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TO: Community Health Centers
Migrant Health Centers
Health Care for the Homeless Programs
Public Housing Primary Care Programs
State and Regional Primary Care Associations

RE: Women's Reproductive Health Services: Sample Policy and Procedure

Dear Colleagues:

Recently, you received from the National Association of Community Health Centers (NACHC) a revised version of the compendium *Federal Law Requirements for Women's Reproductive Health Services at Health Centers*, which was initially distributed in May 2016. Attached to this letter is a sample policy and procedure (*Women's Reproductive Health Services: Sample Policy and Procedure*) that health centers may wish to review to ensure that their relevant policies and procedures are up to date with the current federal requirements addressed in the compendium. We drafted this sample in response to numerous requests from the field after the initial distribution of the compendium, and, further, in response to the request of NACHC's Board of Directors at its November 14, 2016 meeting.

The sample policy and procedure offers general guidance on applicable federal laws and regulations regarding women's reproductive health services (including definitions of services and referrals that comply with Section 330 and the Hyde Amendment as well as the Hyde Amendment exceptions) and can be tailored appropriately by health centers to fit the specific facts and circumstances of their individual operations. If you have any questions regarding either this sample policy and procedure or the compendium, please feel free to contact me, Marcie Zakheim, or Carrie Bill Riley at (202) 466-8960.

Sincerely,

Jacqueline C. Leifer
Senior Partner
Feldesman Tucker Leifer Fidell LLP

Women's Reproductive Health Services: Sample Policy and Procedure¹

I. Statement of Purpose and Policy

[Health Center Name] (“Health Center”) is committed to high standards and compliance with all applicable laws and regulations.²

The purpose of the Women's Reproductive Health Services Policy and Procedure is to provide safeguards to ensure Health Center's compliance with laws and regulations relating to the provision of women's reproductive health services affecting health centers that receive federal grant funds under Section 330 of the Public Health Service Act (“Section 330”) through the U.S. Department of Health and Human Services (“HHS”).

Compliance with Section 330

Under Section 330, Health Center is required to provide, either directly or through contracts or formal written referral arrangements, voluntary family planning services.³ HRSA defines voluntary family services in the Service Descriptor Guide as the following:

“Voluntary family planning services are appropriate counseling on available reproductive options consistent with Federal, state, local laws and regulations. These services may include management/treatment and procedures for a patient's chosen method (e.g., vasectomy, subdermal contraceptive placement, IUD placement, tubal ligation).”

As neither “appropriate counseling” nor “available reproductive options” are defined in Section 330, the implementing regulations, or HHS Health Resources and Services Administration (“HRSA”) guidance, Health Center will use the criteria established under the Family Planning Program regulations authorized under Title X of the Public Health Service Act for guidance on how best to provide appropriate family planning options counseling to Health Center's patients.⁴

¹ The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The sample documents offer general guidance based on federal law and regulations and do not necessarily apply to all health centers under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel.

² Authors' note: This sample Policy and Procedure was established in accordance with federal laws, regulations, and guidance effective as of December 1, 2016. Health centers that seek to adapt and adopt this sample Policy and Procedure to align with the health center's particular operations are advised to seek legal advice from qualified legal counsel to ensure that the Policy and Procedure reflects current requirements, both from a federal and a state level.

³ Authors' note: The procedural requirements included in this Policy and Procedure are applicable only if Health Center furnishes family planning services either directly or by contract with a provider.

⁴ Authors' note: While these criteria are not stated as part of the regulations affecting Section 330 grantees that do not also receive Title X funds, the Title X requirements regarding family planning options counseling provide clarity into

Compliance with the Hyde Amendment⁵

In providing women’s reproductive health services as a component of its Section 330-supported health center program, Health Center will assure compliance with the Hyde Amendment. The Hyde Amendment is a statutory provision included as part of the annual HHS Appropriations legislation, which prohibits health centers from using federal funds to provide abortions (except in cases of rape or incest, or 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 physician, place the woman in danger of death unless an abortion is performed). The Hyde Amendment prohibits the performance of abortion procedures, as well as the administration of drugs and devices that are used for “medication” abortions that terminate an early pregnancy (up to 70 days from the date of the woman’s last menstrual cycle) rather than prevent implantation, including, but are not limited to, administration of the combination of RU-486 (Mifepristone or Mifeprex) and Misprosol, unless the abortion procedure or medication abortion fits within one of those explicit Hyde Amendment exceptions.

Compliance with Public Health Service Regulations⁶

If Health Center furnishes abortion services in the event the woman is the victim of rape or incest or if her life would be endangered, Health Center will maintain adequate documentation and certifications as required under 42 C.F.R. §§50.304, 50.306 and 45 C.F.R. Part 75.

Compliance with Prohibition on Coercion

In providing women’s reproductive health services as a component of its Section 330-supported health center program, Health Center will assure compliance with statutory requirements, as set forth in 42 U.S.C. §300a-8, which prohibits all Health Center employed and contracted staff from coercing or endeavoring to coerce any person to undergo an abortion by threatening such person with the loss of, or disqualification for the receipt of, any benefit or other health center services. Health Center will also assure that Health Center employed and contracted staff do not coerce or endeavor to coerce any person not to undergo an abortion by threatening such person with the loss of, or disqualification for the receipt of, any benefit or other health center services, consistent with guidelines to provide only neutral, factual information and nondirective options counseling.⁷

what criteria are deemed appropriate by HHS. Accordingly, we recommend health centers ensure that discussion of available options is neutral, medically accurate, factual and voluntary (meaning non-coercive and non-directive in nature). However, it is certainly arguable that using Title X requirements as guidance for health centers that do not receive Title X funding is irrelevant.

⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, §§ 506-507, 129 STAT. 2242, 2649 (2015).

⁶ Authors’ note: A health center may opt to adopt a policy whereby abortions are never provided, regardless of whether the pregnancy falls within a Hyde exception. Health centers that choose not to provide abortions under any circumstances should revise this sample policy and procedure accordingly.

⁷ Authors’ note: Although 42 U.S.C. §300a-8 does not prohibit the coercion of a person not to obtain an abortion, we advise that health centers adopt such a policy and implement procedures accordingly.

Providing Access to FDA-Approved Contraceptive Methods⁸

Health Center will ensure that its patients have access to the full range of Food and Drug Administration (“FDA”)-approved contraceptive methods designed to prevent a pregnancy.

Providing Abortion Services Outside of the Section 330-Supported Program⁹

If Health Center furnishes abortion services outside of its Section 330-supported program (or outside of its “scope of project”), Health Center will not use Section 330 grant funds or program income to pay for out-of-scope abortion services and related services or associated overhead costs. Health Center will ensure that the revenue from such out-of-scope services are segregated from the Section 330-supported program and the out-of-scope direct and indirect costs are appropriately allocated consistent with applicable grants management rules, set forth in 45 C.F.R. Part 75.

All Health Center employees and contractors (“Health Center Staff”)¹⁰ are required to comply with this Women’s Reproductive Health Services Policy and Procedure by signing and returning the certification attached to this document as Exhibit A.

II. Procedure¹¹

1. Voluntary Family Planning Services Training.

All Health Center Staff, regardless of their specific job or position descriptions, duties performed or services provided, will be trained on Section 330 requirements applicable to voluntary family planning services including, but not limited to, the required scope of voluntary family planning services, as well as prohibitions and limitations on providing abortions within the Section 330-supported health center program and coercing or endeavoring to coerce any person to undergo an

⁸ Authors’ note: Although not required, providing access to a full range of FDA-approved contraceptive methods is recommended. In its June 14, 2016 “Technical Assistance Resource” entitled “*Family Planning and Related Services in Health Centers*,” HRSA notes that “[E]nsuring access to quality family planning services, including... the full-range of FDA-approved contraceptive methods, for populations served by health centers will help reduce unplanned pregnancy rates.”

⁹ Authors’ note: A health center may opt to adopt a policy whereby abortions are never provided, regardless of whether the pregnancy falls within a Hyde exception. Health centers that choose not to provide abortions under any circumstances should revise this sample policy and procedure accordingly.

¹⁰ Authors’ note: This Policy and Procedure may not be applicable to all health center staff. Accordingly, a health center may wish to modify the description of the staff members who must comply with this Policy and Procedure, and sign the certification set forth in Exhibit A. For example, a health center may wish to modify the phrase “All Health Center employees and contractors” to state “All Health Center employees and contractors who provide clinical services and non-clinical support services ...” Notwithstanding, all employees and contractors should receive the training addressed in Section II (1) related to the Section 330 requirements applicable to family planning services and abortion prohibitions/limitations.

¹¹ Authors’ note: Using the following sample as a guide, health centers should tailor the procedure to reflect their own structures and operations.

abortion. Health Center shall maintain records indicating the completion of such training in each employee's and contractor's personnel file.

2. Complying with the Hyde Amendment

All Health Center Staff agree that Health Center shall not provide abortion services, either directly or by contract, within Health Center's Section 330-supported health center program, unless the abortion fits within a Hyde Amendment exception, as described in Section II(3). All Health Center Staff agree that this prohibition includes the administration of "medication" abortions that terminate an early pregnancy (up to 70 days from the date of the woman's last menstrual cycle) rather than prevent implantation. Medication abortions include, but are not limited to, administering the combination of RU-486 (Mifepristone or Mifeprex) and Misoprostol which results in the termination of a pregnancy.

3. Providing Abortions Under the Hyde Amendment Exceptions.¹²

If Health Center provides abortion services in the event that the woman is a victim of rape or incest, Health Center will secure and maintain documentation from a law enforcement agency or public health service stating:

- a. that the person upon whom the medical procedure was performed was reported to have been the victim of an incident of rape or incest;
- b. the date on which the incident occurred;
- c. the date on which the report was made, which must have been within 60 days of the date on which the incident occurred;
- d. the name and address of the victim and the name and address of the person making the report (if different from the victim); and
- e. that the report included the signature of the person who reported the incident.

If Health Center provides abortion services in cases 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 physician, place the woman in danger of death unless an abortion is performed, Health Center will secure and maintain a written certification from a physician who has found that on the basis of his or her professional judgement, the life of the mother would be endangered if the fetus were carried to term. The certification must contain the name and address of the patient.

¹² Authors' note: The following text is applicable to health centers that directly provide abortion services pursuant to the Hyde Amendment exceptions for pregnancy as a result of rape, incest, or endangerment to the life of the mother. If a health center opts to adopt a policy whereby abortion services are not directly provided by the health center in such scenarios, it should revise Section II (2) accordingly. .

4. Options Counseling.

Health Center Staff providing options counseling shall offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:

- a. prenatal care and delivery;
- b. infant care, foster care, or adoption; and
- c. pregnancy termination.

If requested to provide such information and counseling, Health Center Staff will provide neutral, factual information and nondirective counseling on each of the options, and referral upon request (subject to Section 7 below), except with respect to any option(s) about which the pregnant woman indicates that she does not wish to receive such information and counseling.

5. Prohibition on Coercion.

Health Center Staff are strictly prohibited from coercing or endeavoring to coerce any person to undergo or not to undergo an abortion by threatening such person with the loss of, or disqualification for the receipt of, any benefit or other health center services.¹³

6. Contraceptive Methods.

Health Center Staff, upon request, will provide patients with information regarding the management/treatment, as appropriate, for a patient's chosen family planning method. Such management/treatment information may address vasectomy, tubal ligation, and placement of long-acting reversible contraception (e.g., IUDs and implants). In addition, Health Center Staff will ensure that its patients have access to the full range of FDA-approved contraceptive methods designed to prevent a pregnancy.

7. Referrals for Abortion Services.

- a. If a patient requests an abortion either for a pregnancy resulting from rape or incest or because the patient 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 physician, place the patient in danger of death unless an abortion is performed, in accordance with the Hyde Amendment exceptions, and the health center does not furnish abortions in such limited circumstances, Health Center Staff will provide the patient with a referral to another medical facility.

¹³ Authors' note: Although applicable federal statute (i.e., 42 U.S.C. §300a-8) does not prohibit the coercion of a person not to obtain an abortion, we advise that health centers adopt such a policy and implement procedures accordingly.

- b. In the event that a patient’s pregnancy is not the result of rape or incest, or the pregnancy does not endanger the life of the woman (as defined in Section II (7)(a) above), and accordingly does not meet a Hyde Amendment exception, and the pregnant woman requests a referral to an abortion provider, Health Center Staff offering referral assistance may provide the name, address, telephone number, and other relevant information (such as whether the provider accepts Medicaid, charges, etc.) about an abortion provider. Such Health Center Staff will not take further affirmative action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the requesting patient.¹⁴

The Women’s Reproductive Health Services Policy and Procedure shall be reviewed periodically and updated consistent with the requirements established by the Board of Directors, Health Center’s senior management, federal and state law and regulations, and applicable accrediting and review organizations.

Responsible Parties:

Signature _____ Date _____
CEO

Signature _____ Date _____

¹⁴ Authors’ note: As the language included in this section is specific to Title X requirements, health centers that do not receive Title X funds may have referral procedures that are less stringent than the sample language included here. Health centers may redraft this section to reflect its actual referral practices.

EXHIBIT A

**CERTIFICATION OF COMMITMENT TO COMPLY WITH
WOMEN’S REPRODUCTIVE HEALTH SERVICES POLICY AND PROCEDURE**

I hereby acknowledge and certify that I have received and reviewed a copy of the Health Center Women’s Reproductive Health Services Policy and Procedure and I understand that it represents a mandatory policy of Health Center.

By signing this form below, I agree to abide by the Women’s Reproductive Health Services Policy and Procedure during the term of employment, contract, or agency or while otherwise authorized to serve on Health Center’s behalf. In addition, I acknowledge that I have a duty to report any suspected or known violation of the Women’s Reproductive Health Services Policy and Procedure to my supervisor or through the normal chain of command. I acknowledge that I may also report the information directly to the Compliance Officer or any other member of senior management.

Please return this completed, signed Certification of Commitment to the Compliance Officer.

Date

Signature

Printed Name

Title/Position