

 <p><b>Hilo Medical Center</b> <i>We Care for Our Community</i></p> <p><b>Policy and Procedure</b></p>	<p>Subject / Title:</p> <p><b>LEASE ARRANGEMENTS</b></p>	Policy No.: 850-101-32
		Origination Date: 8/07
		Last Revision Date:
		Last Review Date: 3/09 By: <u>Stephen Palmore</u> , <u>Regional Compliance Officer</u> Name and Title
	Department:	Supersedes Policy:
	<b>ADMINISTRATION</b>	Page: 1 of 13, Appendices A, B, & C

**I. PURPOSE:**

To establish standard procedures for drafting, reviewing and approving lease arrangements for space and equipment for which the lessor or lessee is or may be a potential source of health care business or referrals to or from the Hilo Medical Center (HMC).

**II. DEFINITION:**

- A. Lease arrangements include new and renewed arrangements for the lease of space or equipment executed after the effective date of the Corporate Integrity Agreement (CIA) dated July 27, 2007 between Hilo Medical Center and the Office of Inspector General (OIG) of the Department of Health and Human Services.
- B. Arrangements shall mean every arrangement or transaction that:
1. Involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value; and is between HMC and any actual or potential source of health care business or referrals to HMC or any actual or potential recipient of health care business or referrals from HMC. The term “source” shall mean any physician, contractor, vendor, or agent and the term “health care business or referrals” shall be read to include referring, recommending, arranging for, ordering, leasing, or purchasing of any good, facility, item, or service for which payment may be made in whole or in part by a federal health care program; or
  2. Is between HMC and a physician (or a physician’s immediate family member (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to HMC for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).
    - a. A physician’s immediate family member includes a husband or wife; birth or adoptive 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;

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grandparent or grandchild; and spouse of a grandparent or grandchild (42 C.F.R. § 411.351).

- b. Referrals are defined as the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician) or the request or establishment of a plan of care by a physician which includes the provision of the designated health service (42 U.S.C. § 1395nn(h)(5)).
- c. Designated health services include: clinical laboratory services; physical therapy services; occupational therapy services; radiology services (including magnetic resonance imaging, computerized axial tomography scans, ultrasound services, and nuclear medicine and supplies); radiation therapy services and supplies (including nuclear medicine and supplies); durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs and inpatient and outpatient hospital services (42 U.S.C. § 1395nn(h)(6)).

### III. POLICY:

- A. HMC shall ensure that lease arrangements comply with state and federal rules and regulations including the Anti-Kickback Statute and the Stark Law.
- B. HMC shall ensure that lease arrangements will be commercially reasonable even if no referrals are made between the parties to the lease arrangement and HMC.
- C. HMC shall ensure that the aggregate space or equipment leased does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the lease and will be used exclusively by the lessee.
- D. The lease arrangements will be documented in writing, signed by all parties to the arrangement and will include the following terms:
  - 1. A specific and comprehensive description of the premises or equipment covered by the lease arrangement.
  - 2. The rental charges over the term of the lease arrangement. The rental charges must be reasonable and set in advance, consistent with FMV and will not take into account the volume or value of any referrals or other business generated by any party.
  - 3. The term of the lease agreement must be at least one year. If the lease arrangement is terminated with or without cause, the parties may not enter

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into a new lease arrangement during the first year of the original term of the arrangement.

4. A requirement that the parties to the lease arrangement comply with the HMC compliance program and any state and federal rules and regulations including the Anti-Kickback Statute and the Stark Law.
- E. HMC shall ensure the storage and maintenance of the lease arrangements and any supporting documentation.

#### **IV. PROCEDURE:**

- A. For the lease of space to or from another party, the HMC Senior Management Team identifies and justifies a need to lease space. The space to be leased must be reasonable and necessary for the legitimate business purposes of the lease arrangement.
- B. For the lease of equipment to or from another party, the HMC technical representative (TR) identifies and justifies a need to lease equipment. The equipment to be leased must be reasonable and necessary for the legitimate business purposes of the lease arrangement.
- C. If the lease arrangement is for space, the HMC Senior Management Team or HMC TR notifies the HMC Compliance Committee via email of the lease request.
  1. The HMC Compliance Committee reviews the lease request at the next Compliance Committee meeting.
  2. The HMC Compliance Committee documents the receipt of notice of the lease request, the review of the lease request and any objections to the lease request in the Compliance Committee meeting minutes.
  3. The HMC Compliance Committee reviews the appropriateness of the lease with respect to physician recruitment or new program activities.
  4. If necessary, the HMC Compliance Committee communicates any objections to the appropriate Senior Manager or HMC TR.
- D. The HMC TR completes a purchase request (PR) to include a description of the space or equipment to be leased and the parties to the lease arrangement. Refer to Appendix A for a sample of the Purchase Request form. The HMC TR or designee also certifies that the space or equipment to be leased is reasonable and necessary by completing and signing the Non-Physician Vendor Compliance Certification Form. Refer to Appendix B for a sample of this certification form.

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- E. The HMC Chief Financial Officer (CFO) reviews and signs the PR to indicate that funds are available and that the funds will be expended for the lease of space or equipment.
- F. The HMC Chief Executive Officer (CEO) reviews and signs the PR to indicate receipt of notification of the request to lease space or equipment.
- G. The HMC TR forwards the signed PR and Non-Physician Vendor Compliance Certification Form to Materials Management (MM).
- H. MM reviews the PR for completeness and verifies that a signed Non-Physician Vendor Compliance Certification Form is attached.
  - 1. If the PR or Non-Physician Vendor Compliance Certification Form is not complete, the following steps are performed:
    - a. MM returns the PR and Non-Physician Vendor Compliance Certification Form to the HMC TR.
    - b. The HMC TR completes the PR and/or Non-Physician Vendor Compliance Certification Form. Return to Step G.
  - 2. If the PR is complete, proceed to the next step.
- I. MM screens all parties listed on the PR against the Exclusion Lists. Refer to Policy No.: 850-101-25 Screening and Removal of Ineligible Persons for the screening procedures.
  - 1. If a party to the lease is identified on an Exclusion List, complete the following steps:
    - a. MM notifies the HMC TR of the exclusion.
    - b. The HMC TR sends a notification letter informing the party that they do not satisfy the qualifications for the lease arrangement. Stop.
  - 2. If a party to the lease arrangement is not identified on an Exclusion List, proceed to the next step.
- J. MM forwards the PR, signed Non-Physician Vendor Compliance Certification Form, and a copy of the report of the result of the exclusion check to the HMC Contract Manager.
- K. The HMC Contract Manager verifies whether the third party was previously a party to a lease arrangement that was terminated during the first year of the original term of the lease arrangement.

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1. If a lease arrangement existed and the new lease would be entered into within the first year of the original term, the HMC Contract Manager notifies the HMC TR and Senior Management Team. Stop.
  2. If a lease arrangement did not exist, proceed to the next step.
- L. The HMC Contract Manager ensures that an FMV analysis is completed for the lease arrangement. The HMC Contract Manager also ensures that any data and materials (e.g. relevant letters, reports, schedules, etc.) used to determine the rental charges are documented.
1. For the lease of equipment to or from HMC, MM completes the FMV analysis.
    - a. MM obtains lease and rental information from the ECRI database. For lease arrangements involving equipment that is leased to another party by HMC, MM determines the equipment rental charge using this information.
    - b. MM forwards the FMV analysis to the HMC Contract Manager.
  2. For the lease of space, the HMC Contract Manager requests an FMV analysis (e.g., rental survey or appraisal report) from a commercial appraisal firm. For lease arrangements involving space that is leased to another party by HMC, the HMC Contract Manager determines the rental charge using the FMV analysis (e.g., rental survey or appraisal report).
  3. The HMC Contract Manager reviews the FMV analysis to verify that the rental charges are consistent with the FMV analysis.
- M. The HMC Contract Manager drafts the lease arrangement.
1. For lease arrangements involving space or equipment leased to another party by HMC, the HMC Contract Manager uses the appropriate lease agreement template to document the arrangement. The written contract must include the following terms:
    - a. A specific description of the space or equipment to be leased including a schedule of usage. For the lease of space, the description must include the street address, suite number and square footage.
    - b. The term of the lease arrangement must be at least one year.
    - c. The exclusive use of the space or equipment by the lessee (third party).

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- d. The rental charges over the term of the lease arrangement.
  - e. The lessee's compliance obligations including but not limited to:
    - i. The lessee shall comply with HMC's compliance program including any training requirements.
    - ii. Certification by the lessee to the arrangement that the parties shall not violate the Anti-Kickback Statute and Stark Law with respect to the performance of the arrangement.
    - iii. A requirement that the lessee will immediately notify the HMC TR of any exclusion, debarment, suspension or other ineligibility to participate in the federal health care programs or in federal procurement or nonprocurement programs or of any conviction of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) but has not yet been excluded, debarred, suspended, or otherwise declared ineligible. Refer to Policy No.: 850-101-25 Screening and Removal of Ineligible Persons for the screening procedures.
2. For lease arrangements involving space or equipment leased by HMC from another party, the HMC Contract Manager obtains a copy of the written lease agreement from the lessor. The HMC Contract Manager ensures that the following terms are included in the lease agreement:
- a. A specific description of the space or equipment to be leased including a schedule of usage. For the lease of space, the description must include the street address, suite number and square footage.
  - b. The term of the lease arrangement must be at least one year.
  - c. The exclusive use of the space or equipment by HMC.
  - d. The rental charges over the term of the lease arrangement.
  - e. The lessor's compliance obligations such as:
    - i. The lessor shall comply with HMC's compliance program including any training requirements.
    - ii. Certification by the lessor to the arrangement that the parties shall not violate the Anti-Kickback Statute and

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Stark Law with respect to the performance of the arrangement.

- iii. A requirement that the lessor will immediately notify the HMC TR of any exclusion, debarment, suspension or other ineligibility to participate in the federal health care programs or in federal procurement or nonprocurement programs or of any conviction of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) but has not yet been excluded, debarred, suspended, or otherwise declared ineligible. Refer to Policy No.: 850-101-25 Screening and Removal of Ineligible Persons for the screening procedures.

- N. The HMC Contract Manager screens the lease arrangement against the Anti-Kickback Statute and the Stark Law by entering the contract information into the Arrangements Tracking database. The following information is entered into the Arrangements Tracking database:
  - 1. Vendor information (e.g. vendor name, contract no., etc.);
  - 2. Date of exclusion screening (Exclusion Date); and
  - 3. Other required arrangement information
- O. The HMC Contract Manager completes the Contract Routing Form to ensure that all necessary and required documents and information are obtained to finalize the lease arrangement. Refer to Appendix C for a sample of the Contract Routing Form.
- P. The HMC Contract Manager forwards a draft of the written lease arrangement and all supporting documentation to the HMC legal counsel for review.
- Q. The HMC legal counsel with knowledge of the appropriate state and federal rules and regulations reviews the lease arrangement to ensure that the arrangement does not violate the Anti-Kickback Statute and Stark Law. If issues or questions result from the legal review, the HMC legal counsel works with the HMC Contract Manager to resolve the issue(s). The HMC legal counsel revises the contract accordingly and returns it to the HMC Contract Manager.
- R. The HMC legal counsel signs the Contract Routing Form or provides an email notification to the HMC Contract Manager to indicate that the legal review of the lease arrangement was completed.
- S. If necessary, the HMC Contract Manager revises the information previously entered into the Arrangements Tracking database to reflect any changes made to the lease arrangement.

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- T. If the aggregate rental charge for a lease arrangement is greater than \$2,000,000, the HMC Contract Manager forwards the lease arrangement and the supporting documents to the Board responsible for HMC activities for review.
1. If the Board does not approve the lease arrangement, the Board documents the denial in the meeting minutes and notifies the HMC Contract Manager of the denial and reason. The Contract Manager notifies the HMC TR and the Senior Management Team. Stop.
  2. If the Board approves the lease arrangement, the Board documents the approval in the meeting minutes. The Board forwards a copy of the meeting minutes to the HMC Contract Manager to file in the appropriate contractor file. Proceed to the next step.
- U. The HMC TR forwards two copies of the lease arrangement to all parties of the lease arrangement for review along with copies of the HMC Code of Conduct and the Anti-Kickback Statute and Stark Law policies and procedures.
- V. The parties to the lease arrangement review the contract and supporting documents.
1. If a party requests changes to the contract language, the HMC Contract Manager reviews the contract language changes to determine whether to revise the contract.
    - a. If the HMC Contract Manager decides to request revisions to the contract language, the HMC Contract Manager emails the contract language changes to the HMC legal counsel with a copy to the HMC Contract Manager. Return to Step P.
    - b. If the HMC Contract Manager decides not to revise the contract language, the HMC Contract Manager notifies the third party.
      - i. If the third party wants to proceed with contracting, go to Step V.2.
      - ii. If the third party does not want to continue with contracting, stop.
  2. If the party requests changes to the rental charges, the HMC Contract Manager reviews the requested change to the rental charges to determine whether to revise the lease arrangement.
    - a. If the HMC Contract Manager decides to request revisions to the rental charges, the HMC Contract Manager revises the FMV analysis and forwards the revised FMV analysis and rental charge to the HMC CFO for review and approval.

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- i. If the HMC CFO approves the revised rental charges, return to Step P.
    - ii. If the HMC CFO does not approve the revised rental charges, the HMC CFO notifies the HMC Contract Manager. Proceed to the next step.
  - b. If the HMC Contract Manager decides not to change the rental charges, the HMC Contract Manager notifies the third party.
    - i. If the third party wants to proceed with contracting, go to Step V.3.
    - ii. If the third party does not want to continue with contracting, stop.
3. If the party does not request changes to the lease arrangement, all parties to the contract sign the lease arrangement.
  - a. If HMC is the lessor, the third party signs the lease arrangement first followed by the HMC CEO or the Hawaii Health Systems Corporation (HHSC) President/CEO if the aggregate rental charge is greater than \$2 million.
  - b. If HMC is the lessee, the HMC CEO or HHSC President/CEO if the aggregate rental charge is greater than \$2 million signs the lease arrangement first followed by the third party.
- W. The HMC CFO reviews and signs the Contract Routing Form.
- X. The HMC Contract Manager enters the contract effective date and end date into the Arrangements Tracking database to indicate that the lease arrangement was executed.
- Y. The HMC Contract Manager files the executed lease arrangement and the supporting documents in the corresponding contractor's file. Refer to Policy No.: 850-101-22 Compliance Record Management for the procedures to retain, store, retrieve and destroy documents and records relating to the HMC compliance program. The supporting documents include but are not limited to:
  1. The executed lease arrangement signed by all parties;
  2. The FMV analysis;
  3. The original PR;
  4. Non-Physician Vendor Compliance Certification Form; and

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5.      The Contract Routing Form (includes proof of legal review).
- Z.      The HMC Contract Manager forwards a copy of the contract (hard copy or electronic) to the following departments and individuals:
1.      The HMC TR for contract monitoring purposes;
  2.      Accounts Payable (when HMC is the lessee);
  3.      General Accounting (when HMC is the lessor); and
  4.      The HHSC legal department.

## Appendix A – Purchase Request Form

HAWAII HEALTH SYSTEMS CORPORATION **HILO MEDICAL CENTER**

### PURCHASE REQUEST

<b>1. Date Prepared:</b> *Please Check One: New PR <input type="checkbox"/> - OR - Revised PR <input type="checkbox"/>		<b>Regional Materials Manager Initials</b> _____	
<b>2. REQUESTING FACILITY or System Wide:</b>  Name: _____ Title: _____ Phone No.: _____ Fax No.: _____ <hr/> Technical Rep. Name: _____ Phone: _____		<b>3. REQUIREMENTS</b> <input type="checkbox"/> New Contract - OR - <input type="checkbox"/> Contract Amendment - Identify Existing Contract # <input type="checkbox"/> Goods <input type="checkbox"/> Services <input type="checkbox"/> Construction <input type="checkbox"/> Physician Services <input type="checkbox"/> Direct Patient Related Goods/Services <hr/> Total Contract Value (Current NTE): \$ _____ Estimated Amended Contract NTE: \$ _____ Quantity: _____	
<b>4. DETAIL DESCRIPTION OF GOODS AND SERVICES REQUESTED:</b>  a. <u>Contract Time of Performance/Delivery Dates:</u> ➤ Begin Date: mm/dd/year ➤ End Date, including option years: mm/dd/year b. Recommended Vendors: c. <b>If Pre-Existing Contract</b> - Identify the Contract Manager/Purchasing Agent if known: d. Miscellaneous Documents/Approval Requirements (e.g. Sole Source, Exemption, Ref. Policy and Procedure PUR 0019).			
<b>5. REQUIRED ATTACHMENTS</b> <input type="checkbox"/> a) Scope of Services <input type="checkbox"/> b) Specifications <input type="checkbox"/> c) Vendor Quote/Proposal <input type="checkbox"/> d) Vendor Contract			
<b>6. SIGNATURES</b>			
_____ <i>(Printed Name)</i>	<u>Member Corp. Compliance Committee</u> <i>(Title)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
_____ <i>(Printed Name)</i>	_____ <i>(Title)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
_____ <i>(Printed Name)</i>	_____ <i>(Title)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
_____ <i>(Printed Name)</i>	_____ <i>(Title)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
<b>7. DIRECTOR OF CONTRACTS MANAGEMENT USE ONLY</b>			
Date Received: _____  <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <b>Purchase Tracking No.</b> _____		Comments: _____	
Assigned To: _____ <div style="display: flex; justify-content: space-between;"> <span>(Contract Manager/Purchasing Agent)</span> <span>(Date)</span> <span>(Dir of Contracts Mgt)</span> </div>			

**Appendix B – Non-Physician Vendor Compliance Certification Form**

**NON-PHYSICIAN VENDOR COMPLIANCE CERTIFICATION FORM**

This Arrangement is with \_\_\_\_\_

for \_\_\_\_\_

and can be identified by \_\_\_\_\_

To the best of my knowledge, with respect to this Arrangement, I certify that:

1. The Hospital needs the items and/or services to function properly.
2. The amount(s) that the Hospital will purchase are reasonable.
3. The price(s) that the Hospital will pay are reasonable and approximate the fair market value of what the Hospital is receiving in return.
4. The pricing in the Arrangement is accurate; there are no unwritten "side deals."
5. The vendor did not offer or pay, or solicit or accept, any kickbacks or improper inducements.
6. No one acting on behalf of the Hospital offered or paid, or solicited or accepted, any kickbacks or improper inducements.
7. The price the Hospital is paying is not conditioned on receiving any other business or referrals from the vendor.
8. The price the Hospital is paying is not conditioned on sending any other business or referrals to the vendor.
9. The Hospital is not entering this Arrangement to induce or reward referrals.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

## CONTRACT ROUTING FORM

HHSC Log No. : \_\_\_\_\_

Name of Contractor: \_\_\_\_\_  Corporate  Facility: \_\_\_\_\_

<b>Brief Description of Goods/Services:</b>	
<b>Contract Highlight Only:</b>	
1. Term:	
2. Total Cost (current NTE): \$ _____	New NTE: \$ _____

Documents or Information obtained, as applicable				Comments
(completed by CM):	Yes	No	N/A	
1. Tax Clearance Certificate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Federal Exclusion Check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. W-9 Form Sent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Certificate of Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Certificate of Good Standing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Fair Market Value Completed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Physician Officer Certification Completed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b><u>Legal Review</u></b>	<b>Yes</b>	<b>No</b>	<b>Procurement Attorney</b>
I have reviewed the recommended action and conclude that it (is/is not) consistent with applicable legal requirements and good purchasing practices.	<input type="checkbox"/>	<input type="checkbox"/>	
			Print Name/Signature <span style="float: right;">Date</span>

**Comments:**

<b><u>Contract Manager</u></b>	<b>Yes</b>	<b>No</b>	<b>Contract Manager</b>
As responsible contract manager, I have reviewed this contract, and I believe, based upon my professional judgment and experience, that it is consistent with applicable procurement procedures and good purchasing practices.	<input type="checkbox"/>	<input type="checkbox"/>	
			Print Name/Signature <span style="float: right;">Date</span>

**Comments:**

<b>CFO Regional (as required)</b>	<b>Signature:</b>
<b>CFO Corporate (as required)</b>	<b>Signature:</b>