

ULTIMATE HEALTH SYSTEM (UHS) - Physician Arrangement Checklists

Physicians (which for this purpose also includes podiatrists, dentists, optometrists and chiropractors) **are generally prohibited by law from referring patients to an entity with which the physician or a member of the physician's immediate family has a financial relationship.** There are, however, many exceptions to this general rule and these checklists are designed to obtain information about proposed relationships – before they are “final” – so that the law / compliance department can help you ensure that the requirements of these exceptions are met.

The consequences to UHS of billing for services referred by physicians with whom it has an improperly structured financial relationship are significant. SO when considering a proposed arrangement, you need to ask yourself the following questions:

- A. Is a Physician (or a member of a physician's immediate family ¹) a party to the arrangement?
- B. Is any part of UHS in a position to receive referrals from this Physician? *Note – no arrangement may be aimed at compensating a Physician directly or indirectly for the value of his or her referrals.*

If the answer to either question might be “Yes”, then the proposed arrangement requires further analysis before UHS can enter into it. In order to help the law / compliance department help you, please look through the following checklists, find the one(s) that seems closest to what you are considering and make your best effort to answer the questions listed before bringing the proposal to us for further analysis:

Personal Services Exception Checklist 42 CFR §357(d)	This exception may apply if we need to contract with a physician, his/her professional association, group practice or family member (PFM) to perform certain specified services on behalf of the health system – but we do not intend to enter into an employment relationship (see below for the employment checklist) with this individual. This exception may apply in situations where the physician or PFM employs others to provide services to UHS.
What is the business purpose of the arrangement?	Describe:

¹ “Immediate family” means 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; grandparent or grandchild; and spouse of a grandparent or grandchild. “PFM” will be used throughout these checklists as an abbreviation for this concept.

Is the proposed agreement already in writing ?	Yes / No	List the titles of any documents created so far related to the arrangement and attach copies.
Will the agreement be signed by all parties?	Yes / No	If no, why not?
Is the term of the proposed arrangement for at least one year?	Yes / No	If no, why not? Where is the term specified in the agreement?
Termination – Does the agreement specify that the parties will not enter into another arrangement for the remainder of one year if this one is terminated?	Yes / No	Where is this term specified in the agreement?
Does the agreement describe all the services that the physician or PFM will provide?	Yes / No	If yes, where is this description in the agreement? If no, what other services will be provided?
Is all the compensation to the physician, his/her professional association or the PFM set out in the draft agreement?	Yes / No	If no, what other compensation is being considered? Where is this compensation described in the document?
How was the value of the services determined?	Please describe the methodology used to determine the “fair market value” of the services and attach copies of any data relied upon in this calculation.	
Does the document specify that the Physician is free to refer patients to any facility, not just those in the health system?	Yes / No	If no, why not?

Employment Exception Checklist 42 CFR §357(c)	This exception may apply if we plan to employ a physician or PFM at UHS.	
What is the business purpose of the proposed position?	Describe:	
Are the terms of this employment in writing ?	Yes / No	List the titles of any documents created so far related to the employment and attach copies.
Will the employment agreement be signed by all parties?	Yes / No	If no, why not?
Is the term of the proposed employment for at least one year?	Yes / No	If no, why not? Where is the term specified in the writing?
Termination – Does the agreement specify that the parties will not enter into another arrangement for the same or substantially similar services for the remainder of the first year if this one is terminated?	Yes / No	Where is this term specified in the agreement?
Does the agreement describe all the services that the physician or PFM will provide?	Yes / No	If yes, where is this description? If no, what other services will be provided?
Is all the compensation to the employee set out in the agreement?	Yes / No	If no, what other compensation is being considered? Make sure to include any bonus or incentive compensation structure that it proposed:
How was the value of the employee's salary / wages determined?	Please describe the methodology used to determine the “fair market value” of the services and attach copies of any data relied upon in this calculation.	

Does the document specify that the Physician is free to refer patients to any facility , not just those in the health system?	Yes / No	If no, why not?
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Rental of Office Space or Equipment Exceptions Checklist 42 CFR §357(a) and (b)	This exception may apply if we intend to lease office space or equipment to a Physician, group practice, professional association or PFM.	
What is the business purpose of the arrangement?	Describe: How does the amount of the space or equipment rented relate to this purpose?	
What are the premises or equipment that will be covered by the arrangement?	Describe or reference the section(s) of the draft lease which include this description.	
Is the proposed lease in writing ?	Yes / No	List the titles of any documents created so far related to the lease and attach copies.
Will the lease be signed by all parties?	Yes / No	If no, why not?
Is the term of the proposed lease for at least one year?	Yes / No	If no, why not? Where is the term specified in the lease?
Termination – Does the lease specify that the parties will not enter into another arrangement regarding the same premises / equipment for the remainder of the first year if this one is terminated before then?	Yes / No	Where is this term specified in the lease?

Does the lease specify that the rented space or equipment is to be used exclusively by the lessee and not UHS or any person associated with UHS?	Yes / No	If yes, where is this provision in the lease? If no, why not?
Are all of the rental charges set out in the lease?	Yes / No	If no, what other charges are being considered? Where are these charges described in the lease?
How was the amount of the rental charges determined?	Please describe the methodology used to determine the “fair market value” of the charges and attach copies of any data or opinions relied upon in this calculation.	

Isolated Transaction Exception Checklist 42 CFR §357(f)		This exception may apply if we intend to enter a one time transaction (e.g. the purchase of a practice) with a Physician, group practice, professional association or PFM – even if the payments for the transaction are made over a period of time.
What is the business purpose of the transaction?	Describe:	
What are premises, business, or assets that will be part of this transaction?	Describe or reference the section(s) of the draft transaction documents which include this description.	
Is the proposed transaction in writing ?	Yes / No	List the titles of any documents created so far related to the transaction and attach copies.
Will the writing be signed by all parties?	Yes / No	If no, why not?
Post closing – Does the writing specify that the parties will not enter into another transaction for six (6) months, unless the transaction meets all the requirements of another exception ?		Yes / No If yes, where is this described in the writing?

Charitable Contributions by Physicians Exception Checklist 42 CFR §357(j)	<p>This exception may apply if a Physician, his/her professional association, group practice or PFM wishes to make a charitable contribution to UHS.</p> <p><i>Note: Gifts to UHS may not be solicited or based upon, in any way, the volume or value of business between UHS and the Physician, his/her professional association, group practice or PFM.</i></p>	
<p>Are the terms of the proposed contribution in writing and signed by the parties?</p>	<p>In general this is a good charitable gift acceptance practice if there are any restrictions associated with the use of the contribution or it is more than a one time payment of cash or a cash equivalent.</p> <p>If no – why not?</p>	
<p>Is the proposed contribution gift directed to UHS’s tax exempt entity – the UH Foundation?</p>	<p>Yes / No</p>	<p>If not, why not?</p>

Nonmonetary Compensation to Physicians Exception Checklist 42 CFR §357(k)	<p>This exception may apply if UHS wishes to provide a nonmonetary benefit to a Physician, his/her professional association or PFM. Cash or cash equivalents (e.g. gift certificates, prepaid credit cards, stock, etc.) do not qualify under this exception.</p>	
<p>Did you submit a report to the UHS “physician benefit” data bank operated by the Compliance Office on the UHS Intranet?</p>	<p>Such a report must be filed for each item that is not available to all members of the medical staff at the same time (see “Medical Staff Incidental Benefits” Checklist below). This includes recognition items presented at the annual Medical Staff appreciation event.</p>	
<p>Is the total value of all items provided to the Physician, professional association, or PFM during the current calendar year equal to or less than \$385</p>	<p>Yes / No</p>	<p>If no, when did the physician, professional association or PFM receive the item that exceeded this value?</p>
<p>Was the benefit solicited by either the Physician or someone on his/her behalf?</p>	<p>Yes / No</p>	<p>If yes, explain:</p>

Medical Staff Incidental Benefits Exception Checklist 42 CFR §357(m)	This exception may apply if UHS wishes to provide nonmonetary benefits (items or services) to all medical staff Physicians or groups within it that are “incidental” to their activities at UHS facilities. Cash or cash equivalents (e.g. gift certificates, prepaid credit cards, stock, etc.) do not qualify under this exception.	
Is the item or service available to all members or the medical staff (or all within a particular specialty) on the same terms?	Yes / No If no, explain:	
Is the item or service only available when the medical staff members are making rounds or are engaged in other services or activities that benefit UHS or its patients?	Yes / No If no, explain:	
Is the item or service solely provided at and intended for use at the UHS facilities?	Yes / No. If no, explain:	
Is each occurrence of the good or service of less than \$32 in value?	Yes / No If no, explain:	
Is the good or service provided in any way that might appear to reflect the value or volume of the Physician’s referrals to UHS or other business between us?	Yes / No. If yes, explain:	

Training Exception Checklist 42 CFR §357(o)	This exception may apply if UHS wishes to provide certain types of training to Physicians, their PFMs and/or office staff. <i>Note: This training does not need be limited to Physicians or offices that currently are associated with UHS.</i>	
Is the proposed training about the basic elements of a compliance program (for example, establishing policies and procedures, training of staff, internal monitoring, or reporting)?	Yes / No	
Is the proposed training about the requirements of Federal and State health care programs (for example, billing, coding, reasonable and necessary services, documentation, or unlawful referral arrangements)?	Yes / No	
Is the proposed training about other Federal, State, or local laws, regulations, or rules governing the conduct of the party for whom the training is provided.?	Yes / No	
Is CME or other continuing education credit provided for the training?	Yes / No	
Is a fee charged to some but not all participants?	Yes / No	If yes, explain why only certain participants will be charged:

Other Exceptions: There are other exceptions related to financial arrangements with Physicians, e.g. relating to recruitment / relocation arrangements, subsidies for certain malpractice premiums, and certain electronic health related items and arrangements. If you are considering a relationship with a physician that is not specifically covered by one of the checklists above, please make the law / compliance department your “first call” so we can help you develop appropriate expectations on both sides and assist the transaction to a speedy AND compliant conclusion.