Professional Services Agreements

ROWAN UNIVERSITY POLICY

Title: Professional Services Agreements
Subject: Office of Compliance & Corporate Integrity (OCCI)
Policy No: OCCI:2013:C05
Applies: RowanSOM
Issuing Authority: President
Responsible Officer: Chief Audit, Compliance and Privacy Officer
Adopted: 07/13/2013
Last Revision: 01/26/2021
Last Reviewed: 01/26/2021

I. PURPOSE

To provide guidance as to the execution of professional services agreements ("Professional Services Agreements" or "Agreement") between Rowan University School of Medicine (RowanSOM), on behalf of its operating units, physicians, physician entities, nurses, and other professionals (collectively " Rowan SOM Professionals)" and, Providers (as defined in the "Definitions" Section herein), and compliance with Stark Law, the federal Anti-Kickback Statute, and their relative regulations and directives.

II. ACCOUNTABILITY

Under the direction of the President, the Senior Vice President for Medical Initiatives and Affiliated Campuses, General Counsel, Dean and Chief Audit, Compliance & Privacy Officer shall ensure compliance with this policy. The Deans, Associate Deans, Clinical Chairs and Executive Director shall implement this policy.

III. APPLICABILITY

This policy applies to all RowanSOM operating units including, but not limited to, hospitals, outpatient centers, physicians, physician practices, nurses, and other professionals employed by RowanSOM.

Although this policy is written so as to provide guidance for executing Professional Services Agreements in which RowanSOM Professionals are providing health care-related services to a Provider (see, for example, Section V. Procedure, Paragraph 3: " RowanSOM Professionals shall provide the Provider with a written statement or other documentation substantiating the services that have been rendered prior to each payment."), this policy should be and is intended to be construed to apply also when the Provider is providing health care-related services to RowanSOM. In such cases, the guidelines set forth in this policy shall apply equally to a Provider.

IV. DEFINITIONS

1. *Professional Services Agreements* – any arrangement under which services, including but not limited to clinical or administrative services are provided by a Provider (as defined below) to another entity.
2. *Physician* - a doctor of medicine or osteopathy, a doctor of dental medicine or dental surgery, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.
3. *Immediate Family Member* - husband or wife; birth or adoptive parent, child or sibling; stepparent, stepchild, stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister in- law; grandparent or grandchild; spouse of grandparent or grandchild.

4. *Focus Arrangement* as defined in the Voluntary Compliance Plan (VCP) - every "arrangement that involves, directly or indirectly, the offer or payment of anything of value and is between RowanSOM and any actual source of health care business or referrals to RowanSOM, or is between Rowan SOM and a physician (or a physician's immediate family member (as defined at 42 C.R.F. 411.351) who makes a referral (as defined at 42 C.F.R. 1395nn(h)(5)) to RowanSOM for designated health services (as defined at 42 U.S.C. 1395nn(h)(6)).
5. An actual source of health care business or referrals to RowanSOM, or between RowanSOM and a physician (or a physician's immediate family member (as defined at 42 C.R.F. 411.351) - include, but are not limited to, another Physician, hospitals, long-term acute care centers, nursing homes, clinics, physician group practices, therapists and other individuals and entities who are in a position to influence or make referrals.
6. Provider - providers of health care services or business including, but not limited to, facilities and other entities and individuals with whom RowanSOM Professionals may enter into agreements to provide goods and services.
7. Designated Health Services - (1) Inpatient and outpatient hospital services, (2) Clinical laboratory services, (3) Radiology and certain other imaging services, including X-ray, MRI, CT, Ultrasound, Nuclear Medicine (including PET), and Bone densitometry, (4) Radiation Therapy services and supplies, (5) Durable medical equipment and supplies, (6) Parenteral and enteral nutrients, equipment and supplies, (7) Prosthetics, orthotics and prosthetic devices and supplies, (8) Home health services and supplies, (9) Outpatient prescription drugs, (10) Physical therapy, occupational therapy and speech-language pathology services.

V. REFERENCES

1. 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn(e)(3); 42 C. F. R. § 411.350 et. seq.;
2. 60 Fed. Reg. 41914 (Aug. 14, 1995); 63 Fed. Reg. 1659 (Jan. 9, 1998);
3. 66 Fed. Reg. 856 (Jan 4, 2001); 69 Fed. Reg. 16054 (March 26, 2004); General Statement on Agreements with Referral Sources, Approval Process Policy; Corporate Integrity Agreement Between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey, September 25, 2009.

VI. POLICY

All Professional Services Agreements, as defined in Section IV must be in writing, for at least one year signed by the parties, and provide for fair market value payments that are set in advance for the services to be rendered. Payments shall not be determined in a manner that takes into account the volume or value of any referrals or other business generated between the Provider and RowanSOM. The Professional Services Agreements shall contain one or more provisions to the effect that no written or oral understanding exists between the parties that patient referrals are a part of the agreement, arrangement and/or financial relationship.

VII. PROCEDURE

1. Professional Services Agreements must be reviewed and approved by a dean, chief compliance officer and the Office of Legal Management prior to execution. In most cases, this approval should be evidenced by signatures on an applicable term sheet or approval form. These reviews and approvals must be obtained even if the Agreement complies in all respects with RowanSOM policies.
2. Reviews and approvals also must be obtained for amendments to existing Professional Services Agreements. No payments shall be made prior to obtaining appropriate approvals.
3. RowanSOM Professionals shall provide the Provider with a written statement or other documentation substantiating the services that have been rendered prior to each payment. Such written statement (typically a time sheet or faculty time and effort report in a format acceptable to RowanSOM) shall provide a level of detail of the services normally expected of an outside vendor of professional services.

Such statement will include the date of the service and a description of the services rendered. There shall be an articulated expectation that all time shall be documented as and when worked. In addition, RowanSOM Professionals shall record and report any time that exceeds any applicable monthly cap.

4. All separate arrangements relating to the provision of professional medical and other services between the Provider and the RowanSOM Professional should incorporate each other by reference or cross-reference a master list of contracts that is maintained and updated centrally and is available for review upon request.
5. The provisions in the Professional Services Agreement shall conform to applicable Stark Law exceptions and/or Anti Kickback Statute safe harbors, which set forth parameters regarding contract terms including, but not limited to:
    a. The term of the Professional Services Agreement;
    b. The services to be rendered. Services may be detailed in a job description. The Provider shall contract only for services that are reasonable and necessary for the arrangement's commercially reasonable business purposes. The Agreement with a Provider shall not include payment for services that:
        i. are not required for the operation of the Provider;
        ii. regularly accompany the professional services being rendered by the RowanSOM Professional;
        iii. are required pursuant to Provider's medical staff bylaws to be rendered by the RowanSOM Professional without payment;
        iv. involves counseling or promoting activities that violate state or federal law.
    c. There are no other arrangements for the provision of professional services, whether oral or written, with the RowanSOM Professional. Payment may not take into account referrals or other business generated between the parties.
    d. The payments pursuant to the Professional Services Agreement represent fair market value for the services to be rendered. Payment methodology and rates must be established at fair market value at the inception of the Professional Services Agreement (See Fair Market Valuation policy) and may not change during the first twelve months of the Professional Services Agreement term. Fair market value should be periodically assessed for compliance purposes.
    e. In circumstances where the service fees are affected/adjusted to promote a business related benefit, community need or altruistic purpose, the Provider must document and justify the business related benefit, community need or other rationale for the services being requested in the Agreement.
6. Commitments under the terms of the Agreement should not be made until written approvals have been obtained from the Dean, Chief Compliance Officer, and the Office of Legal Management. Upon successful completion of negotiations, the Agreement shall be executed in accordance with RowanSOM policy Legal Commitment Authority. The Agreement must be signed by duly authorized signatories of each party before any services are provided and before any payments are made and received.
7. To the extent the Professional Services Agreement is a Focus Arrangement, as such is defined under the Voluntary Compliance Plan effective September 26, 2014, the Focus Arrangements Database Policy and Focus Arrangements Approval Procedure apply and must be followed.
8. The Office of Legal Management will ensure that fair market value documentation is attached to the Professional Services Agreement, and that the Professional Services Agreement satisfies the requirements of state and federal law. A copy of this documentation will be maintained with the Professional Services Agreement.
9. The Office Compliance and Corporate Integrity will educate responsible parties on the laws, regulations and policies applicable to Professional Services Agreements and will monitor and review such Professional Services Agreements; review the reasonableness of the methodology employed to establish the fair market value that is attached to the Professional Services Agreement; evaluate the Professional Services Agreement's compliance with applicable state and federal law; and assist the responsible dean or chief compliance officer with remediating such Professional Services Agreements when potential violations of this Policy are detected.

VIII. NON-COMPLIANCE AND SANCTIONS

Any individual who violates this policy shall be subject to discipline up to and including dismissal from the University in accordance with their union and University rules. Civil and criminal penalties may be applied accordingly. Violations of this policy may require retraining and be reviewed with employee during the annual appraisal process. The Deans of each College, Vice Presidents, and University President, with the assistance of the Department of Human Resources, will enforce the sanctions appropriately and consistently to all violators regardless of job titles or level within the University and in accordance with bargaining agreements for represented employees. Any sanction costs or fines will be borne by the Department and the Department Chair or VP will determine how these funds will be assigned.

By Direction of the President:

Signature on file

Chief Audit, Compliance and Privacy Officer