

# **BOARD OF REGENTS BRIEFING PAPER**

## **1. AGENDA ITEM TITLE: Handbook Amendment: Associated Practice Plans Title 4, Chapter 10, Section 35**

**MEETING DATE: October 18, 2019**

## **2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

Practice plans associated with medical schools, dental schools and other clinical educational programs provide an important vehicle for faculty to engage in a clinical healthcare practice in support of NSHE's academic and research missions. Practice plans are typically formed as non-profit corporations which qualify as tax exempt entities under Section 501(c)(3) of the Internal Revenue Code.

Practice plans serve several important functions including:

- Providing a forum for health care programs to engage in clinical education and clinical research;
- Supplying an important source of revenue which supports faculty salaries;
- Creating a revenue stream which can support their associated institutions through academic support payments (also sometimes called "Dean's Tax");
- Accounting for legal separation of debts, obligations and liabilities to the appropriate entity;
- Developing a patient care platform that is accountable to patients and clinical partners;
- Providing necessary care to underserved populations, in particular those participating in Medicaid; and
- Allowing the faculty practice to operate in the highly competitive field of healthcare free from many of the restrictions that apply to the associated institution.

The Centers for Medicare and Medicaid Services ("CMS") acknowledges the important role that practice plans play in providing high quality care to patients and clinical research. For example, faculty practice plans are included in the definition of "group practice" under the federal Stark law (42 U.S.C. 1395nn) and CMS includes faculty practice plans in some of the exceptions to that law (*see* 42 C.F.R. 411.355). In Chapter 1, Section 30.2.8.2 of the Medicare Claims Processing Manual, CMS identifies certain requirements for faculty practice plans. These requirements are:

- There is a written agreement between the Governing Board of the University and the Governing Board of the Medical Faculty Practice Plan describing the relationship between both parties.
- The Medical Faculty Practice Plan is a 501(c)(3) nonprofit tax-exempt organization, according to IRS regulations.
- Physicians of the faculty practice plan are employees of the University and/or medical school. The plan should furnish a copy of the employment agreement(s) between the faculty physician and the University.
- Physicians are full or part-time faculty members of the University's School of Medicine, licensed to practice medicine in the State.
- The faculty practice plan may only be affiliated with one University, and this relationship is described in the written agreement between the University and the Medical Faculty Practice Plan.
- Members of the faculty practice plan are represented on the Governing Board of the practice plan. The Board has the authority to make or delegate management and operational decisions on behalf of the physicians participating in the practice plan.
- Faculty practice plan physicians have unrestricted access to the billing records, medical documentation, and claims forms for services submitted on their behalf by the practice plan. The faculty practice plan provides documentation establishing the existence of this policy.
- The physicians abide by the rules and regulations of the Medical Faculty Practice Plan.
- The faculty practice plan is accountable to Medicare for any claims that are submitted on behalf of the plan's physicians for services provided to Medicare beneficiaries. Thus, the plan is responsible for refunding any overpayments to Medicare that are collected on behalf of the plan's physicians.

The practice plan associated with the University of Nevada, Reno School of Medicine is the University of Nevada, Reno School of Medicine Integrated Clinical Services, Inc. ("ICS"), which was formed in 1998. In 2004 ICS adopted a restructuring proposal which centralized all authority for the practice plan entities with the ICS Board. One of the purposes of the restructuring proposal was to create uniform processes for ICS which would be adopted by the ICS Board. Additionally, the relationship between NSHE and ICS was strengthened through recommendations made in the 2004 restructuring proposal including having the Dean of UNR Med serve as the president of ICS, having the University of Nevada, Reno Vice President of Administration and Finance join the ICS Board, and providing financial reports to the Board of Regents. Nonetheless, the proposal recognized the authority of the ICS Board to manage and operate the practice plan and the need for shielding NSHE from ICS liabilities was discussed by the Board of Regents in 2004. The restructuring

proposal was accepted by Board of Regents at the January 29, 2004 meeting. Following adoption of the restructuring proposal the relationship between NSHE and ICS was memorialized an operating agreement that was entered into effective October 7, 2008. The operating agreement sets forth the rights and obligations of both parties, including the obligation of ICS to provide certain financial reports to the Board of Regents. The operating agreement also satisfies the Medicare Claims Processing Manual Section 30.2.8.2.

During the transition of medical education in southern Nevada, the University of Nevada, Las Vegas School of Medicine formed a faculty practice plan, UNLV Medicine. Like ICS, UNLV Medicine has an operating agreement with NSHE which sets forth the rights and obligations of both parties and satisfies the Medicare Claims Processing Manual Section 30.2.8.2. Currently, UNLV Medicine is working on revising its bylaws and its operating agreement with NSHE.

### **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Adopt the proposed addition to Title 4, Chapter 10, Section 35 to the Board of Regents Handbook, which defines “Associated Practice Plans” and identifies requirements and permitted activities of associated practice plans.

### **4. IMPETUS (WHY NOW?):**

At the December 2018 Board of Regents meeting, the Board requested that NSHE General Counsel work to define the role of faculty practice plans and their relationship to NSHE. Following that instruction, NSHE General Counsel worked with the counsel from the system institutions, but in particular with the University of Nevada, Reno School of Medicine and the UNLV School of Medicine, to develop the proposed language, consistent with Chapter 1, Section 30.2.8.2 of the Medicare Claims Processing Manual.

Currently, many of the standards and principles that govern the relationship between NSHE and the existing practice plans are spread over many documents including the bylaws of ICS, the bylaws of UNLV Medicine, the operating agreements with both entities and the 2004 Restructure Proposal. While these documents will continue to serve an important purpose having overarching principles regarding the relationship between NSHE and affiliated practice plans in the Handbook will provide clarity and stability both to the existing practice plans and any other practice plans that may be formed by NSHE institutions.

Finally, UNLV Medicine is currently revising its bylaws and operating agreement, adoption of the proposed section at the October 18, 2019, Special Meeting of the Board will provide guidance to UNLV and help that process.

### **5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase participation in post-secondary education)**
- Success (Increase student success)**
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)**
- Research (Co-develop solutions to the critical issues facing 21<sup>st</sup> century Nevada and raise the overall research profile)**

### **INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

- Provides a mechanism for clinical education and clinical research.
- Promotes recruitment and compensation for clinical faculty
- Allows for service of the public and increases healthcare access in Nevada
- Provides needed services to at risk and underserved populations, in particular those participating in Medicaid

### **6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- The proposed Section provides clarity regarding the requirements and operations of associated practice plans that is not currently included in the Board of Regents Handbook.
- The proposed Section promotes good governance of associated practice plans while providing for suitable levels of oversight.
- The proposed Section resolves ambiguity and inconsistencies regarding the application of Title 4, Chapter 10, Section 10 to associated practice plans.
- The proposed Section clarifies the limitations on responsibility of NSHE and associated practices plans for the other’s contracts, obligations, debts and liabilities.
- The proposed Section is consistent with Chapter 1, Section 30.2.8.2 of the Medicare Claims Processing Manual regarding University Affiliated Medical Faculty Practice Plans.
- The proposed Section is consistent with the goals and objectives set forth in the 2004 restructuring proposal and adopted by the Board of Regents at the January 29, 2004, meeting.
- The proposed Section is consistent with the underlying purposes of the operating agreements with ICS and UNLV Medicine.

**7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

n/a

**8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Not add the proposed language to the Handbook
- Identify alternate provisions regarding Associated Practice Plans

**9. RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:**

The Office of the Chancellor recommends that the proposed Section be APPROVED.

**10. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title # \_\_\_\_ Chapter # \_\_\_\_ Section # \_\_\_\_
- X Amends Current Board Policy: Title #4 Chapter #10 Section #35 (will add Section 35 to Title 4, Chapter 10)
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_ Section # \_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_ No X  
 Explain: The proposed change provides guidance for operations which currently exist.

## PROPOSED *HANDBOOK* AMENDMENT

### Title 4, Chapter 10

#### Establishing Section 35: Associated Practice Plans

Additions appear in **bold** and *italics* and deletions are ~~stricken~~ and [bracketed]

#### **Section 35. Associated Practice Plans**

**1. *Formation of Associated Practice Plans.***

*An NSHE institution, with the approval of the Board of Regents, may form a separate nonprofit corporation to provide health care services and supplies to the public in support of the teaching, research, patient care and/or clinical missions of the NSHE institution. Such entities shall be considered "Associated Practice Plans."*

**2. *Non-Applicability of Affiliated Entity Provisions.***

*Associated Practice Plans operating pursuant to this section are not subject to the provisions regarding Affiliated Groups and Foundations set forth in Title 4, Chapter 10, Section 10 of the NSHE Handbook.*

**3. *Requirements for Associated Practice Plans.***

*Each Associated Practice Plan operating pursuant to this section shall do the following:*

- a. Form as Nevada Non-Profit Corporation and obtain 501(c)(3) status under the Internal Revenue Code;*
- b. Provide in its bylaws requirements for membership and provide, at a minimum, that two (2) members of the board of directors of the Associated Practice Plan shall be appointed by the President of the NSHE Institution; and one (1) or more members of the board of directors of the Associated Practice Plan be a representative of the faculty that actively practices through the Associated Practice Plan.*
- c. Comply with any applicable Medicare and Medicaid requirements for the formation and operation of faculty practice plans;*
- d. Support of the teaching, research, patient care and/or clinical missions of the NSHE institution through which it is associated;*
- e. Enter into an Organized Health Care Arrangement with the NSHE institution for the purposes of the Health Insurance Portability and Accountability Act;*

- f. Abide by financial reporting deadlines established by the Board of Regents either through policies established by the Board of Regents or in a contract between an NSHE institution and the Associated Practice Plan; and*
  - g. Include in its bylaws that upon dissolution of the Associated Practice Plan the assets of the Associated Practice Plan, after satisfying all debts and liabilities, shall be for the benefit of the NSHE institution.*
- 4. Contract between NSHE Institution and Associated Practice Plan.**

*Each Associated Practice Plan shall have a contract with the NSHE institution it is associated with that describes the relationship between the NSHE institution and the Associated Practice Plan. The contract must be approved by the President of the NSHE institution and the Chancellor and, at a minimum, must include the following:*

- a. Provisions governing financial transactions, financial reporting, and accounting practices of the Associated Practice Plan, including that an annual independent financial audit of the Associated Practice Plan be conducted and an annual report be publicly presented to the Board of Regents;*
  - b. Provisions setting forth the use of shared resources between the Associated Practice Plan and the NSHE institution, including facilities and operational support; and*
  - c. Provisions establishing that any amendment(s) to the bylaws of the Associated Practice Plan must be reviewed by the President of the NSHE institution and the Chancellor prior to the effective date of the amendment(s).*
- 5. Permitted Activities of an Associated Practice Plan.**

*Each Associated Practice Plan may engage in business activities permitted by applicable law and regulations, which may include:*

- a. Billing, collecting and disbursing all patient revenues and other revenues earned by the operations;*
- b. Contracting with an NSHE institution and/or NSHE-employed faculty, resident physicians and/or staff for the provision of services and assignment of clinical revenues;*
- c. Entering into contractual arrangements, including partnerships or joint ventures with medical facilities, managed care organizations, networks of health care providers, government agencies or other healthcare organizations or entities;*
- d. Establishing, managing and operating one or more networks of healthcare providers;*

- e. ***Creating non-profit subsidiary corporations or other non-profit entities as may be necessary or desirable;***
  - f. ***Employ and/or contract for clinical and administrative staff members to support the operation; and***
  - g. ***Establishing rules of practice, quality measures, compliance programs and other standards with which those persons providing services through the Associated Practice Plan, including NSHE-employed faculty, resident physicians and/or staff, must comply.***
6. ***Status of Associated Practice Plan as Separate Legal Entity. Subject to this Section and any contracts between an NSHE Institution and an Associated Practice Plan, each Associated Practice Plan shall be a separate nonprofit corporation under the control of its own board of directors. The Board of Regents, NSHE, and an NSHE institution shall not be liable for any third-party contracts, obligations, debts, and liabilities of an Associated Practice Plan. This notwithstanding, in accordance with the Nevada limited waiver of sovereign immunity provisions set forth in NRS Chapter 41, and when acting in the performance of their duties and within the scope of their employment, NSHE-employed faculty, resident physicians and/or staff shall be considered public employees of NSHE and the cost of defense and payment of claims or judgments shall be made on their behalf through insurance policies or NSHE funds maintained for that purpose, unless the public employee is determined to have acted in a willful or wanton manner.***