

**Wesley Medical Center  
Medicare GME Affiliation Agreement  
With Nonhospital Site**

This Medicare GME (Graduate Medical Education) Affiliation Agreement with Nonhospital Site (the "Agreement") is entered into by and between Wesley Medical Center, LLC ("HOSPITAL"), Sedgwick County, Kansas on behalf of its "COMCARE" ("NONHOSPITAL SITE"), The University of Kansas School of Medicine - Wichita ("UNIVERSITY"), and The Wichita Center for Graduate Medical Education ("WCGME"). HOSPITAL, NONHOSPITAL SITE, UNIVERSITY and WCGME referred to individually as "Party" and collectively as "Parties."

**W I T N E S S E T H:**

WHEREAS, UNIVERSITY, sponsors an approved and ACGME-Accredited Residency Program, (the "PROGRAM") which is conducted through a consortium of teaching facilities, including HOSPITAL; and

WHEREAS, WCGME employs the residents ("Residents") who are enrolled in the UNIVERSITY sponsored Residency Program and by contract with the UNIVERSITY is authorized to secure sites for residency training; and

WHEREAS, NONHOSPITAL SITE is willing to participate in the training and supervision of Residents in the NONHOSPITAL SITE; and

WHEREAS, the PROGRAM assigns residents to the HOSPITAL site, and the HOSPITAL is responsible for all or substantially all of the costs associated with this PROGRAM, and for time spent by the Resident in both the HOSPITAL and NONHOSPITAL SITE.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

**1. Scope of Program**

- A. The scope of the PROGRAM and the number of residents receiving training at the NONHOSPITAL SITE shall comply with the accreditation guidelines established by ACGME and any other applicable accrediting bodies and the requirements for an approved medical residency program as defined under 42 U.S.C § 1395ww(h)(5)(A), 42 C.F.R. §412.105 and 413.86(b) and related regulations for which Medicare payment has been approved for the cost of direct and indirect graduate medical education activities.

The NONHOSPITAL SITE agrees to maintain a training environment which allows the resident to participate in patient care with teaching staff physicians that are associated with NONHOSPITAL SITE.

**2. Responsibilities of Parties.**

- A. NONHOSPITAL SITE
- Supervise Residents in NONHOSPITAL SITE's private medical office.
  - Orient Residents to the clinical experience at NONHOSPITAL SITE's private medical office.
  - Complete Resident Performance and Evaluation Forms and submit them to the UNIVERSITY Program Director.

- Maintain active membership in good standing on the UNIVERSITY's faculty roster.
- B. HOSPITAL
- Pay 100% of all salaries and fringe benefit costs of the Residents for time spent in the HOSPITAL and the NONHOSPITAL SITE.
  - Distribute and collect monthly time reports to Residents assigned to HOSPITAL.
  - Prepare monthly Resident time reports for PROGRAM.
- C. WCGME
- Ensure the official credentials for each Resident and provide NONHOSPITAL SITE with copies as requested.
  - Conduct background check on all new Residents.
  - Ensure that all Residents have received pre-employment lab work, PPD testing and required vaccinations prior to their participation in the PROGRAM.
  - Provide proof of immunization upon request of the HOSPITAL and/or NONHOSPITAL SITE.
  - Provide professional liability insurance for Residents for their activities while assigned to the NONHOSPITAL SITE and while providing services within the scope of the Program and this Agreement, through the self-insurance programs established in K.S.A. 40-3401 *et seq.* Basic coverage (with limits of \$200,000 per occurrence and \$600,000 in the aggregate) is provided via the State of Kansas self-insurance program on a claims-made basis. Excess coverage (with limits of \$800,000 per occurrence and \$2,400,000 in the aggregate) is provided by the Kansas Healthcare Stabilization Fund via a surcharge paid by WCGME. If HOSPITAL, WCGME, or the NONHOSPITAL SITE are sued for vicarious liability for any event, act, or omission occurring in this nonhospital setting, or involving its employees, agents or independent contractors, all Parties agree not to assert a claim of indemnification, subrogation, or contribution against the Resident who has provided medical care under the direction and/or supervision of the teaching staff.
- D. RESIDENCY PROGRAM
- Provide the NONHOSPITAL SITE with the goals and objectives prior to the onset of the rotation.
  - Provide the NONHOSPITAL SITE with the evaluation form to be completed.
- E. MUTUAL RESPONSIBILITIES
- Residents shall be treated as trainees who have no expectation of receiving future employment from HOSPITAL and/or NONHOSPITAL SITE.
  - All Parties shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to Parties, including, without limitation, those requirements imposed by The Joint Commission ("TJC"), the Centers of Medicare and Medicaid Services ("CMS") conditions of participation and any amendments thereto, the Accreditation Council on Graduate Medical Education and all applicable federal, state and local laws, rules, regulations and policies.

**3. Warranty of Eligibility.** NONHOSPITAL SITE represents and warrants to all Parties that NONHOSPITAL SITE and its physicians providing services hereunder: (i) are not currently excluded, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal health care programs"); and (ii) are not under investigation or otherwise aware of any circumstances that may result in NONHOSPITAL SITE being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of the Agreement. NONHOSPITAL SITE shall immediately notify all Parties of any change in the status of the representation and warranty set forth in this section. Any breach of this section or exclusion from participation in any Federal health care program shall give all Parties the right to terminate the Agreement immediately for cause.

**4. Withdrawal of Residents.** NONHOSPITAL SITE may request removal of a Resident from its site if the Resident poses an immediate threat or danger to personnel or to the quality of medical services or for unprofessional behavior.

**5. No Requirement to Refer.** The Parties acknowledge that nothing contained herein shall be interpreted to require or obligate physicians associated with the NONHOSPITAL SITE to admit or cause the admittance of a patient to HOSPITAL, or to utilize its services. The Parties further acknowledge that none of the benefits granted under this Agreement are conditioned on any requirement or expectation that the Parties make referrals to, be in a position to make or influence referrals to, or otherwise generate business for any other Party. The Parties further acknowledge that no Party is restricted from referring any service to, or otherwise generating any business for, any other entity of their choosing.

**6. Independent Contractor.** The Parties hereby acknowledge that they are independent contractors, and neither the NONHOSPITAL SITE nor any of its agents, representatives, or employees shall be considered agents, representatives, or employees of HOSPITAL. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties hereto. NONHOSPITAL SITE shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits.

**7. Non-Discrimination.** There shall be no discrimination on the basis of race, national origin, religion, creed, sex, age, veteran status, or handicap in either the selection of Residents for participation in the Program, or as to any aspect of the clinical training; provided, however, that with respect to handicap, the handicap must not be such as would, even with reasonable accommodation, in and of itself preclude the Resident's effective participation in the Program.

**8. Confidentiality.** NONHOSPITAL SITE and its agents, representatives and employees agree to keep strictly confidential and hold in trust all confidential information of HOSPITAL and/or its patients and not disclose or reveal any confidential information to any third party without the express prior written consent of HOSPITAL. NONHOSPITAL SITE shall not disclose the terms of this Agreement to any person who is not a party to this Agreement, except as required by law or as authorized by HOSPITAL. Unauthorized disclosure of confidential information or of the terms of this Agreement shall be a material breach of this Agreement and shall provide HOSPITAL with the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to NONHOSPITAL SITE.

**9. HIPAA Compliance.** The Parties agree to comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") and any current and future regulations promulgated under either the HITECH Act or HIPAA, including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Standards"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Standards"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transactions Standards"), all as may be amended from time to time, and all collectively referred to herein as "HIPAA Requirements." Both Parties agree to enter into any further agreements as necessary to facilitate compliance with HIPAA Requirements. The Parties agree not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. §164.504) or Individually Identifiable Health Information (as defined in 42 U.S.C. §1320d) other than as permitted by the HIPAA Requirements and the terms of this Agreement. The Parties agree to make their internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Standards. In addition, the Parties agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic and transaction code sets pertaining to, information related to patients.

**10. Term; Termination.**

- The initial term of this Agreement commences January 1, 2016 and ends on December 31, 2020. Any Party may terminate this Agreement at any time with or without cause upon at least thirty (30) days' prior written notice to the other Parties.
- Any Party may terminate this Agreement as set forth in Section 3.

**11. Cross-Referenced Agreements.** Entities with which *physicians or their immediate family members* have direct or indirect financial arrangements are required to cross-reference all such arrangements. A master list of contracts cross-referenced to identify all arrangements between the NONHOSPITAL SITE, including its associated physicians and their immediate family members, and the HOSPITAL is centrally maintained and updated by the HOSPITAL and is available for review by the Secretary of the U.S. Department of Health and Human Services upon request.

**12. Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior Agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement. All continuing covenants, duties and obligations herein shall survive the expiration or earlier termination of this Agreement.

**13. Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, this Agreement shall remain in full force and effect in accordance with its terms disregarding such unenforceable or invalid provision.

**14. Captions.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

**15. No Waiver.** Any failure of a Party to enforce that Party's right under any provision of this Agreement shall not be construed or act as a waiver of said Party's subsequent right to enforce any of the provisions contained herein.

**16. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Kansas.

**17. Change of Circumstances.** If any Party receives notice of any Government Action (defined below), the Parties shall attempt to amend this Agreement in order to comply with the Government Action. If the Parties, acting in good faith, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if any Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall terminate ten (10) calendar days after one Party notifies the others of such fact.

For the purposes of this Section, "Government Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to any Party, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would: (1) revoke or jeopardize the status of any health facility license granted to HOSPITAL or any affiliate of HOSPITAL; (2) prevent UNIVERSITY from being able to access and use the facilities of HOSPITAL or any affiliate of HOSPITAL; (3) constitute a violation of 42 U.S.C. Section 1395nn (commonly known as the Stark law) if NONHOSPITAL SITE referred patients to HOSPITAL or any affiliate of HOSPITAL; (4) prohibit HOSPITAL or any affiliate of HOSPITAL from billing for services provided to patients referred to by NONHOSPITAL SITE; or (5) subject any Party, or any of their respective employees or agents, to civil or criminal prosecution, on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

**18. Assignment; Binding Effect.** Parties may not assign or transfer any of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of all Parties. This Agreement

shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns.

**19. Notices.** All notices hereunder by any Party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

HOSPITAL:	Wesley Medical Center, LLC d/b/a Wesley Medical Center 550 North Hillside Wichita, Kansas 67214 Attention: Director of Medical Education
Copy to:	HCA Legal Department 4900 South Monaco, Suite 380 Denver, Colorado 80237 Attention: Operations Counsel
NONHOSPITAL SITE:	<u>Sedgwick County, Kansas on Behalf of its "Comcare"</u> <u>934 N Water</u> <u>Wichita, KS 67203</u>
UNIVERSITY:	The University of Kansas School of Medicine – Wichita 1010 North Kansas Wichita, Kansas 67214
WCGME:	Wichita Center for Graduate Medical Education 1010 North Kansas Wichita, Kansas 67214
PROGRAM:	Pediatric Residency Program The University of Kansas School of Medicine – Wichita 1010 North Kansas Wichita, Kansas 67214

Or to such other persons or places as a Party may from time to time designate by written notice to the other Parties.

**20. Counterpart Signature.** This Agreement may be executed in one or more counterparts (facsimile transmission or otherwise); each counterpart shall be deemed an original and all of which shall constitute but one Agreement.

**21. Execution of Agreement.** This Agreement shall not become effective or in force until all of the below named Parties have fully executed this Agreement.

Per Facility Policy LL.001, General Statements on Agreements with Referral Sources, Approval Process, et. seq., payments pursuant to this Agreement, if any, will be made only for services performed after the Agreement has been signed by all Parties unless otherwise approved by Facility's Legal Operations Counsel. Services performed prior to this date will not be compensated, unless otherwise approved by Facility's Legal Operations Counsel.
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The Parties hereto have executed this Agreement as of the day and year first above written.

FOR THE NONHOSPITAL SITE:


\_\_\_\_\_  
President or Designee

Federal ID # \_\_\_\_\_

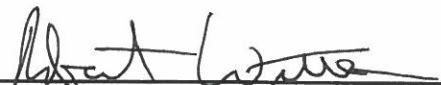
FOR THE HOSPITAL:

  
\_\_\_\_\_  
WMC President & CEO

FOR THE UNIVERSITY:

  
\_\_\_\_\_  
UKSM-W Dean

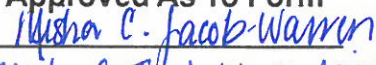
FOR THE PROGRAM:

  
\_\_\_\_\_  
UKSM-W Program Director

FOR WCGME:

  
\_\_\_\_\_  
WCGME Chief Operating Officer

**Approved As To Form**

  
\_\_\_\_\_  
Misha C. Jacob-Warren, Assistant County Counselor