Category: Hospitals / Clinical Services Responsible Office: Hospital and Clinical Services	**Policy Title:** Health-Related Services Contracts Document Number: 4300 Effective Date: November 17, 1999 This policy item applies to: College of Optometry Downstate Medical Center University at Stony Brook Health Science Center Upstate Medical University

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Summary

These health-related services contract procedures will allow the State University of New York health service centers to offer high quality services through contracts and networks with other health care providers and institutions, participate in coordinated care efforts and develop long-range health care plans. All services provided should be offered in a manner that utilizes the standard and widely-accepted best practices in the health care industry.

Policy

I. General

A. In addition to the general provisions contained in these guidelines, reference should be made to University purchasing and contracting procedures where appropriate. Contracts for the routine purchase of goods and services by University health care facilities and clinics, as defined below, shall continue to be governed by the provisions of the Purchasing and Contracting policy, subject to the provisions noted below for contracts up to $75,000.

B. These procedures apply only to agreements between University health care facilities or clinics (as defined below) and other health care providers and institutions, which are entered into in order to participate in coordinated care efforts and to develop long-range health care plans. References in this policy to "contract" or "contracts" shall be understood to apply only to such agreements. Revenue contracts for health services, regardless of amount, shall be governed by these policies.

C. Contracts, as defined in Section I (B) above, may not cause the reduction or elimination of University employees who are members of certified bargaining units at a health care facility or clinic, subject to the terms and conditions of any current or future collectively negotiated agreement between New York State and such employees.

D. In the event of a conflict between the procedures contained in this policy and any other University

purchasing procedures, this policy shall control.

E. Contract levels under section I (A) and III (C) of this policy shall automatically change from time-to-time in order to reflect the contract approval levels as established in Section IV of the University purchasing and contracting procedures, but in no event shall the approval levels in section I (A) and III (C) of this policy be below $75,000.

II. Legislative Background

A. Chapter 363 of the Laws of 1998 provides legislative authorization allowing the University to enter into certain types of hospital-related contracts with greater flexibility than generally allowed for most other state contracts. The statute requires the development of formal guidelines for such contracts. These procedures are intended to establish the manner in which the University will enter into such contracts pursuant to Chapter 363.

B. The chapter provides that any hospital management service contract entered into by health care facilities shall be subject to all provisions of the public health law and regulations, specifically including the provisions of Volume 10 of New York State Codes Rules and Regulations Section 405.3(f) [10 NYCRR 405.3(f)]. The section defines a "hospital management contract" as: "an agreement between a hospital governing body and a contracting entity for the contracting entity to assume the primary responsibility for managing the day-to-day operations of an entire facility or a defined patient care unit of the facility."

C. 10 NYCRR 405.3(f) establishes certain standards which such contracts must meet, applicable to all hospitals, whether public or private, including a specific requirement for the written approval of the commissioner of health, which standards and requirements remain unchanged by these guidelines. Attention is therefore specifically directed to the requirements of 10 NYCRR 405.3(f), and such other provisions of the public health law and regulations as ordinarily apply, when entering into hospital management contracts under this policy.

D. Chapter 363 applies to all University health care facilities and clinics. It establishes definitions of "State University health care facility" and "clinic", and provides certain additional flexibility to the University when contracting on behalf of such facilities and clinics in order to simplify the process necessary to participate in cooperative health care agreements. Chapter 363 also establishes a new University health care account to be designated by the state comptroller, and a contractual reserve account to be designated by the University.

E. In accordance with Chapter 363, contracts for health care facilities and clinics, as defined below, shall, with the exception of those changes specifically made by the Chapter and reflected in these guidelines, continue to be governed by all applicable federal and state laws, rules and regulations, including, but not limited to the New York State public health law and the public officers law and the provisions of the agreements between the state and employee organizations pursuant to Article 14 of the Civil Service Law.

F. The Chapter also authorizes health care facilities and clinics to enter into contracts for the provision of general comprehensive and specialty health care services, either directly or through contracts with other service providers or entities, including University employees or clinical practice plans, subject to these guidelines.

III. Contract Procedures

A. Competitive Bidding

1. Where practical, formal competitive bidding is required for contracts, as described in Section I (B) above, entered into pursuant to this policy. However, it is recognized that for most contracts hereunder, formal bidding may not be appropriate or possible. In such event, the health care facility or clinic must be able to justify and document the selection of the contracting party and establish the reasonableness of the terms of the contract, including costs, if any. Such written justification, as described below, shall be included with the materials accompanying each contract when submitted for approval.

2. Routine purchases of goods or services, as described in Section I (A) above, by health care facilities and clinics shall be subject to requirements for competitive bidding in accordance with the provisions of Section III (B) of the University purchasing and contracting procedures.

3. Each contract shall be subject to financial and business justification, including a cost/benefit analysis where feasible, as described in this procedure in Section IV (C) (3) below.

B. The requirement for prior publication of individual contracts exceeding $20,000 in the New York State Contract Reporter is generally inapplicable to those health care facility or clinic contracts described in Section I (B) above. However, in accordance with the requirements of Article 4-C of the Economic Development Law,

notice of each such contract award may have to be published in the Contract Reporter as soon as practical thereafter. Health care facilities or clinics shall follow the procedures outlined in office of the state comptroller Procurement and Disbursement Guidelines, Bulletin G-107B. Prior publication requirements shall continue to apply to those contracts described in Section I (A) above.

C. Approvals of other state agencies 1. No approvals are required for contracts, as defined in Section I (A) above, up to $150,000.2. Contracts which exceed $150,000 require the prior approval of both the attorney general and office of the state comptroller, subject to increases in accordance with Section I (E) above.3. Contracts for acquisition of facilities suitable for the delivery of health care services by purchase, lease, sublease, transfer of jurisdiction or otherwise, and for the repair, maintenance, equipping, rehabilitation or improvement of any such facilities, shall be subject to the prior approval of the attorney general, director of the budget, the office of the state comptroller, and the department of health as may be required, regardless of amount.

D. Provisions to include in all contracts

1. As an agency of the State of New York, the University can only assume liability in accordance with the provisions of the Court of Claims Act. Generally, the University is liable only for damage or injury arising directly from the negligence of the University, or its officers or employees, when acting within their official capacity. Provisions which attempt to make the University liable for the acts of others, or to require the University to be responsible for indirect or consequential damages should be rejected. Failure to do so may expose the operating funds of the individual health care facility or clinic to unanticipated liability.

2. Where possible, contracts should address the provision of insurance, whether covering general liability, professional liability, and/or directors' and officers' liability. Generally, the University does not purchase insurance covering its acts or those of its employees. However, if required as a condition of entering into a contract, insurance may be purchased by the University. Any such insurance should include the University and the State of New York as additional insured. A pro rata share of the cost of any insurance provided by any other party to a contract may also be paid by the University. Any such policies should also be revised so as to include the University and the State of New York as additional insured's.

3. Contracts should contain a clear, detailed statement of services and payments to be provided by the health care facility or clinic, and those to be received by such health care facility or clinic.

4. The standard University contract clauses ("Exhibit A" and "Exhibit A-1") shall be made a part of all contracts entered into under this policy.

E. The office of university counsel and the office of hospital and clinical services should participate in contract development and negotiation at the earliest time possible. This will reduce the likelihood of changes or additional information being required after all parties have executed such contracts and are prepared to submit them for final approval.

IV. Contract Processing

A. Contracts should be executed on behalf of a health care facility or clinic by those officials specifically authorized to sign contracts pursuant to the provisions of Section III (G) (4) of the University's policy governing Purchasing and Contracting.

B. Each University health care facility is limited to entering into no more than twenty (20) new network contracts per University fiscal year. Therefore, each health care facility must indicate the number of each of its network contracts, starting at the beginning of each fiscal year and continuing consecutively through the remainder of that year.

C. Before submission for the approvals of the attorney general and office of the state comptroller, and the director of the budget where required, the health care facility or clinic must prepare supporting documentation containing both the statutory authority and the business justification for each contract. This documentation shall include the following:

1. An executive summary of the general terms and conditions of the contract. This should include (i) the names of the parties, (ii) the general goals of the contract, (iii) the length of the contract term, and (iv) other material elements of the contract.

2. The statutory authorization for the contract. This material will be prepared by the office of university

counsel, based on information provided by the health care facility or clinic, and may take the form of a general statement applicable to certain types of contracts, or a specific statement applicable to an individual contract.

3. An economic and business analysis of the contract. Article 7(8) of the New York State Constitution prohibits the making of any gift of state funds or credit. Therefore, it is essential that each analysis clearly demonstrate a benefit to the health care facility or clinic commensurate with any consideration provided by that facility or clinic.

The office of hospital and clinical services will provide forms and guidance on a regular basis regarding the information required for the analysis, which shall include, where possible:

a) Identification of the parties (e.g., names, addresses, types of health care business, medicare/medicaid qualifications, ownership);

b) Federal and state programs which may be involved (e.g., medicare, medicaid, other programs, reporting obligations);

c) Nature of the transaction (e.g., describe relationships, obligations of parties, approvals required, legislation required, anti-trust considerations);

d) Governmental and University notices and or approvals required, if any (e.g., Licensure, Joint Commission on Accreditation of Healthcare Organizations (JCAHO), Medicare/Medicaid, Office of Civil Rights (OCR), National Committee for Quality Assurance (NCQA), The Worker Adjustment and Retraining Notification Act (WARN Act);

e) Revenue and cost/benefit analysis as required (e.g, cost reports, outstanding overpayments, statute of limitations on claims submission or recovery of overpayments, recapture on gains or accelerated depreciation, self-referral limitations, net revenue anticipated);

f) Filing requirements (e.g., federal, state);

g) Due diligence considerations and how they were addressed (e.g, agreements must be as specific as possible, New York law to apply, identify home state and nature of party [partnership, business, not-for-profit corporation, etc.], tax status, effective dates of services, appropriate support documentation); and

h) Other relevant information unique to the contract (e.g., definitions, specific performance issues, performance standards, guarantees, penalties, indemnifications, assumptions of liability, risk exposure, termination and renewal provisions).

D. When completed, contracts and two sets of all supporting documentation shall be sent to the office of university counsel. That office will forward a full set of documents to the office of hospital and clinical services for its review and completion of an economic evaluation for incorporation into an executive summary. Upon completion of the legal and economic reviews, the office of counsel shall submit the contract and the executive summary to the director of the budget when required, and to the attorney general and office of the state comptroller (OSC) for final approval. Documentation designated as confidential trade secret information is subject to review pursuant to the provisions of the New York State Freedom of Information Law (FOIL). FOIL requests submitted to OSC for information designated as confidential will be referred to the office of university counsel for determination. Such documentation will be returned to the University upon completion of its review. Approved copies of contracts will be returned to the office of university counsel for distribution to the office of hospital and clinical services and the appropriate health care facility or clinic.

Chapter 363 requires quarterly reports of (i) all expenditures from and the status of the health care account and (ii) all networks in which health care facilities and clinics are participating. Therefore, each health care facility or clinic shall be responsible for providing such information to the office of hospital and clinical services on a monthly basis or on such other basis as that office may advise from time to time.

Definitions

University Health Care Facility - a hospital, as defined in Section 2801 of the Public Health Law, operated by the University, or a clinic, as defined below, of the University Health Sciences Center at Brooklyn, Buffalo, Stony Brook or Syracuse, or the College of Optometry (hereinafter referred to as "health care facility" or "facility").

Clinic - a facility located either within or outside of a University healthcare facility providing services related to the medical educational mission of the University, but shall not include University student health services.

Network Contract - shall mean an agreement under which a health care facility or clinic joins one or more other health care providers having common goals and incentives (whether such group is a public, private or business entity), as a partner, member or shareholder of such group, and under which the health care facility or clinic commits to make a cash or cash equivalent contribution to such group, in exchange for some benefit.

Other Related Information

Purchasing and Contracting

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

10 NYCRR 405.3(f) (Regulations of the New York State department of Health, 20)

The following links to FindLaw's New York State Laws are provided for users' convenience; it is not the official site for the State of New York laws.

NYS Civil Service Law Article 14 (Public Employers' Fair Employment Act)

NYS Economic Development Law Article 4-C (Procurement Opportunities Newsletter)

NYS Public Health Law § 2801 (Definitions)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of New York State Consolidated.

New York State Constitution Article 7(8) (State Finances)

Chapter 363 of the Laws of 1998.

State University Board of Trustees Resolution 99-168 adopted October 26, 1999.

OSC Procurement and Disbursement Guidelines, Bulletin No. G-107B dated April 14, 2000.

History

There is no history relevant to this policy.

Appendices

Appendix A-1 - Standard Contract Clauses - Affirmative Action Clauses - Exhibit A-1

Standard Contract Clauses State University of New York - Exhibit A