



Urgent NACHC Message

From the Desk of
Tom Van Coverden
President & CEO



NATIONAL ASSOCIATION OF
Community Health Centers

TO: Community Health Centers

FROM: Tom Van Coverden, President and CEO, NACHC

DATE: May 12, 2016

RE: Federal requirements regarding women's reproductive health services at health centers

In light of recent concerns about women's reproductive services at health centers, we are sharing the attached document that provides a summary of federal rules and regulations related to this category of services. It reviews the requirements and prohibitions that apply under the Health Centers Program (Section 330 of the Public Health Service Act), Medicaid, Medicare, the Title X Family Planning Program, and the Serve America Act, which governs the AmeriCorps program. NACHC is also developing a comprehensive guidance document addressing these programs and issues as well as a forthcoming webinar. We will have more details on those materials coming shortly.

We hope that this document is helpful in your health center's on-going compliance efforts. If you have any questions, please contact Jacki Leifer or Carrie Bill Riley at Feldesman Tucker Leifer Fidell at 202.466.8960.

Sincerely,

Tom Van Coverden
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ALERT

NACHC is disseminating this alert to provide clear and accurate information concerning a topic of interest to NACHC’s members in a timely manner. Please note that more substantive guidance will be provided shortly. The forthcoming guidance will address all of the topics below in further detail, and therefore this Alert should not be the only source of information on which a health center relies.

Are health centers required to provide, or arrange for the provision of, reproductive health services?

The federal law that authorizes the Health Center Program, Section 330 of the Public Health Service Act (Section 330), requires that health centers provide, either directly or through an established arrangement, a broad range of primary health care services.¹ The list of required primary health care services includes “voluntary family planning services.”²

“Voluntary family planning services” are defined by the Health Resources and Services Administration (HRSA) in the resource *Service Descriptors for Form 5A* as the following:

“appropriate counseling on available reproductive options consistent with Federal, state, local laws and regulations [that] may include management/treatment and procedures for a patient’s chosen method (e.g., vasectomy, subdermal contraceptive placement, IUD placement, tubal ligation.)”

Neither “appropriate counseling” nor “available reproductive option” is defined in Section 330, the implementing regulations or HRSA guidance. Of note, discussion of available options must be voluntary, meaning non-coercive or non-directive in nature.

Health centers are also required by law to provide, or arrange for the provision of, additional services related to reproductive health, including gynecology and obstetrics, as well as preventive health services, including prenatal and perinatal services and appropriate cancer screening (e.g., cervical cancer screening).³

What is the Hyde Amendment and does it extend to health centers?

Since 1976, the Hyde Amendment has been a statutory rider attached to the annual appropriations for the Department of Health and Human Services (HHS) that bars the use of federal funds appropriated under the annual HHS Appropriations Acts to pay for abortions, except if the pregnancy is the result of an act of rape or incest, or “in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a

¹ 42 USC 254b

² 42 USC § 254b(b)(1)(A)(i)(III)(gg)

³ 42 USC § 254b(b)(1)(A)(i)

physician, place the woman in danger of death unless an abortion is performed.” (Pub. L.114-113, Sec 506-507.)

Since it was first passed, the Hyde Amendment has applied to the health center discretionary funds authorized under Section 330 of the Public Health Service Act; it also applies to the funds awarded under the mandatory Community Health Center Fund⁴.

The HRSA Notices of Award for funds awarded pursuant to Section 330 of the Public Health Service Act include a term specifying that health centers are prohibited from using federal funds to provide abortion services (except in cases of rape or incest, or when the life of the woman would be endangered).

Of note, the Hyde Amendment does not restrict referrals for abortion.

Does the Hyde Amendment limit a health center’s ability to prescribe contraceptives?

No, the Hyde Amendment does not prohibit a health center from using federal Section 330 grant funds to cover the cost of drugs or devices to prevent implantation of the fertilized ovum. See HRSA *Service Descriptors for Form 5A* and definition of “voluntary family planning” as described above.

Are the Medicaid and Medicare programs subject to the Hyde Amendment?

The Medicaid program is subject to the Hyde Amendment, meaning that, generally, federal financial participation cannot be used to pay for abortions, subject to certain exceptions that must be reasonably documented.⁵ Additionally, according to Medicaid program guidance, the Hyde Amendment does not prohibit a state from paying for an abortion with state-only funds.

In Medicare, abortions are not covered procedures except if the pregnancy is the result of an act of rape or incest or in the case where a woman suffers from a physical disorder, physical injury or physical illness, including a life-endangering physical condition by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.⁶

If a health center receives Title X funding, in addition to those funds being subject to the Hyde Amendment’s restrictions, are there additional abortion-related requirements?

A health center is subject to additional requirements if it receives federal grant funding under Title X of the Public Health Service Act to establish and operate a voluntary family planning project.⁷

⁴ Pub.L. 114-10, Sec. 221(c)

⁵ 42 C.F.R. §§ 441.200-208

⁶ Pub.L. 114-113, Sec. 506-507 and National Coverage Determination for Abortion 140.1

⁷ 42 U.S.C. § 300, *et seq.*, Project Grants and Contracts for Family Planning Services; implementing regulations at 42 C.F.R. Part 59, subpart A

In regard to pregnancy diagnosis and counseling, Title X projects must offer pregnant women the opportunity to be provided information and counseling regarding each of the following options: (1) prenatal care and delivery; (2) infant care, foster care, or adoption; and (3) pregnancy termination.⁸ If a woman requests to receive such information and counseling, the Title X Project must provide neutral, medically accurate, factual information and non-directive counseling on each option, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.⁹

If a health center receives federal grant funding directly or indirectly through the Corporation for National and Community Service (CNCS) to participate in the AmeriCorps Program, is it subject to additional abortion-related requirements?

A health center is subject to additional requirements applicable to the provision of abortion services and abortion-related activities if it receives federal grant funding through the Corporation for National and Community Service (CNCS) to participate in the AmeriCorps Program.¹⁰ Specifically, AmeriCorps members may not engage in the provision of “abortion services or referrals for receipt of such services.”¹¹ AmeriCorps members may not engage in such services while charging time to the AmeriCorps Program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps Program or the CNCS.¹²

CNCS recently has advised that, consistent with the statute and regulations, AmeriCorps Members are prohibited from performing any activity which:

- Directly or indirectly counsels or provides information about the availability of abortion services, and/or
- Involves providing services to a patient seeking or considering abortion services, including but not limited to—
 - Escorting, in-processing or preparing patients or potential patients for a procedure,
 - Assisting in or attending any part of the procedure, or
 - Providing any post-procedure support, processing or assistance.

Are there state specific restrictions applicable to abortion services and abortion-related activities?

In addition to the federal restrictions described above, several states have enacted laws specific to the provision of abortion services and abortion-related activities. Health centers should consult with their Primary Care Association (PCAs) for more information on state-specific laws and regulations.

⁸ 42 C.F.R. § 59.5(a)(5)(i)

⁹ 42 C.F.R. § 59.5(a)(5)(ii)

¹⁰ See 42 U.S.C. § 12584a(a)(9) and 45 C.F.R. § 2520.65(10)

¹¹ 42 U.S.C. § 12584a(a)(9)

¹² 45 C.F.R. § 2520.65(10)