreement or any interest therein unless Entity agrees in writing to such assignment. This Agreement shall be binding upon Entity and Speaker, as well as their respective successors and (to the extent permitted herein) assigns.
- 6.8. Independent Contractor. Speaker is performing services and duties under this Agreement as an independent contractor and not as an employee, agent, partner of, or joint venturer with Entity. Entity does retain responsibility for the performance of Speaker's services as and to the extent required by law and the accreditation standards applicable to Entity. Such responsibility, however, is limited to establishing the goals and objectives for the Presentation and requiring services to be rendered in a competent, efficient and satisfactory manner in accordance with applicable standards and legal requirements. Speaker shall be responsible for determining the manner in which services are provided and insuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.
- 6.9. Form 1099. If required to do so under applicable law, Entity shall issue an Internal Revenue Service Form 1099 to Speaker for the performance of services under this Agreement.
- 6.10. Governing Law. This Agreement shall be governed by the laws of the state in which Entity is located.
- 6.11. Approvals. Neither this Agreement nor any amendment or modification hereto shall be effective or legally binding upon Entity, or any officer, director, employee or agent thereof, unless and until it has been reviewed and approved in writing by a Senior Vice President of Entity's owner and by Entity's Legal Counsel.

6.12. Other Agreements. The following list and/or the Referral Source Contract Control Log maintained by the Facility constitutes a list of all services furnished by the physician (or an immediate family member of the physician) to the entity as of the date of this Agreement:

Name of Contract Party	Relation to Physician Source of Referrals	Description of Contract	Start of Term	End of Term

6.13. Other Provisions [if none, type in "N/A"]. _____

IN WITNESS WHEREOF, Entity and Speaker have duly executed this Agreement as of the dates set out beneath their respective signatures.

PER HOSPITAL POLICY LL.001, GENERAL STATEMENTS ON AGREEMENTS WITH REFERRAL SOURCES; APPROVAL PROCESS, ET SEQ., PAYMENTS PURSUANT TO THIS AGREEMENT, IF ANY, WILL BE MADE ONLY FOR SERVICES PERFORMED AFTER THE AGREEMENT HAS BEEN SIGNED BY BOTH THE CONTRACTOR AND THE FACILITY. SERVICES PERFORMED PRIOR TO THIS DATE WILL NOT BE COMPENSATED.

ENTITY:

SPEAKER:

 (Entity Name)

 (signature)

 Entity CEO

 (print name)

Its: _____

Date: _____

Date: _____

REQUIRED APPROVALS: For amounts of \$250 or less for any one occasion or \$500 or less in the aggregate for any 12-month period, the Agreement must be signed by the CEO (or designee) of the Entity and the Speaker. For amounts over \$250 for any occasion or \$500 for any 12 month period, the Agreement must be additionally signed by the Corporate Legal Department of the Entity and the Division President.

APPROVED BY:

Operations Counsel

Division/Market President

Date: _____

Date: _____