

*As Approved by the Wayne State University Board of Governors  
March 20, 2002*

## **DEAN'S GUIDELINES FOR CLINICAL SERVICE GROUPS**

### *Preamble and Purpose*

Wayne State University (the "University") employs physicians and other health professionals to teach in the medical education programs offered by its School of Medicine (the "School of Medicine"), to engage in scientific research and to administer academic and research programs. Unlike some other educational institutions operating medical schools, however, the University does not own any hospitals or other health facilities and does not provide medical or surgical care to teaching patients. Instead, the clinical education programs of the School of Medicine are conducted in the facilities of Detroit Medical Center hospitals and other affiliated health care institutions.

Many of the physicians and other health professionals serving on the faculty of the School of Medicine have elected to practice medicine or to provide other professional services to patients as employees of one of a number of independent private nonprofit corporations or professional service corporations practicing in medical specialties corresponding with the specialties of clinical departments of the School of Medicine. Faculty and staff are not, however, required to practice through such organizations as a condition of their employment by the University.

In order to assure the availability of the teaching patients needed to conduct graduate and undergraduate clinical programs of the School of Medicine and to provide needed financial support for its educational and research activities, the Dean of the School of Medicine has appointed certain faculty practice organizations as recognized clinical service groups. This document (the "Guidelines") sets forth the requirements such practice organizations must meet in order to secure and to retain such an appointment.

### *Part I - Definitions*

As used in these Guidelines, the following terms shall have the meanings set forth below:

"Compensation" means all financial benefits furnished to a Service Group Participant in connection with Professional Services and other services furnished as an employee or independent contractor of a Service Group and in connection with stock, membership or other interests in a Service Group, including, without limitation, all salary, wages, contract payments, bonuses, allowances, pension and profit sharing benefits, health and welfare benefits, dividends, membership and partnership earnings and payments with respect to the partial or complete liquidation of a Service Group and the sale or redemption of stock or other interests in a Service Group.

“Dean” means the person holding the position of Dean, Interim Dean or Acting Dean of the School of Medicine.

“FMRE” means The Fund for Medical Research and Education, a Michigan nonprofit corporation.

“Group President” means the chief executive officer of a Service Group (whatever his or her actual title).

“Guidelines” means these Dean’s Guidelines for Clinical Service Groups as they may be amended or supplemented from time to time.

“Implementation Agreement” means a contract between a Practice Group and the University more fully described in Section 2.1 of these Guidelines under which a Practice Group agrees to be bound by these Guidelines.

“Practice Group” means a nonprofit corporation, professional service corporation, partnership, professional limited liability company or other legal entity authorized to provide Professional Services in the State of Michigan.

“Practice Site” means a location at which a Service Group regularly provides Professional Services and includes all physician offices, clinics and other facilities owned or leased by the Service Group for such purposes and hospitals and other health facilities in which the Service Group provides Professional Services by contract with the owner or operator. The term “Practice Site” does not, however, include hospital or other health facilities used by physicians or other health professionals employed or retained by the Service Group solely by virtue of their membership on the medical staff.

“Organizational Documents” means the articles of incorporation, certificate of incorporation, bylaws, partnership agreement, operating agreement or other documents governing the organization and management of a Service Group in effect from time to time, together with any shareholder agreements, member agreements, voting trusts or other instruments relating to the ownership, control or management of a Service Group.

“Net Professional Service Collections” means the Professional Service Collections during any period less the amounts actually refunded during the same period to patients and payors with respect to amounts previously received for Professional Services.

“Professional Service Collections” means the actual gross collections received by a Service Group with respect to Professional Services provided by Service Group Participants. The term “Professional Collections” includes amounts received in the form of capitation payments, fixed payments and shares of risk pools as well as amounts payable on a fee for service basis. The term “Professional Collections” does not, however, include (i) amounts received by a Service Group with respect to teaching, scientific or commercial research or administrative services; or (ii) grants or similar payments provided to the Service Group to support care for medically indigent persons, the recruitment of the Group President or other Service Group Participants or the development of educational or clinical programs.

“Professional Services” means the practice of medicine and other health care and health care related services and includes arrangements with health care institutions to provide clinical coverage, house officers and similar staffing.

“School of Medicine” means the School of Medicine of the University.

“Service Group” means a Practice Group which has entered into an Implementation Agreement.

“Service Group Participant” means an individual employed by a Service Group (in any capacity), a partner or member of a Service Group or an individual providing Professional Services on behalf of a Service Group as an independent contractor.

“Tax Exempt Organization” means a nonprofit corporation or other entity which is exempt from federal corporate income tax under Sections 501(c)(3) and 501(a) of the Internal Revenue Code of 1986, or comparable provisions of subsequent federal tax legislation.

“University” means Wayne State University, a constitutional body corporate of the State of Michigan.

## *Part II - Recognition of Service Groups*

**2.1 Implementation Agreements.** A Practice Group secures appointment as a recognized Service Group by entering into an Implementation Agreement in a form approved by the Dean. Each such Implementation Agreement shall require that the Service Group abide by these Guidelines and that it make the payments to FMRE described in Part IV. An Implementation Agreement with a particular Service Group may contain such additional terms and conditions consistent with these Guidelines as the Dean determines are appropriate to carry out the mission of the School of Medicine. The University and the Dean retain complete discretion to decide whether or not to enter into an Implementation Agreement with a Practice Group and on what terms. All Implementation Agreements shall be terminable by the Dean without penalty on not more than ninety (90) days' prior written notice to the Service Group.

**2.2 Effect of Having Entered into an Implementation Agreement.** Recognized Service Groups (i) have been represented in the governance of certain private corporations supporting the mission of the School of Medicine; (ii) have entered into contracts under which the Service Groups have received payment for teaching in graduate medical education programs and for Professional Services and administrative services furnished to affiliated health care institutions; (iii) have received funding to support academic and clinical programs and care furnished to medically indigent persons; (iv) have been offered the opportunity to occupy space at University Health Center; and (v) have been offered opportunities to purchase certain business services. Each of those relationships, however, is separate and apart from the one between a Service Group and the University created under an Implementation Agreement and involves rights and obligations in addition to those set forth in an Implementation Agreement. In entering into an Implementation Agreement, the University provides no assurance that a Service Group will be offered opportunities to enter into any additional contracts, that it will receive any

particular payments or financial support or that it will be entitled to be represented in the governance of any other corporation or entity.

### ***Part III - Guidelines***

Service Groups shall provide Professional Services and shall conduct their business in accordance with the following principles and requirements:

**A. Organizational Structure and Governance.** Each Service Group may create and amend its Organizational Documents provided such Organizational Documents are consistent with these Guidelines, the Service Group's Implementation Agreement and the mission of the School of Medicine (all as determined and approved by the Dean). The Organizational Documents of each Service Group shall provide the Group President with authority to manage the activities of the Service Group with respect to research, indigent care and teaching in undergraduate and postgraduate programs of the School of Medicine. Subject to the powers reserved to the Group President, the board of directors or other governing body of a Service Group shall be fully responsible in accordance with the Organizational Documents and applicable law for establishing the policies of the Service Group, for setting, billing and collecting fees, for the Professional Services furnished by the Service Group and for its other business activities. Notwithstanding the preceding, every Service Group which is not a Tax Exempt Organization shall have reorganized on terms reasonably satisfactory to the Dean and qualified as a Tax Exempt Organization by December 31, 2006.

**B. Group President.** The person serving as Chair of the clinical department of the School of Medicine in the Service Group's specialty shall also serve as the Group President unless the Dean agrees otherwise.

**C. Practice Sites and Affiliations.** In order to assure that the undergraduate and graduate clinical education programs of the University function effectively, Service Groups (i) shall provide Professional Services only at Practice Sites approved in advance by the Dean in writing; and (ii) shall not enter into any contract or arrangement to provide administrative, teaching or research services or any other affiliation with a health facility or educational institution other than the University without the prior written approval of the Dean. Each Service Group shall furnish the Dean with a written report annually listing each Practice Site, contract, arrangement and affiliation described in the preceding sentence. Each Service Group shall also participate and cooperate in all programs designed to coordinate or consolidate the Professional Services, payor contracting or other business functions of the Service Groups endorsed by the Dean.

**D. Subcontracts.** A Service Group shall not enter into subcontracts or other agreements under which other Practice Groups or individuals who are not employees, members or partners of the Practice Group furnish Professional Services to patients (except for arrangements for ancillary services or agreements with *locum tenens* health professionals to provide Professional Services on a temporary or emergency basis) without the approval of the Dean.

**E. Teaching Patients.** All consenting patients of Service Groups, including those under the care of physicians and other health professionals who are not members of the faculty of the School of Medicine, shall be considered to be available for participation in the clinical education programs of the School of Medicine. The University is not a provider of Professional Services to individuals. Patients of Service Groups and Service Group Participants are not patients of the University and no physician/patient or other professional relationship shall exist between the University and any patient of a Service Group or of any Service Group Participant.

**F. Employment and Compensation of Service Group Participants.** Providing Professional Services to individuals is not within the scope of the duties of any Service Group Participant as an employee of the University. Service Groups and Service Group Participants are not agents of the University in furnishing Professional Services. Except to the extent provided below, the terms and conditions under which a Service Group employs or otherwise engages a Service Group Participant to provide Professional Services or other services on its behalf shall be determined by agreement between the Service Group Participant and the Service Group. Notwithstanding the preceding, (i) the physician Compensation plans of Service Groups and the Compensation furnished by Services Groups to individual Service Group Participants (other than arrangements with *locum tenens* health professionals to provide Professional Services on a temporary or emergency basis) shall be subject to annual review and approval by the Dean and by the Group President in order to ascertain the adequacy and appropriateness of the total Compensation furnished to those persons by the Service Group, the University and others; and (ii) the employment contract or other agreement under which any Service Group Participant provides Professional Services on behalf of a Service Group shall explicitly require that the Service Group Participant abide by the Implementation Agreement (and that the Service Group Participant provide written acknowledgment of that obligation to the Dean or the University upon request). Each Service Group shall be solely responsible for paying all Compensation and taxes and providing all pension and other benefits with respect to Professional Services and other services furnished by Service Group Participants on behalf of the Service Group and the University shall have no obligations with respect thereto.

**G. Other Facilities and Services.** Each Service Group shall be responsible for arranging and paying for all facilities and services required to furnish Professional Services and to conduct its other business including, but not limited to, (i) space and equipment needed for the diagnosis and treatment of patients and for its other business activities; (ii) services in connection with the billing and collection of fees; (iii) professional liability, general liability and other insurance coverage; (iv) accounting, legal and other services; (v) management and patient information systems, including records and data processing; and (vi) nursing, clerical and other support personnel. Except as otherwise provided by contract, (a) the University is not the employer of Service Group support personnel and the Service Group shall be solely responsible for paying all Compensation and taxes and providing all pension and other benefits with respect to its support personnel; and (b) Service Groups shall not be entitled to use clerical or other support personnel employed by the University to furnish Professional Services or to conduct other business. Notwithstanding the preceding, each Service Group shall comply with any minimum standards for benefits for Service Group personnel adopted from time to time by the Dean.

**H. Compliance with Laws and Regulations.** Service Groups shall comply with all laws, rules and regulations of federal, state and local governmental bodies, including, without limitation, antidiscrimination laws and laws governing billing for health care services, applicable to its Professional Services and other business. Each Service Group shall establish and carry out a formal regulatory compliance program that is in substantial conformity with recommendations of the U.S. Department of Health and Human Services (or its successor agency).

**I. Insurance.** Each Service Group shall maintain on its own behalf and on behalf of Service Group Participants employed or retained by the Service Group such professional liability, general liability, employer liability and other insurance (or equivalent coverage) as required under its Implementation Agreement. Each such policy of professional, general and employer liability insurance shall name the University as an additional insured.

**J. Indemnification of the University.** The Implementation Agreement with each Service Group shall require that the Service Group indemnify and hold harmless the University and its governors, officers and employees for all claims, liabilities and expenses arising out of or in connection with (i) Professional Services furnished by the Service Group; (ii) the employment by the Service Group of Service Group Participants; and (iii) the violation by the Service Group of its obligations under the Implementation Agreement and these Guidelines.

#### *Part IV - Payments to FMRE*

**4.1 Required Payments to FMRE.** Except to the extent waived or modified by the Dean in accordance with Section 4.2 of these Guidelines, each Service Group shall remit to FMRE 8.7% of its Net Professional Service Collections realized from Professional Services furnished at all Practice Sites. Such payments shall be made to FMRE at the times provided in the Implementation Agreement. Except as provided in Section 4.2 of these Guidelines, FMRE will allocate one-third (1/3) of the payments from each Service Group to the FMRE Dean's fund and two-thirds (2/3) of the payments to the FMRE research and education fund for the clinical department of the School of Medicine in the Service Group's medical specialty.

**4.2 Modifications to Required Payments.** If the Dean determines that modifications to the amounts payable by a Service Group under Section 4.1 of these Guidelines are necessary or appropriate (i) in connection with grants, contracts or programs sponsored by governmental bodies or others designed to extend Professional Services to medically underserved communities or to medically indigent patients; (ii) to assist a financially distressed or recently established Service Group; or (iii) to further the mission of the School of Medicine, the Dean may, in his or her discretion, authorize reductions in the amounts the Service Group is required to pay or other modifications in the terms and conditions applicable to such payments. These modifications can take the form of reductions in the overall percentages payable with respect to Net Professional Service Collections from particular payment sources, from Professional Services rendered at particular Practice Sites or from Professional Services rendered by particular Service Group Participants or changes in the proportions of such amounts allocated to the FMRE Dean's fund. Each such change shall be effective for a period of no more than one (1) year but may be extended or renewed for an unlimited number of additional periods of up to one (1) year each at the discretion of the Dean. Each Service Group seeking a modification of its

obligations pursuant to this Section 4.2 (or an extension or renewal of such a modification) shall provide the Dean with a written request describing the changes sought and the circumstances warranting the modification.

*Part V - Reports and Access to Records.*

Each Implementation Agreement shall require the Service Group (i) to provide the President of FMRE with copies of its Organizational Documents, all amendments to its Organizational Documents and current lists of its members, shareholders or others having proprietary interests in or rights to control the Service Group; (ii) to furnish to the FMRE President annual financial statements which shall be prepared in accordance with generally accepted accounting principles and audited by a firm of certified public accountants reasonably acceptable to the FMRE President; (iii) to provide the FMRE President with financial statements and other documents regarding Service Group subsidiaries and other business entities or joint ventures furnishing health care or health related services in which the Service Group or Service Group Participants have a material interest; (iv) to provide the FMRE President with full information in advance about any Compensation to be paid and other terms and conditions applicable to changes in Service Group ownership or leadership and to transfers not in the ordinary course of business of more than 10% of the book value of Service Group assets; (v) to provide the FMRE President with such additional reports, in formats acceptable to FMRE, as the FMRE President may determine from time to time are necessary to carry out the mission of the School of Medicine and the Implementation Agreement; and (vi) to provide FMRE and the University and their respective auditors and attorneys with prompt access to all such data and records (other than those subject to the physician/patient privilege, the attorney/client privilege or other privileges recognized by statute or court rule) reasonably necessary to verify the computation of amounts payable to FMRE under Part IV of these Guidelines and the compliance by the Service Group with other requirements of these Guidelines and the Implementation Agreement. All financial information provided to FMRE or the FMRE President or to the University by Service Groups (including, but not limited to, information regarding Compensation) shall be considered to have been submitted under a promise of confidentiality and may be disclosed only as required by law.