

I. PATIENT CARE

A. Care and Treatment

UK HealthCare (UKHC) is committed to providing patient care in accordance with recognized legal, ethical and professional standards. Licensing and accreditation is maintained by numerous professional organizations, including UK Hospital's accreditation by the Joint Commission of Accreditation of Healthcare Organizations (JCAHO). Employees are expected to follow all applicable federal, state and local laws regarding patient care and treatment. Additionally, each employee is obligated to follow all applicable standards of external licensing, regulating, and accrediting agencies and all applicable UK Governing and Administrative Regulations as well as UK Hospital policies and procedures.

B. Medical Staff Credentialing

Medical providers who practice medicine or dentistry at UK HealthCare must be a member of the UK Hospital medical staff. Accordingly, they shall abide by the UK Hospital "Bylaws, Rules and Regulations of the Medical Staff." No member of the medical staff individually or collectively will act in a way that unfairly prevents other qualified physicians from practicing at UKHC.

C. Patient Information Maintenance and Confidentiality

All medical records, including lab reports, must be complete, accurate and retained and maintained in accordance with federal and state law and UK policy. The information contained within an individual's medical records is confidential and, therefore, *may only be released in accordance with UK policy. The Health Insurance Portability and Accountability Act (HIPAA), and applicable state law.* Responses to any such orders or requests must comply with UK policy, HIPAA and state law. UKHC employees shall maintain at all times the confidentiality of patient records and medical information as required by law and codified in UK policy.

D. Mandatory Testing and Reporting

UKHC employees shall report to the proper authority any and all patient-related information as required by state or federal law. All such information must be reported accurately and honestly. Employees who are uncertain about their duty to make a particular report must consult with the appropriate UKHC official to determine the extent of their reporting obligation. Likewise, UKHC employees are required to perform all medical testing as required by law. All applicable UK policies and procedures must be followed when such tests are administered. Only those tests that are required by law shall be performed without the consent of the patient or patient's family.

E. Patient Transfer and Discharge

UKHC employees are prohibited from knowingly or willfully reducing or limiting medically necessary services provided to patients who are entitled to receive medical care. All required examinations, tests and reports must be completed properly and documented according to recognized standards. For example:

- 1. UKHC employees shall screen all individuals seeking treatment at the Emergency Department to determine whether an emergency condition exists or whether the patient is in active labor. Any patient determined by a UK physician to require emergent care or to be in active labor will be treated until the condition is stabilized. The patient may be released or transferred before being stabilized if the patient refuses treatment or requests a transfer or if the physician certifies that the medical benefits of treatment at the receiving facility outweigh the risk involved in transfer.**
- 2. UKHC employees shall not falsify or misrepresent any examination, test result or any entry in any report. UKHC employees are prohibited from knowingly giving false or misleading information that reasonably could be expected to influence the decision when to discharge a person from the hospital.**

F. Drug and Device Usage

UKHC employees shall not illegally or unethically distribute or use drugs or devices that are unapproved, adulterated or misbranded. With some exception, UKHC employees only may use and dispense drugs and devices that the Food and Drug Administration (FDA) has approved. However, because UKHC operates in a teaching and research setting, drugs and devices that have not received final approval by the FDA are employed by UKHC employees under government-approved guidelines.

Additionally, UKHC is obligated to report all incidents in which a medical device contributes to or causes death, serious illness, or serious injury to a patient or employee.

Examples of prohibited conduct in this area would include:

- 1. using unapproved drugs or devices without strict compliance with University, UKHC, FDA, NIH, and/or HCFA guidelines;**
- 2. making any false or misleading representation or suggestion about whether the FDA has approved a specific drug or device;**
- 3. representing that a certain drug or device is something that it is not;**

4. **failing to report a reportable event under the Safe Medical Devices Act as set forth in UK Hospital policy 4-13.**

II. PATIENT BILLING AND REIMBURSEMENT ISSUES

A. General Requirements

Numerous requirements surround patient billing and provider reimbursement. Billing standards, assignments and reimbursement requirements can be complex and at times seem ambiguous. Nonetheless, it is extremely important that UKHC carry out its billing, assignments and reimbursement procedures accurately at all times.

B. Billing Practice

Billing activities are expected to be performed in a manner consistent with Medicare, Medicaid and other third-party payors' regulations and requirements including the Medicare Hospital Manual (HIM 10), the Kentucky Administrative Code for Medicaid, the American Medical Association's Physicians' Current Procedure Terminology (CPT), the Medicare Diagnostic Related Group (DRG) coding requirements and other applicable regulations. Specific examples of prohibited conduct under this subsection include: billing for services that were not provided; misrepresenting the nature of services that have been provided; filing false cost reports; misrepresenting provider credentials or treatment remedies; and providing unnecessary or substandard services.

UKHC employees shall not engage, encourage or condone the following conduct when billing patients, third-party payors or others, including Medicare and Medicaid:

1. **knowingly and willfully making, or causing to be made, any false statement or representation of material fact in any application for any benefit or payment (42 U.S.C. § 1320a-7b(a)(1));**
2. **knowingly and willfully making, or causing to be made, any false statement or representation of a material fact for use in determining rights to a benefit or payment (42 U.S.C. § 1320-7b(a)(2));**
3. **concealing or failing to disclose an event affecting the initial or continued right to any benefit or payment, with the intent to fraudulently secure the benefit or payment in an amount greater than is due or when no such benefit is authorized (42 U.S.C. § 1320a 7b(a)(3)(b));**
4. **knowingly and willfully converting a benefit or payment for a use other than**

for the use of the person in whose name the application for the benefit was made (42 U.S.C. § 1320a-7b(a)(4));

- 5. presenting, or causing to be presented, a claim:**
 - (a) for an item or service that is known or should have been known not to have been provided as claimed (42 U.S.C. § 1320a-7a(a)(1)(A));**
 - (b) for an item or service that is known or should have been known to be false, improper or fraudulent (42 U.S.C. § 1320a-7a(a)(1)(B));**
 - (c) for physician services, or an item or service incident to the physician services where the individual was not licensed as a physician, the license was obtained through a misrepresentation of material fact, or it was falsely represented to the patient that the physician was certified in a medical specialty (42 U.S.C. § 1320 a-7a-7a(a)(1)(C));**
 - (d) intentionally requesting payment for medical services not warranted (i.e. reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member) by the patient's current and documented medical condition (42 U.S.C. § 1395y(a)(1)(A));**
 - (e) containing a billing code that provides a higher payment rate than the billing code that accurately reflects the service furnished to the patient (42 U.S.C. § 1320a-7a(a)(1)(A));**
 - (f) containing a DRG code that provides a higher payment rate than the DRG code that accurately reflects the service furnished to the patient (42 U.S.C. § 1320a-7a(a)(1)(A));**
 - (g) containing charges for non-physician outpatient services that already were included in the hospital's inpatient payment under the Prospective Payment System (PPS);**
 - (h) for the same service, which has been billed to more than one primary payor at the same time (42 U.S.C. § 1320a-7a(a)(1)(A)).**
- 6. Knowingly presenting, or causing to be presented, a request for payment in violation of the terms of an assignment or an agreement with the payor (42 U.S.C. § 1320a-7a(a)(2));**
- 7. Knowingly filling a false or fraudulent claim for payment to the federal or state government, knowingly using a false record or statement to obtain payment on a false or fraudulent claim, delivering less property than certified in a receipt, or making a false statement to conceal an obligation**

(31 U.S.C. § 3730);

8. **submitting, or causing to be submitted, false cost reports, including those which inaccurately reflect the provider's operating cost due to the provider inappropriately shifting certain costs to cost centers that are below their reimbursement cap and shifting non-Medicare related cost to Medicare cost centers (42 U.S.C. § 1320a-7b(a)(1));**
9. **submitting or causing to be submitted, bills piecemeal or in a fragmented fashion to maximize the reimbursement for various tests or procedures that are required to be billed together (42 U.S.C. § 1320a-7b(a)(2));**
10. **submitting, or causing to be submitted, a reimbursement claim for the full amount of the DRG related to a transferred patient, rather than seeking reimbursement for charges based on a per diem rate (42 U.S.C. § 1320a-7b(a)(2));**
11. **entering into any agreement, combination, or conspiracy to defraud the federal or state government or any department or agency thereof, by obtaining or attempting to obtain the payment or allowance of any false or fictitious claim (31 U.S.C. § 3730);**
12. **claiming, charging, accepting or receiving any payments for laboratory services, unless the test components are medically necessary and billed in accordance with the Medicare Hospital Manual (HIM 10, Sec. 439), and Kentucky Administrative Regulation (907 KAR 1:028), as applicable;**
13. **claiming, charging, accepting or receiving any payments for physician services rendered by Residents in a non-provider settings (such as nursing homes, free standing clinics or physician offices), unless the time spent by the Resident in patient care activities in the non-provider setting is not included in the hospital's full-time equivalency count for direct graduate medical education ("GME") cost purposes (42 C.F.R § 415.200, et. seq.);**
14. **claiming, charging, accepting or receiving any payments for the services of Residents providing Moonlighting Services; (42 C.F.R § 415.200, et. seq.);**
15. **claiming, charging, accepting or receiving any payments for services furnished in "Teaching Settings" involving Residents unless the services are personally furnished by the Teaching Physician or unless otherwise permitted as set forth in the next section below (42 C.F.R §415.170, et. seq.).**

C. Services Furnished by Teaching Physicians and Residents

Whenever services are provided in a Teaching Setting involving Residents, UKHC and its employees are prohibited, under the regulations promulgated at 42 C.F.R. §§ 415.150 to 415.184 and Kentucky Physician Manual §§ III(G); V(3), from billing patients, third-party payors or others, including Medicare and Medicaid, for such services, **unless the services are furnished:**

- (1) personally by a Teaching Physician who is not a Resident; or**
- (2) jointly by a Resident and a Teaching Physician; or**
- (3) by a resident with the Teaching Physician present during the critical or key portions of the service(s) that a Resident performs (excluding the exception described in Number 2 below).**

1. Evaluation and Management ("E&M") Services

- (a) The Teaching Physician must be present for the key portion of the time during the performance of the service for which payment is sought. If the Teaching Physician believes that a key portion of an entire evaluation cannot be identified, the Teaching Physician should be present for the entire service. The Teaching Physician need not duplicate the Resident services. However, the Teaching Physician is required to verify key portions of a service and perform certain key portions.
- (b) In the case of services such as E&M services, for which there are several levels of service available for reporting purposes, the appropriate billing level must reflect the extent and complexity of the service if the service has been furnished fully by the Teaching Physician. If the medical decision making in an individual service is highly complex to an inexperienced Resident, but straightforward to the Teaching Physician, the charge submitted should be at the lower level reflecting the involvement of the Teaching Physician in the service. Therefore, when determining at what level the Teaching Physician's services should be billed, consideration should be given to the level of service required to be performed by the Teaching Physician in accordance with the Centers for Medicare & Medicaid Services (CMS) *Documentation Guidelines for Evaluation and Management Services*, and the *Physician Manual*, the *American Medical Association's Current Procedural Terminology (CPT)*, and (907 KAR 3:005, 3:010).
- (c) Regardless of whether a patient receives E&M services on an inpatient or outpatient basis, the Teaching Physician must be present during the key portion of the visit. Note, however, that there is an exception to the physical presence requirement for certain low- and mid-level evaluations in the office setting (see number 2 below).
- (d) The Teaching Physician must, in a timely fashion, personally document in writing or dictated note in the medical record that he/she was physically present during the portion of any E&M service that determines the level of service billed; specifically, the Teaching Physician must document:

- that he/she performed the service or were physically present during the key or critical portions of the service when performed by the resident; and
- his/her participation in the management of the patient.

(e) **Documentation illustrations:**

1. If a Resident does not see the patient, the Teaching Physician should document as if he/she would document an E&M service in a non-teaching setting.
2. If a Teaching Physician's service follows a Resident's service, then the Teaching Physician's documentation should refer to the Resident's note and provide summary comments that establish, revise, or confirm the Resident's findings and the appropriate level of service required by the patient. For example, the Teaching Physician would not have to restate the review of systems and past/family/social history; however, the Teaching Physician would have to independently perform the critical or key portion(s) of the service and, as appropriate, discuss the case with the resident. The Teaching Physician must document that he/she personally saw the patient, personally performed the critical or key portions of the service, and participated in the management of the patient. Combined, the entries must be adequate to substantiate the level of service required by the patient.

Ex. "I saw and evaluated the patient. I reviewed the Resident's note and agree, except that picture is more consistent with pericarditis than myocardial ischemia. Will begin NSAIDs."

3. If all the required information is obtained by the Resident in the presence of, or jointly with, the Teaching Physician, but documented by the Resident, the Teaching Physician's note may reference the resident's note. The Teaching Physician must document that he/she was present during the performance of the critical or key portion(s) of the service and that he or she was directly involved in the management of the patient. Combined, the entries must be adequate to substantiate the level of service required by the patient.

Ex. "I was present with the Resident during the history and exam. I discussed the case with Resident and agree with the findings and plan as documented."

2. Exceptions to E&M services Furnished in Certain Primary Care Centers

- (a) In the case of certain E&M codes of lower and mid-level complexity, the Teaching Physician may claim payment from Medicare and Medicaid for services furnished by a Resident without the presence of the Teaching Physician only if

the services are provided in a hospital or another ambulatory care entity in which the time spent by the Residents in patient care activities is included in determining direct GME payments to a Teaching Hospital by the hospital's fiscal intermediary.

- (b) The only acceptable CPT-4 codes that can be used by approved primary care programs are new patient codes: 99201, 99202, 99203, and established patient codes: 99211, 99212, and 99213 and IPPE exams for new Medicare beneficiaries code: G0344.
- (c) Family Practice, General Internal Medicine, Geriatric Medicine, Pediatrics and Obstetrics/Gynecology residency programs may qualify for an exception upon application for the exception and approval by the appropriate Medicare or Medicaid carrier. To qualify for this exception, **the following criteria must be met:**
 - 1. The patients seen must be an identifiable group of individuals who consider the primary care center to be the continuing source of their health care in which services are furnished by Residents under the supervision of Teaching Physicians;
 - 2. The range of services provided by Residents at the primary care center must include: (i) acute care for undifferentiated problems or chronic care or ongoing conditions, (ii) coordination of care furnished by the physicians, and (iii) comprehensive care not limited by organ system or diagnosis;
 - 3. The services are provided by Residents who have completed more than six months in an approved residency program; and
 - 4. The Teaching Physician does not supervise more than four (4) Residents at any one time, the Teaching Physician is immediately available to assist and has no other conflicting responsibilities, the Teaching Physician reviews with each Resident during or immediately after each patient visit the patient's medical history, physical examination, diagnosis and record of tests or therapies, and the Teaching Physician documents in the medical record his or her management responsibility and participation in the review and direction of the services furnished to each patient.

3. Surgical and High-Risk Procedures (including Endoscopic Operations)

(a) Major Surgery

- 1. In the case of surgical, high-risk or other complex procedures, the

Teaching Physician must be present during all critical or key portions of the procedure. The Teaching Physician may use his or her medical judgment as to what constitutes the critical or key portion. However, if the Teaching Physician is not present for the entire procedure, the Teaching Physician must document what is considered the critical or key portion of the surgery and that he/she was present during that critical or key portion. The Teaching Physician's presence is not required during opening and closing of the surgical field unless it is considered the critical or key portion.

2. The Teaching Physician must be immediately available to furnish services during the entire procedure. If the Teaching Physician is not immediately available, the Teaching Physician must arrange for another physician to be immediately available to intervene.
3. As part of the major surgery, the Teaching Physician is responsible for pre-operative, operative, and post-operative care. The Teaching Physician may determine which post-operative visits are to be considered critical or key and require the Teaching Physician's presence. However, if the patient's post-operative period extends beyond the patient's discharge and the Teaching Physician will not be involved in the patient's follow-up care, the Teaching Physician must follow the instructions for billing less than the global surgical fee.
4. If the Teaching Physician bills for two overlapping surgeries, the Teaching Physician must be present during the critical or key portion of both operations. The Teaching Physician must personally document the critical or key portion of both procedures in a manner sufficient to clearly reflect that the Teaching Physician was immediately available to return to either procedure in the event of a complication. The critical or key portions may not take place at the same time. When all of the key portions of the initial procedure have been completed, the teaching surgeon may begin to become involved in a second procedure.
5. In the case of three concurrent surgical procedures, the role of the teaching surgeon (not anesthesiologist) in each of the cases is classified as supervisory service rather than a physician service to an individual patient and **is not** payable under the physician fee schedule.

(b) Minor Procedures

1. In the case of minor procedures, considered to be procedures which only take a few minutes to complete such as a simple suture, the Teaching Physician must be present for the entire procedure in order to bill for the procedure. NOTE: CMS defines a minor procedure as one that typically

takes less than five (5) minutes to perform.

(c) High-Risk Procedures

1. In the case of other complex or high-risk procedures, where Medicare policy or the CPT description indicates that the procedure requires the personal supervision of its performance by a physician, the Teaching Physician must be physically present with the resident during the entire procedure. High-risk procedures include:
 - (i) interventional, radiological and cardiologic supervision and interpretation codes;
 - (ii) cardiac catheterization;
 - (iii) cardiovascular stress tests; and
 - (iv) transesophageal echocardiography.

(d) Diagnostic Services

1. In the case of diagnostic procedures performed through an endoscope the Teaching Physician must be present during the entire viewing, which includes insertion and removal of the device.
2. In the case of interpretation of diagnostic radiology and other diagnostic tests, the Teaching Physician must personally review the image and the Resident's interpretation, document such review and indicate whether the Teaching Physician is in agreement with the findings of the Resident or edit the findings. If the teaching physician's signature is the only signature on the interpretation, it is assumed that he or she is indicating that he or she personally performed the interpretation. A co-signature by the Teaching Physician on the Resident's interpretation is not sufficient.
3. In the case of pathology, the Teaching Physician must review the specimen or study and the Resident's interpretation, document such review and indicate whether the Teaching Physician is in agreement with the findings of the Resident or edit the findings.

(e) Time-Based Services

1. For procedure codes determined on the basis of time, the Teaching Physician must be present for a period of time for which the claim is made. The Teaching Physician may **not** add time spent by the Resident in the absence of the Teaching Physician to the time spent by the Resident and the Teaching Physician with the patient.

2. Examples of services falling into this category include:
 - (i) individual medical psychotherapy;
 - (ii) critical care services;
 - (iii) E&M codes in which counseling or coordination of care dominates more than 50 percent of the encounter, and time is considered the key controlling factor to qualify for a particular level of E&M service;
 - (iv) prolonged service; and
 - (v) care plan oversight.

(f) Anesthesia

1. The teaching anesthesiologist is present in the operating room for the critical or key portions of the procedure, including induction and emergence, and he or she is available immediately to furnish services during the entire procedure;
2. The teaching anesthesiologist documents in the medical record as to the key portions of the service for which he or she is present; and
3. The teaching anesthesiologist is in the operating suite during the portions of the procedure not considered to be critical or key;
4. The teaching anesthesiologist's presence is not required during pre-operative or post-operative visits.

(g) Endoscopy Procedures

1. To bill Medicare for endoscopic procedures (excluding endoscopic surgery that follows the surgery policy subsection A, above) the teaching physician must be present during the entire viewing. The entire viewing starts at the time of insertion of the endoscope and ends at the time of removal of the endoscope. Viewing of the entire procedure through a monitor in another room does not meet the teaching physician presence requirement.

(h) Psychiatry

1. In the case of psychiatry, the Teaching Physician concurrently observes the service provided by the Resident by the use of a one-way mirror or video equipment. Monitoring by audio-only equipment is not sufficient. When a

one-way mirror or video equipment is not used, the Teaching Physician must be present for a period of time for which the claim is made. The Teaching Physician may **not** add time spent by the Resident in the absence of the Teaching Physician to the time spent by the Resident and the Teaching Physician with the patient.

(i) Assistance During Surgery.

1. CMS will **not** pay for the services of assistants at surgery furnished in a teaching hospital which has a training program related to the medical specialty required for the surgical procedures and has a qualified resident available to perform the service. However, if a qualified resident is not available, reimbursement is allowed if the teaching physician certifies that a qualified resident was not available and the certification is attached to the corresponding claim.
2. The services of an assistant at surgery justify the services of a physician assistant due to exceptional medical circumstances, such as emergency, life-threatening situations like multiple traumatic injuries that require immediate attention.
3. If a primary surgeon has an across-the-board policy of never involving Residents in the pre-operative, operative or post-operative care of patients, billing for assistant at surgery services may be allowable.
4. Teams of physicians may be required for complex medical procedures, such as multistage transplant surgery and coronary bypass surgery. Each Teaching Physician is engaged in a different level of activity different from assisting the surgeon in charge of the case. If a team surgery charge is submitted, additional billing should not be submitted.

(j) Medical Student Documentation.

1. Medical student documentation for evaluation and management services, i.e. the review of systems (ROS) and past family and social history (PFSH), may be referred to and utilized by the teaching physician.
2. The teaching physician may not utilize medical student documentation for the history of present illness, exam and medical decision making process. The teaching physician must perform and document these elements of the service.

(k) Generic Attestations and Signatures

1. The use of generic attestations is never acceptable for evaluation and management services.

2. The use of generic attestations is acceptable when used on radiology and other diagnostic test reports and routine anesthesia reports.
3. Each entry should be dated and include legible signature or identity.
4. Electronic signatures are acceptable as long as the presence of the teaching physician during the key portions of the service is indicated.

(l) Addendums

1. Addendums to documentation are acceptable only if added for legitimate medical reasons. Any such addendum should be dated and signed. If it is necessary to make a correction to the documentation, a single line should be drawn through the incorrect word or phrase, with the correction above that line, along with the date and time the correction was made.
2. Addendums made solely for billing purposes are prohibited.
3. Retrospective documentation, i.e. documentation added after the related charge is submitted, prepared primarily to assure compliance with documentation requirements is prohibited.

(m) Macros

In the context of an electronic medical record, the term ‘marco’ means a command in a computer or dictation application that automatically generates predetermined text that is not edited by the user.

When using an electronic medical record, it is acceptable for the teaching physician to use a macro as the required personal documentation if the teaching physician adds it personally in a secured (password protected) system. In addition to the teaching physician macro, either the resident of the teaching physician must provide customized information that is sufficient to support a medical necessity determination. The note in the electronic medical record must sufficiently describe the specific services furnished to the specific patient on the specific date. It is insufficient documentation if both the resident and the teaching physician use macros only.

(n) Modifiers

1. Modifiers must be submitted on every charge that includes resident involvement. Modifier **GE** must be used for services performed under the outpatient exception rule. Modifier **GC** is to be used for all other services.

2. Lack of a modifier indicates that the teaching physician performed the service personally without a resident.

D. Services of Residents

As previously noted, services furnished in hospitals by Residents in approved GME programs generally are **excluded** from being paid as “physician services.” Rather, they are payable as hospital services. This general exclusion applies whether the resident is licensed to practice under the laws of the state in which he or she performs the service. Additionally, specific guidelines dictate how Residents are to be treated for reimbursement purposes when they are providing patient care in non-traditional settings. When services of Residents are employed in such a manner, all UKHC employees must comply with applicable standards including those specific billing requirements set forth under **42 CFR §§ 415.200 - 415.208**.

1. Assuming that the conditions regarding patient care activities and training of residents are met, services of residents furnished in non-provider settings, such as clinics, nursing facilities, and physician offices, are payable in one of the following two ways:

- (a) as direct GME payments, included in determining the number of full-time equivalency residents in the calculation of a teaching hospital’s count, or
- (b) covered as physician services and payable under the physician fee schedule if the following requirements are met:
 1. the resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the state in which the service is performed, and
 2. the time spent in patient care activities in the non-provider setting is not included in a teaching hospital’s full-time equivalency resident count for the purpose of direct GME payments.
- (c) If the requirements listed in sub-section (b) are met:
 1. payment may be made regardless of whether a Resident is functioning within the scope of his or her GME program in the non-provider setting.
 2. however, if fee schedule payment is made for the Resident’s services in a non-provider setting, payment **must not** be made for the services of a Teaching Physician.
 3. furthermore, the carrier **must** apply the physician fee schedule payment rules to payments for services furnished by a Resident in this setting.

2. Moonlighting services provided by licensed residents and performed outside the scope of an approved GME program must be submitted for reimbursement in accordance with the following standards:

(a) Services provided in GME program hospitals.

1. The services of residents to inpatients of hospitals where the residents have their approved GME program are not covered as physician services and are payable only as direct GME payments.
2. Services provided by residents that are not related to their approved GME programs and are performed in an outpatient department or emergency department of a hospital where they have their training program are covered as physician services and payable under the physician fee schedule if **all** of the following criteria are met:
 - (i) the services are identifiable as physician services and meet the conditions for payment of physician services;
 - (ii) the Resident is fully licensed to practice by the State in which the service is performed; and
 - (iii) the services performed can be identified separately from those services required as part of the approved GME program.
3. If the criteria specified in (a)(2) are met, the Resident's Moonlighting Services are considered to have been furnished by the individual in his/her capacity as a physician. Related service agreements and contracts should reflect the requirements set forth in (a)(2), in order to ensure compliance.
4. Reimbursement **will not** be sought for services of a Teaching Physician associated with moonlighting services, and the time spent furnishing these services **may not** be included in UKHC's full-time equivalency count **or** the indirect GMC payment and for the direct GMC payment.

(b) Services provided in non-GME program hospitals.

1. Moonlighting services of a licensed Resident in an approved GME program furnished outside the scope of that program in a hospital or other setting that does not participate in the approved GME program are payable under the physician fee schedule.

III. ORGANIZATIONAL INTEGRITY

A. Personal Relationships and Conflicts of Interest

Integrity, objectivity, and the absence of self-dealing are essential at all levels and in all aspects of government and private activities. All UKHC employees owe a fiduciary duty of loyalty to UKHC. Conflicts of interest, and even the appearance of conflicts, must be avoided. UKHC employees shall conduct all business transactions consistent with the duty of loyalty they owe UKHC. UKHC employees must accurately and honestly represent UKHC and their relationship with UKHC. A conflict of interest arises if a person's judgment and discretion is or may be influenced by personal considerations, or if the interests of UKHC are, in any way jeopardized. The University of Kentucky's conflict of interest policy sets forth specific relationships and activities that both employees and members of their families may not participate in. **(UKHosp. 01-03)**. *See also*, **(UKAR II 4.0-4)**. However, it is important to remember that each relationship is different, and many factors often will need to be considered to determine whether a conflict of interest exists. Therefore, it is the responsibility of the individual employee to immediately disclose to the UKHC Chief Compliance Officer any situation that may lead to a conflict so that the relationship can be reviewed by the appropriate UKHC official. Additionally, UKHC employees shall not divulge or otherwise use any confidential UKHC information for a period of six months or longer if provided for by law, after termination.

B. Buying or Selling Influence

In all interactions with government officials, representatives of external agencies, special interest groups, or the general public, UKHC employees may not engage in any illegal or unethical behavior with the intent to influence the decision making or performance of a public or private individual, agency, or organization. Likewise, UKHC employees are forbidden from selling their influence to any public or private individual, agency, or organization. **(UKHosp. 01-02)**.

UKHC employees shall not:

- 1. solicit, accept, or agree to accept any pecuniary benefit upon agreement or understanding that their opinion, judgment, exercise of discretion or other action as a UKHC employee thereby will be influenced.**
- 2. offer, confer or agree to confer any pecuniary benefit upon a public servant or private individual with the intent to influence an individual's vote, opinion, judgment, exercise of discretion or other action in his/her official capacity.**
- 3. act in any way toward a public or private individual, agency, or organization which constitutes extortion or coercion.**

C. Business Practice

UKHC employees shall conduct all business transactions consistent with the duty of loyalty they owe UKHC. UKHC employees must accurately and honestly represent UKHC and their relationship with UKHC. UKHC employees shall not, under any circumstances, engage in any unlawful business practice or act in any manner intended to defraud any individual or entity of money, property or services.

The following behavior is specifically forbidden with regard to the business operations of UKHC:

- 1. unlawfully monopolizing the provision of medical services;**
- 2. unlawfully controlling fees or prices;**
- 3. unlawfully conditioning the sale of one product on an agreement to do other business;**
- 4. unlawfully boycotting suppliers, payors or providers; or**
- 5. misrepresenting their relationship with UKHC.**

D. Financial Reporting and Record Keeping

UKHC employees honestly and accurately shall develop and maintain financial records in accord with recognized standards.

The following behavior specifically is forbidden with regard to the books, records, and financial reports which reflect the assets, liabilities, balances, revenues, expenses, and activities of UKHC:

- 1. establishing or maintaining numbered or secret accounts or unrecorded funds or assets;**
- 2. making or directing false or misleading entries on official books or records for any reason; including, but not limited to, improperly reporting bad debts and/or credit balances;**
- 3. approving or making transactions or payments with the intention, understanding or knowledge that any part of such payment or transaction is to be used for any purpose other than that described by the documents supporting the payment or transaction;**
- 4. submitting bills or statements for services containing false or misleading entries; or**

5. **destroying records other than in accordance with the applicable records retention and destruction policy.**

E. Kickbacks/Illegal Remuneration

UKHC employees are required to follow all applicable federal, state and local laws as well as UK governing and administrative regulations and UK policy when interacting and transacting with providers of goods and services. The standards set forth below encompass any and all transactions, regardless of whether the goods or services provided directly are related to the delivery of health care services.

Note that remuneration includes anything of value. Therefore, if solicited, received, offered or given with the intent to influence the decision making process, even remuneration that is of minimum value could violate the law as well as UK policy.

UKHC employees are prohibited from knowingly and willfully soliciting or receiving, or offering or paying, any remuneration (including any kickback, bribe, forgiveness of debt or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for, or as an inducement to:

1. **referring an individual to a provider for the furnishing of, or arranging for the furnishing of, any item or service for which payment may be made under a federal health care benefit program; or**
2. **purchasing, leasing, ordering, arranging, or recommending purchasing, leasing, ordering, of any good, facility, service or item for which payment may be made in whole or in part by a federal health care benefit program;**
3. **submitting or causing to be submitted claims to Medicare or Medicaid for patients who were referred to the hospital pursuant to contracts and financial or business arrangements that were designed to induce such referrals;**
4. **entering into financial or business arrangements with hospital-based physicians that are designed to provide inappropriate remuneration to the hospital, for example compensating physicians for less than the fair market value of services they provide to the hospital or requiring them to pay more than market value for services provided by the hospital, (i.e. token or no payment for Part A supervision and management services; requirements to donate equipment to the hospital; and excessive charges for billing services) in return for the physician's ability to provide services to federal health care benefit program beneficiaries at that hospital;**
5. **entering into financial or business arrangements with physicians that result in**

the physician receiving, for example, excessive payment for medical directorships, free or below market rents or fees for administrative services, and interest-free loans and excessive payment for intangible assets in physician practice acquisitions; or

6. otherwise influence or attempt to influence the decision making process surrounding a transaction in an illegal, unethical, or abusive manner.

- **Safe Harbor Exemptions:**

It is important to remember that there are a significant number of specifically drafted exemptions (often referred to as “safe harbors”) to the Anti-Kickback prohibition. The safe harbors essentially permit certain conduct that would otherwise be prohibited by the statute. However, because these exceptions are narrow in scope, and are accompanied by numerous requirements, employees may not agree to, or engage in any transaction, that involves any form of potentially prohibited remuneration without approval from the UKHC Chief Compliance Officer or UK legal counsel.

F. Self Referrals

The anti-referral statute often referred to as “Stark” is designed to prevent possible conflicts of interest related to patient referrals made by physicians and the resulting claims for reimbursement. **Anti-Referral Statute “Stark I & II” (42 U.S.C.§1395nn).**

Accordingly,

- 1. UKHC physicians shall not make a referral for a designated health service to an entity in which he or she (or an immediate family member) has a financial relationship.**
- 2. UKHC shall not knowingly submit or cause to be submitted a bill or claim for reimbursement for services provided pursuant to such a prohibited referral.**

For purposes of this prohibition, the term **“financial relationship”** includes:

- (a) Ownership or investment interest through equity, debt, or other means including an interest in an entity holding an ownership or investment interest in any entity actually furnishing the designated health services; or
- (b) Compensation arrangement involving any remuneration to physician or immediate family member.

For purposes of this prohibition, **“designated health services”** include:

- (a) Laboratory services
- (b) Physical therapy services
- (c) Occupational therapy services

- (d) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services
- (e) Radiation therapy services and supplies
- (f) Durable medical equipment and supplies
- (g) Parenteral and enteral nutrients, equipment and supplies
- (h) Prosthetics, orthotics, and prosthetic devices and supplies
- (i) Home health services
- (j) Outpatient prescription drugs
- (k) Inpatient and outpatient hospital services

- **Safe Harbor Exemptions.**

It is important to remember that there are a significant number of specifically drafted exemptions (often referred to as “safe harbors”) to the Self-Referral prohibitions. The safe harbors essentially permit certain conduct that would otherwise be prohibited by the statute. However, because these exceptions are narrow in scope, and are accompanied by numerous requirements, employees may not agree to, or engage in any transaction, that involves any form of potentially prohibited remuneration without approval from the UKHC Chief Compliance Officer or UK legal counsel.

G. False Statements and Representations

All statements and representations, *whether oral or written*, made on behalf of UKHC must be backed by an adequate basis for belief or made in a context in which the lack of such basis is clearly understood. The deliberate organization of information in such a way as to mislead or misinform those who receive it is prohibited. It is important to remember that these standards must be followed not only when conducting the day-to-day business operations of UKHC, but also in non-routine situations such as investigative questioning by government agents. **False Statements (18 U.S.C. §1001).**

UKHC employees must report and record all information accurately and honestly, whether on patient records, private or governmental requests for payment or other information, time cards, clinical research records, financial reports or otherwise. UKHC employees shall not:

- 1. knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device a material fact;**
- 2. make any false, fictitious or fraudulent statement or representation;**
- 3. make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry; or**
- 4. falsely make, alter, or forge any proposal, contract, or other writing.**

H. Fraudulent Use of the Mails/Wires

UKHC employees shall not use or cause the use of the mails or wires in furtherance of any scheme or intended scheme to defraud or obtain money or property by means of false or fraudulent pretenses, representations or promises. Because of the broad scope of the related statutes under this sub-section, virtually anyone who so much as even attempts or plans to defraud the government could be charged with mail and/or wire fraud.

Mail Fraud/Wire Fraud (18 U.S.C. §§1341, 1343).

Prohibited behavior includes:

- 1. furthering fraudulent behavior by placing or causing to be placed in any authorized mail depository, anything to be sent, delivered, or to be received from the Postal Service.**
- 2. furthering fraudulent behavior by transmitting or causing to be transmitted, any writings, signs, pictures or sounds by some means of wire, including telephone, radio, or television communication.**

I. Conspiracy

UKHC employees are prohibited from entering into an agreement, with one or more other individuals, (regardless of whether the other(s) individuals are employees) to commit any local, state or federal offense. An employee's agreement to commit an unlawful act is an illegal activity in itself, above and beyond the actual commission of any other unlawful behavior.

J. Theft

UKHC employees shall not embezzle, steal, take, convert, consume or use any record, voucher, money, or thing of value of the United States or the Commonwealth of Kentucky or any of their respective departments or agencies. Any employee who embezzles, steals, etc., from UKHC could be charged under both federal and state anti-theft statutes.

K. Research

UKHC employees shall comply with all federal and state laws, regulations, ordinances, University and hospital policies and ethical standards relating to investigational research. These standards must be followed during *all phases* (including funding, whether public or private) of any investigational study which is in any way affiliated with UKHC.

L. Prescription Medications and Controlled Substances

All controlled substances that enter, are used by, or are dispensed from UKHC shall be handled in accordance with all federal, state, and local regulations. UKHC employees are forbidden from illegally possessing, attempting to possess, embezzling, selling, trafficking, misbranding or misusing any controlled substance for any reason.

Examples of prohibited conduct in this area include:

- 1. altering or forging any record, prescription, label or license;**
- 2. selling, purchasing or trading a drug sample;**
- 3. failing to dispense a prescription drug without correct copies of all printed matter that is required to be included in any package in which the drug is distributed or sold;**
- 4. dispensing a prescription drug that fails to bear the statement “Caution: Federal Law prohibits dispensing without a prescription;”**
- 5. prescribing a drug without properly evaluating the medical necessity for the prescription;**
- 6. providing or distributing prescription or scheduled drugs without requiring a prescription;**
- 7. dispensing drugs without the appropriate authority or license to do so.**

M. Facility Certification

UKHC employees may not make or cause another individual to make any false statement or representation about any aspect of the operation or control of UKHC. It is essential that UKHC provide accurate information to state and federal agencies in order to maintain its participation in the Medicare and Medicaid programs.

Medicare/Medicaid Fraud (42 U.S.C. §1320a-7b(c)).

UKHC employees shall not:

- 1. knowingly and willfully make, or cause to be made, a false statement or representation of material fact with respect to the conditions or operation of any institution, facility or entity in order that such entity may qualify, either initially or upon re-certification, for participation in the Medicare or Medicaid Program; or**

2. knowingly and willfully make, or cause to be made, a false statement or representation of material fact with respect to information regarding ownership and control of a facility.

IV. COMPLIANCE PROGRAM INTEGRITY

A. Responding to Government Investigations

UKHC employees shall not act in a way that illegally obstructs the administration of justice. UKHC demands that all of its employees provide accurate information to government investigators, and in testimony before administrative, governmental and judicial bodies. **Obstruction of Justice (18 U.S.C. §§ 1503, 1505, 1512, 1622).**

Numerous behaviors can lead to an individual or organization being charged with obstruction of justice or related crimes. Specific examples include:

1. **corruptly, or by threats or force, or by threatening letter or communication, endeavoring to influence, intimidate, or impede the administration of the law.**
2. **engaging in intimidation, force, threats, misleading conduct or corrupt persuasion with the intent to influence testimony of any person in any official proceeding.**
3. **procuring an individual to commit perjury.**
4. **corruptly destroying, altering, or misplacing documents.**

B. Whistleblower Protection

UKHC shall not engage in illegal retaliation, (whether personal or job related) which is directed against an employee who, *in good faith, reports* to a government agency or official alleged unlawful conduct by UKHC.

Additionally, UKHC shall not retaliate, in any way that tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against an employee who reports any facts or information that the reporting individual believes, in good faith, to be relative to actual or suspected illegal, unethical or abusive conduct.

The above paragraphs do not, in any way, imply that employees can exempt themselves from the consequences of impropriety or inadequate performance. Rather, these provisions are

meant to ensure employees who, in good faith, report compliance concerns do not suffer adverse consequences for making a report. The EVPHA can, in whole or part and at his complete discretion, consider an individual's compliance report a mitigating factor when determining the appropriate corrective action to be taken against a "self-reporting" individual.

C. Failure to Adhere to Compliance Program Standards

Failing to adhere to compliance program standards, directives, or policies and procedures can result in disciplinary action, including termination. Sanctions imposed under the CCP will be carried out according to University policies and procedures, consistent with the individual's employment status. *See* Chapter 2 Section IX.

D. Abuse of Compliance Program Procedures

Employees will be subject to disciplinary action up to and including termination if they intentionally and maliciously report a false allegation or otherwise intentionally or recklessly abuse UKHC's Corporate Compliance Program procedures. *See* Chapter 2 Section IX.