

PHYSICIAN RELOCATION POLICY

FREQUENTLY ASKED QUESTIONS

January 4, 2005, March 1, 2007, November 1, 2008, October 25, 2010,

July 21, 2011, February 29, 2016

Updated: February 1, 2017

Community Need

1. **Question:** Can the hospital recruit a physician if the community need assessment indicates a net need of less than one full time physician, such as .3 or .7?

Answer: Maybe. The independent consultant's community need report shall indicate whether there is a need for an additional physician in the community. If the consultant's report indicates a net need for a .3, .5, or .7 physician in the hospital's service area, the consultant will make the final determination as to whether there is a need to recruit a physician in the hospital's service area and their findings shall be stated in the community need report.

2. **Question:** Can the hospital recruit a part-time physician?

Answer: Yes. The hospital may recruit a physician who plans to practice on a part-time basis but the level of financial assistance to be provided should be reduced accordingly. For instance, if the physician plans to work only 60% of the time, then the net income guarantee should approximate only 60% of the guarantee amount that a full-time physician would otherwise receive. However, it is not appropriate for a hospital to recruit a physician to practice in the service area on a part-time basis, while continuing to practice outside the service area for the remaining time.

3. **Question:** Can a hospital recruit a hospital based physician, such as an anesthesiologist?

Answer: Yes. However, the hospital must be mindful of the fact that most hospital based agreements provide a physician will automatically lose his/her medical staff membership if the physician is no longer employed by or contracted with the group. This will result in a breach of the relocation agreement and require the physician and/or group to repay the outstanding balance due under the promissory note.

Service Area

4. **Question:** How often can a hospital determine its service area?

Answer: The service area should be determined annually in conjunction with the annual needs study. If there is a substantial change in circumstances during the year which a hospital believes justifies a revision to the service area, it should contact its Operations Counsel. However, recruited physicians will be bound by the service area definition established in their relocation agreement without regard to changes in the service area in the future.

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5. **Question:** Can the hospital recruit a physician if the physician was previously on the hospital's medical staff and the physician moved to a distant city and desires to relocate back to the hospital's service area?

Answer: The hospital may recruit the physician provided that more than three (3) years have elapsed since the physician resigned from the medical staff and moved his/her practice to the distant city, and the physician otherwise meets the eligibility criteria for recruitment.

Financial Assistance

6. **Question:** What are examples of reasonable and ordinary business expenses for purposes of a recruitment arrangement?

Answer:

- Support staff salaries
- Consulting fees (e.g., legal and accounting) associated with the operation of the practice (but not the negotiation of the recruitment arrangement)
- Consulting fees associated with the start-up of the physician's practice up to \$12,000 (limited to solo practitioners)
- Rent
- Interest expense on a loan related to the practice
- Advertising and initial marketing expenses should not be line item expenses in the pro forma used to build the income guarantee. Rather, the hospital may choose to reimburse up to \$10,000 in documented, actual marketing expenses, separate and apart from the income guarantee (limited to solo practitioners)
- Medical supplies
- Non-medical supplies
- Office supplies
- Equipment rentals (operating leases only; but not capital leases)
- Utilities, including telephone, beepers and pagers
- Equipment repair
- Outside tests
- Postage
- CME expenses, including travel, lodging and meals up to \$4,000 for the recruited physician only (excludes spouse)
- Property taxes
- License fees (license fees may be expensed in the month paid or prorated monthly over the term of the licensee fee)
- Malpractice insurance (including expenses associated with a "tail" policy) {**Note:** Malpractice and tail premiums can only be included as line item expenses on the pro forma if those expenses are not otherwise reimbursed by the hospital as a separate benefit. In other words, the malpractice premiums and tail payments should not be "double counted."}
- Incorporation fees up to \$5,000
- Health/disability benefits

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- Payroll taxes (may expense the accrued but not paid payroll taxes for the month since payroll taxes are typically paid on a quarterly basis)
- Any capital expenditure under \$500
- Depreciation on property, plant and equipment, provided depreciation is calculated in accordance with generally accepted accounting principles using the straight line method of depreciation
- Immigration and visa process fees for the relocating physician (may be treated as an Additional Benefit)

Note: For a recruited physician joining an existing practice, only incremental expenses incurred by the existing practice on behalf of the recruited physician can be considered. For example, if the practice had existing space in its medical office for the recruited physician, then the rent associated with the space would not be considered an incremental expense. However, if the practice had to lease an additional 500 square feet for the recruited physician, then the rent associated with this 500 square feet would be considered an incremental expense.

7. **Question:** What are examples of expenses that are not reasonable and necessary for purposes of a recruitment arrangement?

- Answer:**
- Any capital expenditure in excess of \$500, including, but not limited to equipment, furniture or fixtures with a useful life in excess of one year
 - Leasehold improvements
 - Principal payments related to loans associated with the practice
 - Principal and interest on loans not related to the practice (*e.g.*, home improvement loans, student loans, etc.)
 - Costs not pertaining to the daily operations of the relocated physician's practice
 - Country club dues and other entertainment expenditures, including meals
 - Tickets to sporting events, concerts, etc.
 - Physician draws
 - Preparation of individual tax returns
 - Life insurance and retirement plan expenses
 - Rental expenses for equipment/office space owned by another member of the practice
 - Auto expenses, including auto lease expenses
 - Gifts or charitable contributions
 - Other or miscellaneous expenses not documented

The foregoing examples may be reviewed and approved for reimbursement by Operations Counsel where appropriate, such as benefits provided to physicians employed by a faculty practice plan as part of the standard employee compensation program.

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8. **Question:** What type of financial assistance is permitted if a physician purchases services and office space from an existing practice but is not an employee of the practice?

Answer: This will be based on the facts and circumstances of the arrangement. It should be noted that the Stark II Phase II regulations require the recruited physician, the existing practice and the hospital to all execute the relocation agreement when the recruited physician joins an existing practice. The regulations are largely silent as to whether the physician must join the existing practice as an employee. Since both CMS and the OIG are concerned about the financial benefit derived by the existing practice, except as otherwise provided below, it is the Law Department's position that all expenses in this type of arrangement be limited to the actual, reasonable, ordinary, and **incremental** expenses incurred by the existing practice on behalf of the recruited physician.

9. **Question:** If the recruited physician purchases services and office space from an existing practice but is not an employee, owner or independent contractor of the practice, will a two-party or a three-party *Relocation Agreement* be required?

Answer: If the recruited physician is not an employee, owner or independent contractor of the existing practice, he is not deemed to have "joined" the group under the Stark Law and a two-party relocation agreement may be used. The recruited physician and the existing practice should not advertise an affiliation and each party must bill for their services using separate provider numbers in this event.

In cases where the recruited physician purchases services from an existing practice in this type of arrangement, including the use of office space, personnel, or other services, and does not join the existing practice, the recruited physician will have to represent and warrant the following: (i) he or she is not joining the existing practice, (ii) he or she will maintain his or her own medical malpractice insurance in accordance with the hospital's medical staff bylaws (i.e., the recruited physician cannot be added to the existing practice's malpractice policy), (iii) professional services rendered are billed under a tax identification number assigned to the recruited physician or his or her professional corporation, not a number associated with the existing practice, and (iv) the existing practice does not advertise its affiliation with the recruited physician. Further, the existing practice will be required to (a) execute a rider to the Relocation Agreement whereby the existing practice gives the hospital the right to inspect and audit the books and records of the existing practice as it pertains to services provided to the recruited physician, (b) identify the incremental expenses incurred by the existing practice in providing the management services to the recruited physician, (c) represent and warrant that it does not impose any practice restrictions on the recruited physician, which unreasonably restrict the recruited physician's ability to practice in the service area, and (d) maintain its books and records in connection with its arrangement with the recruited physician for at least five (5) years. In this case, the recruited physician, and not the existing practice, will be solely liable for any repayment obligation under the relocation agreement. If the relocated physician and the existing practice enter into any other financial arrangement during the guarantee period, the parties must also agree to amend the Relocation Agreement as needed to comply with the Stark Law.

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Other

10. **Question:** When a hospital is interviewing a prospective relocation candidate, (i) what types of travel related expenses may be reimbursed, and (ii) is the hospital required to enter into a written agreement with the candidate?

Answer: (i) The hospital should follow the same policy and practice that applies to Tenet employees when determining what expenses are appropriate. More specifically, all travel accommodations and meals should be modest as judged by local community standards and airline travel should be limited to coach. Any expenses that are to be reimbursed by the hospital to the candidate will need to be substantiated by appropriate receipts. Generally, reimbursement of travel prior to the final relocation (i.e., for interviewing or househunting) should be limited to the physician and his or her spouse or partner; expenses for other family members should not be reimbursed unless otherwise agreed in advance. Before the physician arrives for his initial recruitment visit, Hospital shall document its agreement to pay these expenses in writing, and the physician must countersign the letter, so that there is a written agreement which supports the payments in the event that the physician later comes to the community. In the absence of a written agreement, costs should be tracked on the nonmonetary compensation log.

Answer: (ii) If a physician on the hospital's medical staff or within the community is going to attend a meeting with the CEO and the recruitment candidate at which a meal will be served, the hospital should use the CAM letter agreement so that the value of the meal is not logged and counted against the non-monetary compensation limit. Moreover, in situations where an existing practice has indicated its desire to add a practitioner, the hospital should advise the existing practice not to make and pay for the travel arrangements of the physician recruit as the hospital will not have a written agreement with the existing practice to reimburse them for the expenses. The hospital should make all travel arrangements and pay for them directly or the physician recruit should incur the cost and submit the expenses to the hospital for reimbursement.

11. **Question:** If the recruited physician's practice in the service area is interrupted by pregnancy or deployment of a military reservist, what is the impact on the Relocation Agreement?

Answer: If the recruited physician must be absent from his or her practice for a period exceeding the permitted vacation and CME allotment due to causes such as childbirth or deployment of a military reservist, the hospital and physician may agree in writing prior to the absence to suspend the terms of the Relocation Agreement during the absence. If the absence occurs during the guarantee period, generally all financial assistance will be suspended as well. The term of the Relocation Agreement will be extended by the duration of the suspension of the agreement. The hospital should contact its Operations Counsel as soon as possible if an absence is expected to evaluate the situation. If an absence can be foreseen before the agreement is finalized, it should be addressed in the initial Relocation Agreement.