The materials below consist of regulations of the State University of New York Board of Trustees. However, it is not the Official Compilation of the Codes, Rules, and Regulations of the State of New York. Readers are advised to refer to the Official Compilation (8 NYCRR Part et seq)in case of questions.

PART 340

PLAN FOR THE MANAGEMENT OF CLINICAL PRACTICE INCOME

Sec.

340.1 Policy

340.2 Development of plan

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340.4 Plan requirements

§ 340.1 Policy.

It is the policy of the university that each school of medicine and dentistry and the College of Optometry shall have a plan for the management of clinical practice income that is consistent with the requirements set forth in this Part.

§ 340.2 Development of plan.

The chancellor shall take all necessary steps to develop and implement plans for the management of clinical practice income consistent with this Part and with the provisions of the applicable collective bargaining agreement. Nothing contained in the plan shall allow actions to be taken by the individual plan members or any governing board which are inconsistent with the educational mission of the college.

§ 340.3 Implementation of plan.

Any plan which is determined pursuant to such a collective bargaining agreement to be consistent with the requirements of section 340.4 of this Part shall be implemented by the chancellor as soon as the governing board of such plan is elected pursuant to section 340.4(c)(2) of this Part or convened by the chancellor should an election not occur, or within 45 days after a determination made pursuant to the applicable collective bargaining agreement, whichever is earlier. The chancellor shall provide written certification to the Director of the State Division of the Budget, the Director of the Governor's Office of Employee Relations, the State Comptroller and the certified representative of employees in the Professional Services Negotiating Unit that any plan consistent with the requirements of section 340.4 of this Part has been implemented.

§ 340.4 Plan requirements.

Any clinical practice management plan shall be consistent with the following requirements:

(a) Definitions.

(1) Chief administrative officer shall mean the president. The president shall assure that no actions are taken under the clinical practice plan that are inconsistent with the educational mission of the college.

(2) Clinical practice shall mean the act of providing all forms of medical and health care, including patient consultations, and the act of performing clinical investigation involving patients, for which acts a fee for professional service is customarily charged. Clinical practice may be organized along departmental, multi-departmental, or institutional-wide lines. Clinical practice shall be restricted to facilities of a health sciences or medical center, school of dentistry, College of Optometry, or affiliated institution except:

(i) for unusual circumstances or consultation;

(ii) during periods of vacation, in the case of calendar year employees;

(iii) during the period following the completion of professional obligation, in the case of academic year

employees; and

(iv) during such other times mutually agreed upon by the employee and the chief administrative officer or designee after discussion of elements, including but not necessarily limited to institutional objectives and the employee's commitments as a faculty member to instruction, research, clinical service and facility utilization.

(3) Clinical practice income shall mean the income from fees for professional services rendered in connection with clinical practice, including salaries paid by affiliated institutions, but excluding any income derived from clinical practice at facilities other than those of a health sciences or medical center, school of dentistry, College of Optometry, or affiliated institution.

(i) during an employee's vacation, in the case of calendar year employees;

(ii) during the period following the completion of professional obligation, in the case of academic year employees; and

(iii) during such other times as may be mutually agreed upon by the employee and the chief administrative officer or designee after discussion of elements, including but not necessarily limited to institutional objectives and the employee's commitments as a faculty member to instruction, research, clinical service and facility utilization. State basic annual salary, research grants, royalties, honoraria for lectures and income unrelated to patient care are not considered clinical practice income. The chief administrative officer or designee may, in his discretion, waive from inclusion in clinical practice income salaries paid by affiliated institutions to specific employees, if in his judgment it is in the best interest of the institution; provided, however, such salaries shall be included in determining maximum allowable compensation.

(4) Basic annual salary, for the limited purpose of this Part, shall mean that salary which is obtained from the direct appropriation of State monies for the purpose of paying wages which may not exceed the maximum State salary for an employee's academic rank.

(b) Participation in a plan for the management of clinical practice.

(1) Any employee who meets all of the following criteria must be a member of a plan for the management of clinical practice:

(i) Serves in a position of academic or qualified academic rank in a school of medicine or dentistry in a State University health sciences or medical center, or College of Optometry, and who is not an intern, resident or fellow.

(ii) Performs the professional clinical practice of medicine, dentistry, or optometry for which a fee for professional services is customarily charged, or a salary is customarily paid.

(2) The governing board may make provision for voluntary memberships for persons not required to participate but whose membership would be mutually beneficial.

(3) The chief administrative officer or designee, with the approval of the chancellor, may grant exemptions from membership to employees whose primary employment is not with the State University of New York and who have only a limited connection with the State University.

(c) Governing board.

(1) Management of the plan. Subject to the requirements contained in this section, the day-to-day management of any plan shall rest in the governing board of the plan, including but not limited to authority to review accounts, transmit reports to the chief administrative officer and establish supplementary guidelines for expending clinical practice income. For purposes of auditing and accounting, the governing board may, where appropriate, develop procedures to preserve patient confidentiality. Minutes of governing board meetings shall be circulated to each department and be available, at any reasonable time, for inspection by members of the practice plan. The members of the governing board shall be accountable to the university to implement and carry out its responsibilities set forth in this section.

(2) Composition and election. The governing board shall consist of one person from each clinical department in the school or college to which the plan pertains, elected once a year by majority vote of the members of such department who are required to be members of a plan for the management of clinical practice, plus one at-large member from the basic science faculty elected by a majority vote of the members of such faculty. Procedures for the election of the governing board, which shall provide for secret ballots and equal voting rights for eligible voters, shall be established by the college president and the chapter president of the certified representative of employees in the Professional Services Negotiating Unit, subject to the approval of the chancellor, no later than 15 days from the date a plan is received by the chancellor for implementation after a determination that the plan is consistent with the requirements of this section. Provided, however, if an election has not been conducted 45 days following a determination that a plan is consistent with the requirements of this section, the chancellor shall convene a governing board.

(3) Ex-officio members. The chief administrative officer, or designee, and the dean shall be nonvoting members of the governing board.

(4) Subject to the requirements contained in this section, the governing board shall have the power to develop and promulgate operating procedures for the orderly transaction of its functions, including but not limited to quorums, officers, terms of office, meetings and other items consistent with the requirements of this section.

(d) Accounting. Each plan shall provide for a central billing and accounting system under the control of the governing board. The accounting system shall provide a means to record transactions respecting collection and disbursement of clinical practice income, including but not limited to such transactions involving a plan member, department, school of medicine or dentistry, College of Optometry, health sciences center, or medical center. All accounts shall be available at any reasonable time for inspection by the chancellor, or designee, the chief administrative officer, or designee, and representatives of the State Division of the Budget and Department of Audit and Control. Monthly reports shall be forwarded to the office of the vice chancellor for finance and business as determined by that office. The governing board shall provide copies of the annual audit to plan members at least once each year. The governing board, or in the case of a plan organized along departmental lines, the department, shall provide each plan member an account of the amounts billed and collected as a result of the plan member's clinical practice and a summary of those accounts for which payment has not been received. Any professional or academic employee who is a plan member may authorize, on his or her behalf, the duly certified employee organization representing the Professional Services Negotiating Unit to request such information no more frequently than twice each year. Each plan member shall be required annually to provide such data as may be necessary for the institution to comply with the appropriate sections of the Public Health Law. Where clinical practice at an institution is organized along departmental lines the chancellor shall approve a departmental billing system if the chancellor determines it adequately complies with the above standards. In no event shall individual plan members be permitted to bill directly for fees for professional services.

(e) Auditing. All accounts shall be audited annually by independent auditing firms chosen by the governing boards to determine whether the operations of each plan for the management of clinical practice have been conducted in accordance with generally accepted accounting principles, the provisions of the plan for the management of clinical practice and supplementary guidelines for disbursement of clinical practice income developed by a governing board.

(f) Maximum allowable compensation. At least once annually, the chief administrative officer or designee shall provide to each employee who is required to be a member of a clinical practice plan a statement in writing which sets forth the maximum allowable compensation which such employee may earn from all sources, including State basic annual salary, clinical practice income as previously defined, salary from an affiliated hospital and research grants, but excluding royalties, honoraria and income unrelated to patient care; provided, however, that compensation from a research sponsor shall be subject to the regulations of the sponsor. Such maximum allowable compensation shall be arrived at by the chief administrative officer or designee after consultation with the employee, the employee's department chairperson and the dean, and after considering the employee's present commitments and future goals in teaching, patient care and research, as well as the amount of clinical practice income attributable or likely to be attributable to the employee. With due consideration of the factors stated above, an employee's maximum allowable compensation shall not be unreasonably fixed at less than 250 percent of maximum State basic annual salary for the employee's rank when clinical practice income attributable to the employee, or available to the employee under provisions of a plan for management of clinical practice, permits maximum allowable compensation to be fixed at such percentage. Except as specifically provided hereafter, the maximum allowable compensation may not exceed 250 percent of the maximum State basic annual salary for a member's rank. In special circumstances relating to recruitment of employees, the chief administrative officer or designee may authorize a newly recruited employee who is required to be a member to receive more than 250 percent of the maximum salary for such member's rank, if in the chief administrative officer's judgment the best interest of the institution is served, but in no event shall this

authorization extend beyond the first two years of such member's employment. With the approval of the chancellor, or designee, the maximum allowable compensation of individual plan members may be increased to 275 percent of the maximum State basic annual salary. In exceptional cases related to the retention of physicians in difficult to retain specialties, the employee's maximum allowable compensation may exceed 275 percent with the approval of the chancellor or designee. In making such recommendations, the chief administrative officer shall give due consideration to the competition for individuals in the particular specialty as indicated by the Association of the American Medical Colleges' compensation data, and the hospital and other revenue generated by the employee's clinical activities. Such exceptions shall not exceed five percent of the total number of physicians on a system wide basis. The State shall pay fringe benefits only on the State basic annual salary. With the approval of the chief administrative officer or designee, the State and the certified representative of employees in the Professional Services Negotiating Unit, members of a clinical practice management plan at each school may elect by majority vote an alternate compensation method in which case plan members may be permitted to earn and retain amounts generated which exceed 200 percent of the maximum allowable State salary for such member's rank; provided, however, that 50 percent of such amounts authorized to be earned above the 200 percent level shall be paid into the fund in paragraph (g)(1) of this section. With the approval of the chancellor, or designee, individual members of plans which have adopted the alternate compensation method may be permitted to earn and retain amounts which exceed 225 percent of the maximum allowable State salary for such member's rank; provided, however, that 50 percent of such amounts authorized to be earned above the 225 percent level shall be paid into the fund in paragraph (g)(1) of this section. If selected, the alternate method shall be in lieu of the method of compensation first described in this subdivision. After an approved clinical practice plan has been fully operational for a period of 12 months, the members of the plan may, subject to the approval of the chancellor, State and the certified representative of employees in the Professional Services Negotiating Unit, elect by majority vote to change the method of compensation initially selected; provided, however, the methods of compensation are limited to the two methods provided in this subdivision.

(g) Disbursement of clinical practice income. Provisions for disbursement of clinical practice income shall provide for the following in order of priority:

(1) Five percent of the gross clinical practice income from each plan for the management of clinical practice shall be deposited into a fund at the school of medicine or dentistry or College of Optometry whose plan members generated the income to be administered by the chief administrative officer, or designee, for the benefit of the school of medicine or dentistry, or College of Optometry; provided, however, that $60,000 of such funds, which shall be collected proportionately based on the amount of gross clinical practice income generated by each of the plans, shall be available for university-wide health sciences purposes.

(2) The State shall be reimbursed for the costs of clinical practice experienced by it as a consequence of clinical practice by plan members which are regular and customary costs of a practitioner, not a hospital, including but not limited to use of facilities, personnel, supplies and equipment. Reimbursement to the State for the costs of clinical practice will be made pursuant to a formula established by the chief administrative officer in consultation with the governing board of the practice plan and approved by the chancellor in consultation with the Governor's Office of Employee Relations. Such funds will be deposited into the Debt Service/State University Income Fund for transfer to the respective hospital operations IFR accounts. Affiliate institutions may be reimbursed with the approval of the chancellor or designee for appropriately documented costs of clinical practice experienced by them as a consequence of clinical practice by plan members which are regular and customary costs of a practitioner, not a hospital, including but not limited to use of facilities, personnel, supplies and equipment.

(3) Payment of all other costs of clinical practice determined in accordance with generally accepted accounting principles and allowable to a practitioner as a deductible cost or expense under current Federal Internal Revenue Service guidelines.

(4) Employees required to participate in a plan for the management of clinical practice may be paid an amount from clinical practice income which, together with compensation from all other sources (exclusive of fringe benefits), does not exceed the maximum allowable compensation arrived at in consultation with the chief administrative officer or designee, dean, department chairperson and the employee, or such excess amounts authorized by the chief administrative officer or designee pursuant to subdivision (f) of this section; provided, however, that no disbursements from clinical practice income for compensation of a plan member may be made where such income was not earned by the member unless there is specific provision for such disbursement in the plan for the management of clinical practice.

(5) An amount (not to exceed the rate the State University contributes for retirement to TIAA-CREF) of the cash payment made under paragraph (4) of this subdivision to the employee from clinical practice income may be used to purchase an annuity; provided, however, that any portion of such cash payment on which retirement contributions have already been made shall be excluded from the calculation to be made herein.

(6) Remaining clinical practice income shall remain in a school of medicine or dentistry or College of Optometry, and shall be used for the benefit of the school of medicine or dentistry, College of Optometry, or departments thereof, as determined by the chief administrative officer, or designee, after consultation with the governing board.