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I. SCOPE:

This policy applies to Tenet Healthcare Corporation, its consolidated subsidiaries and all hospitals and other healthcare operations owned or operated by Tenet’s consolidated subsidiaries (Tenet).

II. PURPOSE:


This policy establishes guidelines for marketing, advertising and promotional activities in conjunction with, or which list or mention physicians that are members of the medical staff of Tenet hospitals (Affiliated Physicians). Parameters for physician participation in hospital sponsored community educational events are also included. This policy does not apply to physicians employed by Tenet hospitals.

III. POLICY:

- A. General. All advertising must be submitted and approved through Tenet’s FTC Marketing, Advertising and Review Service (“MARS”) in accordance with Tenet’s Guidelines for Advertising, Marketing and Communications (“Tenet’s Guidelines”). Unless otherwise set forth in this policy, employees of a hospital or any Tenet entity may not provide marketing services (*e.g.*, preparation of advertising copy, and other marketing assistance) to any physician.
- B. Marketing and Advertising¹ with Affiliated Physicians.
 1. A hospital may pay the costs of advertising or marketing which list, mention, or involve the participation of Affiliated Physicians only when such advertising or marketing primarily benefits the hospital.
 2. A hospital may list members of the hospital’s medical staff in advertising or list members of the hospital’s medical staff on a hospital web page for the sole purpose of promoting the hospital and as an incidental benefit of medical staff membership. Please see special rules below at Section III.C. regarding web-based physician finder services and web-based physician directories. Hospitals may choose to list only Active Medical Staff²

¹The term “advertising” includes promotional materials that appear in newspapers, magazines, specialized newsletters, radio and television spots, billboards, mailers, brochures, news releases, on-hold messages, websites, web pages, web domains, web banners, web pop-ups and other forms of promotional materials.

² For purposes of this policy, Active Medical Staff shall mean that category of the medical staff defined in the hospital’s medical staff by-laws having the following minimum requirements: Practitioners who regularly admit, or personally provide services other than written consultation, to more than twelve (12) admissions or contacts for the purpose of evaluating the member’s quality of medical services and eligibility for designated privileges. Active medical staff members assume the responsibilities of medical staff membership including, where appropriate, emergency service care, disaster plan assignment, consultation assignments and participation in peer review, quality/performance management activities and proctoring activities. Members of the active medical staff are eligible to vote, hold staff and departmental offices, and serve on the medical staff and departmental and governing

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members or may choose to list both Active Medical Staff and Courtesy Medical Staff³. All members of the eligible category (i.e., Active, Courtesy or both) of the medical staff, with privileges for the hospital-based program, department or specialty being advertised shall be listed unless the eligible member elects not to participate. The primary focus of all such advertisements or individual web pages must be either on a particular hospital department, hospital-based program, or medical specialty⁴, and the listing of medical staff must be ancillary to the hospital advertisement or website and limited as described below.


3. If members of a hospital’s medical staff are to be listed in an advertisement or on a hospital web page, then the advertisement or web page shall list all of the eligible category of the medical staff of the applicable department, program or medical specialty who wish to be so listed, and may list the following additional information regarding each such physician:
 - a. physician’s name;
 - b. physician’s medical specialty;
 - c. physician’s board certification(s);
 - d. physician’s undergraduate and medical education, and dates of graduation;
 - e. languages spoken; and
 - f. a small thumbnail photograph of the physician.

Generally, no other information may be listed on the advertisement or web page. A physician’s office address and office telephone number **shall not** be listed. Except as otherwise provided in Section III.C. of this policy, weblinks, URLs, or web addresses of the medical staff member or the member’s medical group or other affiliate’s website shall not be included

board committees.


³ For purposes of this policy, Courtesy Medical Staff shall mean practitioners who admit or provide services other than written consultation for twelve (12) or fewer patients per calendar year. If patient care services are provided to more than twelve (12) patients per calendar year, appointment to the Active Medical Staff category is required. Courtesy Staff are required to be members of the active staff of another hospital in which their regular participation in quality/performance management activities is documented and their performance is evaluated. Courtesy Staff members are not eligible to vote on medical staff or departmental matters, or hold medical staff offices.

⁴The term “medical specialty,” for purposes of this policy, shall be limited to those medical specialties listed as Member Boards of the American Board of Medical Specialties, including sub-specialties for which Member Boards grant sub-specialty certificates.

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on any hospital website or advertisement. Advertisements shall **not** instruct the reader to contact or telephone the particular physicians listed in the advertisement or web page. Other information concerning a medical staff member may be listed if the hospital enters into a joint marketing agreement with the physician, splitting the costs of an advertisement or promotion with the physician on a 50/50 basis (or other appropriate, substantiated percentage split of costs). Please see Section III.I. of this policy.

4. An advertisement which lists the hospital’s medical staff members, or members of the eligible category (e.g. Active or Courtesy or both) of the medical staff, may also promote the hospital’s physician referral service, if the hospital’s physician referral service meets the requirements of the federal anti-kickback safe harbor and the requirements of applicable Tenet policy. Use of any physician referral service by a Tenet hospital (other than the Tenet Call Center) must be reviewed and approved by each hospital’s Regional Counsel. Use of the Tenet Call Center shall be in accordance with the Tenet Call Center Policy, a copy of which is attached hereto as Exhibit A. See also Section III.C. below concerning web-based physician finder services and physician directories.
5. Except as otherwise provided in this policy, individually identifiable photographs of physicians may not be included in an advertisement paid for by the hospital. Note that group photographs of all or a substantial portion of the eligible physicians in a medical specialty, with the physicians identified in the caption, are acceptable. The hospital shall document that all eligible physicians in the specialty were invited to participate in the photograph. In addition, a group photograph of a patient and their care team, with individuals identified in the caption, including the physician and hospital staff, is also acceptable, with appropriate consents and releases. Other individually identifiable photographs may be permissible if paid for by the physician on a 50/50 basis or other appropriate, substantiated percentage split of costs as part of a joint marketing agreement.
6. Advertisements for hospital-based programs, departments or medical specialties **having fewer than five members of the eligible category of the medical staff**, shall be submitted for review and approval by the hospital’s regional counsel as well as through the FTC MARS system for review and approval as required by Tenet’s FTC Guidelines. It is the hospital’s responsibility to notify their regional counsel and FTC that the program, department, or medical specialty has fewer than five members of the eligible category of the medical staff. Review shall be based upon the following criteria:

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- a. The focus of the advertisement or web page must be on the advertisement of the hospital’s programs and services only and not on the physician or physician group.
- b. **The advertisement may mention only the hospital’s name of the program, the hospital department, and the medical director’s name, with no additional information provided regarding the medical director or any other physicians.**

All other advertising of a hospital program, department or medical specialty having fewer than five members of the eligible category of the medical staff must be through a joint marketing agreement consistent with Section III.I. of this policy and other applicable policies.

7. Nothing herein will prohibit a hospital from providing advertising or marketing assistance as part of a relocation agreement with a physician, if the arrangement complies with Law Department Policy No. L-2 (Physician Relocation).

C. **Web-Based Physician Finders.** A web page or web link on the hospital’s website which promotes or links to the hospital’s web-based physician finder search engine or physician directory, is acceptable as part of an efficient and effective physician referral service. Consistent with applicable regulations and Tenet’s policy on physician referral services, hospitals may use the same objective criteria used by their physician referral service to determine which medical staff physicians are eligible to be listed on the web-based physician finder. The following information may be listed in a web-based physician finder or directory:

1. physician’s name;
2. physician’s office address, telephone and facsimile number;
3. physician’s medical specialty;
4. physician’s board certification(s);
5. physician’s undergraduate and medical education, and dates of graduation;
6. languages spoken;
7. a small thumbnail photograph of the physician; and
8. one weblink to the website of the physician’s personal practice.

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D. Printed Hospital Directories. A printed directory describing the hospital and its services and distributed generally to consumers in the hospital’s service area, may also list the hospital’s medical staff and include subsections listing physicians by medical specialty, languages spoken, insurances accepted, or other appropriate category approved through the FTC MARS process. Printed physician directories should list **all** members of the medical staff (e.g. both Active and Courtesy). The following information concerning Active Medical Staff may be listed in the hospital directory:

1. physician’s name;
2. physician’s office address, telephone and facsimile number;
3. physician’s medical specialty;
4. physician’s board certification(s);
5. physician’s undergraduate and medical education, and dates of graduation;
6. languages spoken;
7. a small thumbnail photograph of the physician; and
8. one weblink to the website of the physician’s personal practice.

E. Press Releases and Announcements.

1. Press Releases. A hospital may issue a press release announcing a new member of the medical staff *if* such press releases ***are issued for all new medical staff members*** in the eligible category (e.g. Active, Courtesy or both). However, hospitals may choose to issue press releases concerning only all new Active Medical Staff members. The press release may include:

- a. physician’s name;
- b. physician’s medical specialty;
- c. physician’s board certification;
- d. physician’s undergraduate and medical education and dates of graduation;
- e. languages spoken;

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- f. a concise description of the physician’s professional experience and background;
- g. a photograph of the physician taken by hospital personnel or supplied by the physician;
- h. and the press release may include a quote from the physician.

Press releases regarding a new member of the medical staff may be posted to the hospital’s website on the usual hospital web page designated for press releases for a reasonable period of time.

2. Announcements. A hospital may also send a formal announcement (i.e., a printed announcement in the form of a letter or on card stock) to its medical staff announcing that a new medical staff member joined the staff *if* such announcements *are issued for all new medical staff members* in the eligible category (e.g. Active, Courtesy or both). However, a hospital may choose to issue announcements concerning only Active Medical Staff members and distribute them only to Active Medical Staff members. The announcement may include:

- a. physician’s name;
- b. physician’s specialty;
- c. physician’s board certification;
- d. physician’s undergraduate and medical education and dates of graduation;
- e. languages spoken;
- f. a concise description of the physician’s professional experience and background;
- g. and a photograph taken by hospital personnel or supplied by the physician.


The hospital shall not send announcements to others outside the hospital, or pay for advertising announcing a physician’s affiliation with the hospital, unless the advertising or marketing is part of a relocation agreement with a physician and the arrangement complies with Law Department Policy No. L-2 (Physician Relocation), or in connection with a joint marketing agreement consistent with the guidelines for joint marketing agreements as described in this policy.

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F. Articles Prepared for Hospital Newsletters or the Media.


1. **Articles Written by Hospital Staff:** The primary focus of articles written by hospital staff and included in hospital newsletters, or forwarded to local or national media, must be on the hospital or its programs, clinical diseases or health education. Articles shall be submitted through the FTC MARS process as required in the FTC Guidelines. Depending upon the facts and circumstances of the case, articles may include a limited number of quotes from the hospital’s medical staff physicians. Participation may be limited to Active Medical Staff members for the purpose of ensuring that authors are subject to the hospital’s peer and quality review processes. The hospital may include the name of the quoted physician and a concise description of the physician’s background and experience relevant to the subject matter of the article. The hospital may also include in newsletters, or forward to the media, appropriate visuals generally expected by the media, including a small photograph of the quoted physician supplied by the physician or taken by hospital personnel. The hospital should make reasonable attempts to include from time to time quotations from all members of the eligible medical staff with qualifications and experience relevant to the subject matter of articles written by the hospital staff.

2. **Articles Written by Medical Staff Members:** Articles written by medical staff members may be included in hospital newsletters that are distributed to the hospital medical staff and employees, or to the community in general, or articles to be distributed to local or national media, under the following circumstances. Articles shall be submitted through the FTC MARS process as required in the Tenet FTC Guidelines. Participation may be limited to Active Medical Staff members for the purpose of ensuring that authors are subject to the hospital’s peer and quality review processes. Articles written by medical staff should primarily benefit the hospital by focusing on a hospital program. The hospital may also include in newsletters, or forward to the media appropriate visuals generally expected by the media, including a small photograph of the quoted physician supplied by the physician or taken by hospital personnel. Identification of the physician/author in hospital newsletters may include the physician’s name, medical specialty, and a concise description of the physician’s background and experience relevant to the subject matter of the article. The description may not include the physician’s office address or telephone number, or include any language instructing the reader to telephone or otherwise contact the particular physician. The article should

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be drafted by the physician and none of the content should be provided to the physician by the hospital. The hospital should make reasonable attempts to give all members of the medical staff or eligible medical staff category the opportunity to prepare articles for the hospital newsletter.

- G. **Speaker’s Bureaus.** A hospital may promote a speaker’s bureau to the community which identifies medical staff members and their expertise on specific subject matters. Participation may be limited to Active Medical Staff members for the purpose of ensuring that speakers are subject to the hospital’s peer and quality review processes. Information provided may include the physician’s name, address, telephone number, practice area, languages spoken, and a concise description of the physician’s education and professional experience relevant to their expertise. The hospital may not pay or reimburse the expenses of members of the eligible medical staff category who participate in a program through the speaker’s bureau. Speeches shall be drafted by the physician and none of the text shall be provided to the physician by the hospital.
- H. **Community Educational Events.**
1. **Events:** A hospital may sponsor community educational events within the hospital’s service area, such as seminars and lectures, which include lecturers from the hospital’s medical staff. Participation may be limited to Active Medical Staff members for the purpose of ensuring that participants are subject to the hospital’s peer and quality review processes. The hospital may provide or pay for the room reasonably necessary to hold the seminar. For educational events held outside the hospital’s service area, which include lecturers from the hospital’s medical staff, the hospital may pay for the room reasonably necessary for the event, but may not under any circumstances pay for any of the physician’s travel or lodging expenses. A member of the hospital’s administrative team, or other appropriate hospital manager, shall attend each event and supervise the distribution of hospital promotional items.
 2. **Participating Physicians:** If a community educational event is repeated on a regular basis, then all members of the eligible category of the medical staff qualified to speak on the subject matter shall be offered the opportunity to speak and the opportunity to speak rotated amongst those members of the eligible category of the medical staff willing to speak. The hospital shall document their reasonable attempts to include all such members of the medical staff qualified to speak on the subject matter.
 3. **Promotion of the Educational Event:** When promoting a community educational event, the hospital may identify the physician lecturing at the event, and include a concise description of the physician’s background and

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experience related to the subject matter of the event. The promotional material may also include a small photograph of the participating physician supplied by the physician or taken by hospital personnel.


4. The Educational Event: The physician lecturing at the event may distribute business cards to attendees as a business courtesy, but may not distribute other promotional items or materials, such as informational flyers (concerning their own practice) or gifts at the event. In addition, all meals, gifts and/or discounts for attendees of the event must comply with Tenet policy. In consideration of the physician’s appearance on behalf of the hospital at a community educational event, the hospital may provide or reimburse the physician for one meal, and may reimburse the physician for mileage at the I.R.S. approved rate. The hospital shall not provide any additional consideration to the physician unless otherwise allowed by other Tenet Policy and documented in a written agreement. The hospital must confirm the physician’s participation at the event in writing. A member of the hospital’s administrative team, or other appropriate hospital manager, shall attend each event and supervise the distribution of hospital promotional items.
5. Television/Radio/Internet Based Broadcasts.
 - a. Broadcasts: A hospital may sponsor television and radio programs or web-based broadcasts of community educational events that include lecturers and participants from the hospital’s medical staff and which are repeated on a regular basis for the benefit of the community. Broadcast events must focus on either (i) services offered by the hospital, (ii) preventive care, or (iii) healthcare subjects of interest to the community. The hospital may pay for the reasonable production costs, broadcast costs and promotional costs of the broadcast educational event. The format of broadcast educational events may include lectures, seminars, or call-in question and answer formats. The audience shall not be instructed to contact or telephone the particular physician(s) participating in the program.
 - b. Disclaimer: The event shall begin with a disclaimer approved by FTC MARS stating that (1) the program is a community service and is not intended to be a substitute for medical advice; (2) audience members having questions about their health should make an appointment to see their personal physician; and (3) any opinions or statements made during the program are those of the individuals or physicians making the statements and are not the opinions or statements of the hospital or other sponsoring party.

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- c. Participants: All medical staff members qualified to speak on the subject matter shall be offered the opportunity to speak and the opportunity to speak rotated amongst those members of the medical staff willing to speak. Participation may be limited to Active Medical Staff members for the purpose of ensuring that participants are subject to the hospital’s peer and quality review processes.
 - d. Additional Requirements: The script, program outline, and/or format of proposed television/radio/internet based broadcasts must be submitted for approval through the FTC MARS process, in addition to any advertisements promoting the broadcast. Television/radio/internet based broadcasts not meeting all of the foregoing criteria may be the subject of a joint marketing agreement, which must be reviewed and approved by the hospital’s Regional Counsel.
6. Form Letter. Attached as Exhibit B to this policy is a form letter for confirming a physician’s participation in a community educational event conforming to the above-referenced policy.
- I. Joint Marketing. Nothing herein prohibits a hospital from entering into a joint marketing agreement with a physician, splitting the costs of an advertisement or promotion with the physician on a 50/50 basis (or other appropriate, substantiated percentage split of costs). Joint marketing agreements must be reviewed and approved by the hospital’s regional counsel before submitting any advertisement generated pursuant to the joint marketing agreement through the FTC MARS process.

IV. REFERENCES:

- Tenet’s FTC Marketing, Advertising and Review Service (“MARS”)
- Tenet’s FTC Guidelines
- Stark Law, 42 U.S.C. §1395nn, and implementing regulations
- Anti-Kickback Law, 42 U.S.C. §1320a-7b(b), and implementing regulations
- Referral Services exception, 42 C.F.R. §100.952(f)
- Law Dept. Policy L2 on Physician Relocation

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Physician Referral Services
(Tenet Call Center Policy)

I. Legal Issue: The federal anti-fraud and abuse statute prohibits the giving of remuneration either in cash or in any kind to induce the referral of patients for whom payment is made under the Medicare or Medicaid programs. Inclusion of a physician on a physician referral panel could be constructed to constitute such remuneration. However, the Department of Health and Human Services has developed a “safe harbor” for physician referral services. Compliance with the terms of the safe harbor means that the referral service will not be subject to scrutiny by the office of the Inspector General.

II. Terms of Safe Harbor: The following are the requirements to meet the safe harbor.

- A. The referral service does not exclude as a participant in the referral service any individual or entity who meets the qualifications for participation.
- B. Any payment the participant makes to the referral service is assessed equally against and collected from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by the participants for the referral service for which payment may be made in whole or in part under Medicare or a State Health Care Program.
- C. The referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge.
- D. The referral service makes the following five disclosures to each person seeking a referral with each such disclosure maintained by the referral service in a written record certifying such disclosure and signed by either such person seeking a referral or by the individual making the disclosure on behalf of the referral service (a copy of the Safe Harbor Disclaimer Statement used by the Physician Referral Representatives
 - 1. The manner in which it selects the group of participants in the referral service to which it could make a referral;
 - 2. Whether the participant has paid a fee to the referral service;
 - 3. The manner in which it selects a particular participant from this group for that person;
 - 4. The nature of the relationship between the referral service and the group of participants to whom it could make the referral;
 - 5. The nature of any restrictions that would exclude such an individual or entity from continuing as a participant.

III. Company Standards for Physician Referral Services:

- A. Qualifications for Participation – The facility may set objective standards for participation in the referral service including, but not limited to, active staff membership, board certification or years of experience in practice.
 - 1. Any individual meeting the qualifications must be included as a participant regardless of the level of activity at the hospital.
 - 2. The fact that the active staff membership may include a minimum activity level at the hospital does not foreclose use of active staff membership as a qualification.
 - 3. All physicians employed by the hospital may be included on the referral list regardless of other qualifications because the facility receives the income from a referral to an employed physician, not the individual physician.
- B. Service Charge—The hospital will not charge a fee to physicians to participate in the referral panel.
- C. Restrictions on Provision of Services— The hospital will impose no requirements on the manner in which the physicians on the panel provide services to a referred person, except that the hospital may require that the physician charges other persons not referred by the service.
- D. Restrictions which would exclude a Physician from participating or continuing to participate— The hospital may impose conditions upon which participation will be refused or removed. Examples of such restrictions would include:
 - 1. Suspension or restriction of the physicians license to practice;
 - 2. Suspension or restriction of the physicians medical staff privileges;
 - 3. Loss of employment;
 - 4. Violation of the standards of the referral panel (i.e. charging discriminatory fees to patients referred to the referral services);
 - 5. Loss of participation in the Medicare or Medicaid programs.
- E. Required Disclosures— The referral service must make the following disclosures to each person to whom a referral from the referral panel is made to each individual:
 - 1. The manner in which the participants in the referral service are selected (i.e. the qualifications upon which selection to the panel is based);
 - 2. That the participant has not paid a fee to the referral service;

3. The manner in which the referral service selects the participant from the individual calling. This would include the Physician's specialty and the fact that the individual selected is based on a rotation list within the specialty;
4. The nature of the relationship between the referral service and the group of participants to whom it could make the referral. This would include medical staff membership, employment, or the like;
5. The nature of any restrictions that would exclude such an individual or entity from continuing as a participant (i.e., if the physician's license or medical staff membership is restricted).

A copy of the Safe Harbor Disclaimer Statement used by the Physician Referral Representatives follows this section.

Safe Harbor Disclaimer Statement:

“Let me explain to you how our referral system works:

This referral service is sponsored by Sample Hospital. Only physicians who have appropriate medical staff privileges at Sample Hospital may participate in this referral service. There is no charge or fee to you or the participation physician for this referral service, and participation by each physician is voluntary.

We will refer you to a physician based on your request for a referral and the location, specialty, and rotation availability of the physician.

The doctors on our referral panel are independent practitioners or physician employees. The independent practitioners are not employees, agents or representatives of Sample Hospital and are solely responsible for the provision of medical services to you.”

Sample Form Letter for Confirming Physician's Participation in a Community Education Event
[TO BE TYPED ON HOSPITAL LETTERHEAD]

[Date]

_____, M.D.

Dear Dr. _____:

In order to meet regulatory concerns, I am providing this letter to document an agreement between _____ ("Hospital") and yourself regarding your lecturing on the subject of _____ at Hospital's community educational event entitled _____ and scheduled for [date and time]. The hospital will reimburse you for mileage to and from your place of business or residence at the I.R.S. approved rate and you are invited to participate in the meal provided at the event. You may distribute business cards, but you may not distribute other promotional items or materials, such as informational flyers or free gifts at the event.

Please understand that the Hospital's reimbursement of your mileage and payment of the modest cost of your meal for these meetings is in no way designed to induce you to refer patients to the Hospital. Rather, the cost of the meal is in partial exchange for the time and energy you have committed to the lecture. I wish to take this opportunity to thank you in advance for your willingness to give your valuable time to serve in this capacity.

If you concur with the content of this letter, please execute below.

Sincerely,

Chief Executive Officer

I understand and agree with the content of this letter:

_____, M.D. _____(Date)

Signature