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I. SCOPE:



This policy applies to (1) Tenet Healthcare Corporation and its subsidiaries and affiliates (each, an “Affiliate”); (2) any other entity or organization in which Tenet Healthcare Corporation or an Affiliate owns a direct or indirect equity interest greater than 50%; and (3) any hospital or entity in which an Affiliate either manages or controls the day-to-day operations of the facility (each, a “Tenet Entity”) (collectively, “Tenet”).

II. PURPOSE:



- A. This policy addresses the circumstances under which Tenet may participate as an Investor in or manage an ASC Joint Venture. This policy applies regardless of the legal structure of the ASC (*e.g.*, corporation, limited liability company, limited partnership, etc.), the Tenet Investor’s role in the ASC (*e.g.*, member of an LLC, general or limited partner of a limited partnership, etc.). This policy does not address joint venture arrangements other than ASC Joint Ventures.
- B. This policy also shall serve to ensure, through the implementation of prudent and reasonable controls, that:
 1. all ASC Joint Ventures comply with applicable laws and regulations, including the Federal health care program Anti-Kickback Statute (“AKS”) and the federal physician self-referral law (“Stark Law”); and
 2. under no circumstances will any ASC Joint Venture involve a Tenet Entity paying or transferring Remuneration to a Physician or Other Potential Referral Source, directly or indirectly, with the intent to induce the Physician or Other Potential Referral Source to refer patients to, or otherwise generate business for, any Tenet Entity.

III. DEFINITIONS:

- A. “**Ambulatory Surgery Center**” or “**ASC**” means an ambulatory surgery center certified under 42 C.F.R. Part 416.
- B. “**ASC Joint Venture**” means any ASC that a Tenet Entity participates in as an Investor with other Investors who are Physicians and/or Other Potential Referral Sources.
- C. “**ASC Safe Harbors**” means any safe harbor with respect to Physician investment in ASCs, promulgated by the United States Department of Health and Human Services Office of Inspector General (OIG) in 42 C.F.R. § 1001.952(r).

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- D. **“Covered ASC Procedure”** means any medical or surgical procedure designated by the Centers for Medicare & Medicaid Services (“CMS”) as meeting the standards described in 42 C.F.R. §§ 416.65(a) and (b) and published by CMS pursuant to 42 C.F.R. § 416.65(c).
- E. **“Fair Market Value”** means the value in arm’s-length transactions, consistent with the General Market Value. “General Market Value” means the price that an asset would bring, as the result of bona fide bargaining between well-informed buyers and sellers who are operating at arm’s length and are not in a position to generate business for one another. See Law Department Policy L-25 “Referral Source Fair Market Value” for additional requirements on determining Fair Market Value.
- F. **“Federal health care program”** means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, including, but not limited to, Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TriCare/VA/CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corp Volunteers, Railroad Retirement Benefits Black Lung Program, Services Provided to Federal Prisoners, Pre-Existing Condition Insurance Plans (PCIPs) and Section 1011 Requests.
- G. **“Investment”** means any direct or indirect beneficial ownership interest in an ASC, regardless of its character, e.g., stock, membership interest, partnership share, options, units, contractual rights which mimic an equity interest, synthetic equity, preferred stock, debt with a unilateral right to convert to an equity interest (whether at the option of the holder, upon the passage of time, or upon the occurrence of an event or series of events) and the like.
- H. **“Investor”** means a person or entity that has an Investment in an ASC Joint Venture. An Investor may include a Tenet Entity, Physician, an Other Potential Referral Source, a hospital or health system (commonly referred to as a health system partner) or other entity.
- I. **“Other Potential Referral Source”** means any individual or entity in a position to make or influence referrals to, or otherwise generate business for, a Tenet Entity.
- J. **“Physician”** means a duly licensed and authorized doctor of medicine or osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, doctor of optometry or chiropractor and his or her immediate family members. Immediate family member means husband or wife; birth or adoptive

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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.

- K. **“Physician Investor”** means any Physician is an Investor.
- L. **“Remuneration”** means anything of value, including, but not limited to, cash, items or services.
- M. **“USPI Investor”** means a Tenet Entity that is an Investor.

IV. POLICY:



The OIG has adopted regulations, generally referred to as the “safe harbor” regulations, which identify certain practices and relationships that would not subject the participants to civil or criminal sanctions under the Anti-Kickback Statute. The ASC Safe Harbors provide that a return on Investment, such as a dividend or interest income, made to a Physician Investor will not constitute prohibited remuneration under the Anti-Kickback Statute if the requirements of the ASC Safe Harbors are met. This policy requires an ASC Joint Venture to meet certain requirements of the applicable ASC Safe Harbor. This policy also acknowledges that not all ASC Joint Ventures meet all of the requirements of the ASC Safe Harbors. In these circumstances, the USPI Investor may invest in the ASC Joint Venture provided such investment does not pose a material risk of Federal health care program abuse, and further provided the ASC Joint Venture adopts safeguards to prevent such abuse.

V. PROCEDURE:

A. Joint Venture Requirements



In order for a USPI Investor to invest in an ASC Joint Venture, the ASC Joint Venture must meet the following requirements:

- a. The ASC must be certified as an ambulatory surgery center under 42 C.F.R. Part 416 (or, with respect to a de novo ASC Joint Venture project, must be certified as soon as reasonably practicable upon onset of operations).
- b. The ASC’s clinical space, when being used by the ASC, shall be dedicated exclusively to the ASC consistent with Medicare Conditions of Participation.
- c. Any Physician Investor who refers a patient to the ASC shall



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disclose to the patient the Investor's Investment interest in the ASC, which disclosure shall comply with any applicable disclosure requirements imposed by state law.

- d. The terms on which an Investment in the ASC is offered to a potential Investor must not be related to the previous or expected volume of referrals, services furnished, or the amount of business otherwise generated from that potential Investor to the ASC, the USPI Investor or Tenet.
- (1) All potential Investors shall be offered an equal opportunity to purchase Investments on the same terms.
 - (2) The criteria for choosing to whom Investments are offered shall be objective. Acceptable objective criteria include (i) objective measurements of quality of care and reputation of the physician in the community; (ii) the type of practice of the potential Investor, thus allowing a favorable mix of procedures to be performed at the ASC consistent with the service lines offered or to be offered at the ASC, (iii) a willingness to perform procedures at times of day or on days of the week that are beneficial to the ASC, (iv) a demonstrated willingness to observe certain protocols within medically acceptable standards, such as the way in which certain procedures are conducted and the use of certain type of supplies, (v) a demonstrated willingness to work within the frameworks established in connection with managed care contracts, (vi) agreement to abide by the terms of the governing documents of the ASC Joint Venture, (vii) maintaining active membership on the medical staff of the ASC Joint Venture in accordance with the applicable medical staff bylaws, and (viii) agreement to complete the annual compliance training provided by Tenet to Physician Investors.
 - (3) Investors or potential Investors shall not be guaranteed or promised a minimum rate of return from the ASC or that a distribution will ever be made by the ASC.
- e. All transactions among Investors with respect to an Interest in an ASC Joint Venture shall be consistent with Fair Market Value as follows:



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- (1) With respect to the initial Investment by a Tenet Entity in an existing ASC, Fair Market Value of the interest shall be established by an independent valuation firm approved by Tenet’s Law Department (an “Independent Valuator”) who shall issue a written fair market value report prior to the consummation of the transaction (“Fair Market Value Report”).
- (2) With respect to Investments offered to Investors in a de novo ASC Joint Venture, the offering price for an Interest in the ASC Joint Venture shall be equal to the pro-rata capital contribution for the Investment offered to all Investors based on the cost build-up set forth in the pro forma calculations developed by the Development Lead net of debt financing to be obtained in accordance with such pro forma.
- (3) With respect to management services provided to the ASC Joint Venture or the ASC, the fee for such management services shall be consistent with Fair Market Value set forth in a Fair Market Value Report issued by an Independent Valuator.
- (4) When (i) the ASC has an existing operating history, (ii) a Tenet Entity has an existing Investment in the ASC Joint Venture, and (iii)(A) the ASC Joint Venture proposes to issue additional ownership interests pursuant to a secondary offering, (B) Investors other than a Tenet Entity are seeking to buy or sell interests in the ASC Joint Venture to any person; or (C) the USPI Investor desires to buy or sell additional ownership interests from or to a Potential Referral Source, the sale or purchase of the Investment shall be consistent with Fair Market Value determined by an Independent Valuator and reflected in a Fair Market Value Report.
- (5) With the exception of a Fair Market Value Report relied on pursuant to Section (3) above, the Fair Market Value Report may only be utilized beyond its “through date” if the USPI Accounting Department has determined in accordance with internal policies and procedures that the economics that form the basis of the Report have remained

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consistent and that the report reflects current Fair Market Value. In no event may an Fair Market Value Report be utilized more than one year beyond its issuance.

- (6) Any Remuneration inconsistent with the requirements above requires the advance written approval of the General Counsel.
 - (7) For purchases made pursuant to the ASC Joint Venture’s Operating Documents, see Law Department Policy L-29 “Equity Transactions”.
- f. Neither the ASC nor any Investor (or other individual or entity acting on behalf of the ASC or any Investor) shall loan funds to or guarantee a loan for a potential Investor if the potential Investor uses any part of such loan to obtain the Investment interest.
- (1) If an Investor contributes land, building, equipment or other assets, an Independent Valuator shall be engaged, at the contributing Investor’s expense, to conduct a fair market value appraisal of the asset being contributed to the ASC Joint Venture entity; otherwise each Investor must pay for his/her/its Investment interest in a lump-sum cash payment.
 - (2) An Investor may not offer any Remuneration, directly or indirectly, to a potential Investor intended to assist the potential Investor in purchasing his/her/its Investment interest.
- g. The amount of payment to an Investor in the ASC in return for his/her/its Investment must be directly proportional to the Investor’s capital investment in the ASC (including the Fair Market Value of any pre-operational services rendered by the Investor).
- h. The ASC and all Physician Investors furnishing services at the ASC shall agree to treat in a nondiscriminatory manner patients receiving medical benefits or assistance under any Federal health care program, including Medicaid patients (to the extent the ASC agrees to treat Medicaid patients).
- i. The ASC may not use space, including, but not limited to,

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operating and recovery room space, located in a Tenet facility or owned by Tenet, unless such space is leased from Tenet in accordance with a written agreement that complies with [Law Department Policy L-4, Office Space and Equipment Leases with Physician and Other Potential Referral Sources](#).

- j. The ASC may not use equipment owned by Tenet unless such equipment is leased from Tenet in accordance with a written agreement that complies with [Law Department Policy L-4, Office Space and Equipment Leases with Physician and Other Potential Referral Sources \(other than equipment owned or leased by the ASC Joint Venture\)](#).
- k. The ASC may not use services provided by Tenet unless those services are provided in accordance with a written agreement that complies with the [Law Department Policy L-5, Personal Services Arrangements and Law Department Policy L-23 “Personal Services Arrangements with Non-Physician Referral Sources”](#). If the ASC engages a third party management company other than a Tenet Entity to manage the ASC, such management company must be approved in advance by USPI’s CEO and Tenet’s General Counsel, CFO, President and CEO.
- l. All ancillary services performed at the ASC must be directly and integrally related to the Covered ASC Procedures performed at the ASC, and none may be separately billed to any Federal health care program by the ASC.
- m. The USPI Investor in the ASC may not include on its cost report or any claim for payment from a Federal health care program any costs associated with the ASC (unless such costs are required to be included on the cost report by a Federal health care program).
- n. Development Counsel’s designee must verify that no Investor is listed on the U.S. General Services Administration’s (GSA) List of Parties Excluded from Federal Procurement and Nonprocurement Programs, OIG’s List of Excluded Individuals/Entities or any applicable state healthcare exclusion list.
- o. The agreement that governs the ASC Joint Venture and the relationship among the Investors (e.g., Operating Agreement, Shareholders Agreement, Partnership Agreement, etc.) shall

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require that each Physician Investor abide by Tenet’s Compliance Program. Specifically, the Physician Investors will be required to:

- (1) Certify that they have received, read and understood and agree to abide by Tenet’s Code of Conduct;
- (2) Comply with Tenet’s Compliance Program and Tenet’s policies and procedures related to the Anti-Kickback Statute and the Stark Law. A summary of Tenet’s Compliance Program and a link to Tenet’s policies and procedures shall be provided to the Physician Investors upon request;
- (3) Certify that they shall not violate the Anti-Kickback Statute and/or the Stark Law; and
- (4) Complete any training required under Tenet’s Compliance Program.

p. The ASC Safe Harbors require Physician Investors in an ASC Joint Venture to meet the following requirements:

- (1) At least one-third of each Physician Investor’s medical practice income from all sources for the previous fiscal year or previous 12-month period must be derived from the Physician’s performance of Covered ASC Procedures (the “ASC Income Percentage Requirement”). Each Physician Investor must certify annually that he/she has met the ASC Income Percentage Requirement during the previous 12 months; and
- (2) If an ASC Joint Venture owns and operates an ASC which is a Multi-Specialty ASC, each Physician Investor must perform at least one-third of his or her Covered ASC Procedures at the ASC (the “ASC Use Requirement”). Each Physician Investor shall certify annually that he/she has met the ASC Use Requirement during the previous 12 months.

q. In the event that any Physician Investor in an ASC Joint Venture does not meet the ASC Income Percentage Requirement and, where applicable, the ASC Use Requirement during any applicable



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12-month period, as applicable, then the facility Administrator and Regional Vice President shall contact the Operations Counsel who shall, in consultation with the ASC Joint Venture’s governing board, determine (1) whether the Physician may remain an Investor in the ASC (and, if so, whether any additional conditions shall be imposed on the Physician Investor) because the Physician’s status as an Investor does not raise any material risks under the Anti-Kickback Statute, or (2) whether the Physician Investor shall be required to divest his/her Investment interest in accordance with the governing agreements of the ASC Joint Venture. The determination of the Operations Counsel, which may be in the form of an approval note approving the buyback of the Physician’s Investment interest, shall be in writing and uploaded to the eCATS package for the ASC.

- r. In the event that the responsible Operations Counsel, in consultation with the ASC Joint Venture’s governing board, determines that the Physician Investor should be required to divest his/her Investment in the ASC, but is unable to require such divestiture under the terms of the governing documents of the ASC Joint Venture, then the USPI Investor shall consider all appropriate remedies and safeguards to be put in place, including without limitation, the divestment of its Investment in the ASC.

B. Approval Requirements

1. All ASC Joint Venture investments and development by USPI or any Tenet Entity require the advance review and approval of USPI Development Counsel to confirm that the structure of the ASC Joint Venture and the investment and governing documents (e.g., Subscription Agreement, Offering Memorandum, Operating Agreement, Shareholders Agreement, etc.) comply with this Policy and all applicable federal and state laws and regulations, including, without limitation, securities laws and regulations (including state blue sky laws and regulations), the Anti-Kickback Statute and the Stark Law.
3. With respect to a new ASC Joint Venture, the USPI Market President, Regional Vice President and/or Development Lead (or his or her designee), may hold informal talks with a small number of potential Physician Investors to determine the level of interest for the ASC Joint Venture, without making any commitments. The subject matter of any such meetings must be limited in scope to the potential Investors’ general



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interest in an ASC and potential Investment opportunity. These and any subsequent contacts with potential Investors must be made in a manner consistent with **Attachment A** and after consultation with the Development Counsel.

4. The Market President (or his or her designee) and the Development Lead shall prepare a Management Approval Package that includes, without limitation, the reasons for and structure of the proposed ASC Joint Venture, to whom the Investments will be offered, and the facts necessary to support one or more of the following:
 - a. The community’s desire for or benefit from the contemplated ASC;
 - b. The advantages of the ASC being affiliated with Tenet (*e.g.*, credentialing, quality oversight, experience in managing ASCs, contracting with payors, group purchasing) as compared with an ASC that has no affiliation;
 - c. The pro-competitive effects of the ASC, such as providing a lower-cost setting for the performance of outpatient procedures with which managed care payors and others may contract; and/or
 - d. The extent to which the ASC will relieve pressures on existing surgical facilities in the marketplace that may be faced with more demand than the available facilities are capable of meeting.
5. Following the legal approval of Development Counsel, the applicable Development Lead shall submit the Management Approval Package, to and obtain the approval of the individuals required in accordance with, the USPI Corporate Approval Authority Policy.
6. After the approvals required above are obtained, Development Counsel’s designee shall load all investment and governance documents, approvals, and the Management Approval Package and other supporting documents required by this policy (e.g. OIG/GSA searches and Fair Market Value reports) into eCATS as an archived package.

VI. ENFORCEMENT:

All employees whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this

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policy will be subject to appropriate performance management pursuant to all applicable policies and procedures. Such performance management may also include modification of compensation, including any merit or discretionary compensation awards, as allowed by applicable law.

VII. REFERENCES:

- [Law Department Policy L-4, Office Space and Equipment Leases with Physician and Other Potential Referral Sources](#)
- [Law Department Policy L-5, Personal Services Arrangements](#)
- Anti-Kickback Statute, 42 U.S.C. § 1320a-7b
- Safe Harbor for Ambulatory Surgical Centers, 42 C.F.R. §1001.952(r)
- Stark Law, 42 U.S.C. § 1395nn
- [OIG Advisory Opinion 01-17](#) (Oct. 10, 2001)

VIII. ATTACHMENTS:

[L-08A Investor Meeting Guidelines \(Attachment A\)](#)