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Tips on Reduced Payments for Services Provided to Patients Above 200% of Poverty

Providing services to patients regardless of ability to pay, and thus removing financial barriers to receiving care, is key to the mission of every health center and one of the cornerstones of the health center program. This obligation, however, is not without limitation - Section 330 of the Public Health Service Act and its implementing regulations provide certain parameters with which health centers must comply in designing fee schedules and in applying discounts to such fees. This Alert offers tips to health centers on how they can financially support services to patients who fall outside of the regulatory parameters without running afoul of their Section 330-related legal obligations(1).

Section 330 requires health centers to "assure that no patient will be denied health care services due to an individual's inability to pay for such services; and ... assure that any fees or payments required by the center for such services will be reduced or waived to enable the center to fulfill the assurance ..." 42 USC § 254b(k)(3)(G)(iii).

Health centers also have corresponding duties to:

- Have "a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and ... a corresponding schedule of discounts to be applied to the payment of [such] fees or payments, which discounts are adjusted on the basis of the patient's ability to pay;" and
- "[M]ake every reasonable effort ... to secure from patients payment for services in accordance with such schedules."

42 USC §§ 254b(k)(3)(G)(i) & (ii). Thus, health centers are required to charge and use best efforts to collect applicable fees from all patients - including discounted amounts from persons who qualify, and full fees from patients who do not qualify, for the health center's schedule of discounts (commonly referred to as the "sliding fee schedule" or the "SFS").

The health center implementing regulations provide broad parameters for designing the SFS, specifying that:

- Individuals and families who earn annual incomes greater than 100% and up to and including 200% of the Federal Poverty Guidelines (FPG) must be charged discounted rates based on a SFS.
- Individuals and families who earn annual incomes equal to or less than 100% of the FPG must be provided services at no charge; however, health centers are allowed to charge a nominal fee, so long as the nominal fee is consistent with the goals of Section 330 (i.e., creating greater access to and availability of care to underserved populations) and, thus, does not create a barrier to care.

Subject to these broad parameters, each health center has the flexibility to design its own discount schedule, so long as the center's governing Board of Directors approves and adopts whatever schedule is chosen.

Recently, it has come to NACHC's attention that many health centers nationwide have expanded their discount schedules to include patients whose annual incomes exceed the regulatory parameters described above. Although there may be tremendous need to support care to individuals above 200%, especially during these troubling economic times, it is important to remember that the purpose of the Section 330 funds is to support the costs of otherwise uncompensated care provided by health centers solely to uninsured and underinsured patients who qualify for either SFS or nominal payments (or for care at no charge). Section 330 does not authorize a health center to discount charges for services to patients who earn annual incomes over 200% of FPG and, as such, health centers are prohibited from using Section 330 funds and/or grant-related funds (such as program income) to support the costs of services provided to such individuals and families. Rather, health centers are required to charge and use best efforts to collect from such patients the full payment amounts in accordance with their fee schedules, without taking into account any discounts.

While the Section 330 grant and/or grant-related funds cannot be used to support discounts provided to patients who do not qualify for SFS or nominal payments (or for care provided at no charge), consistent with their missions, health centers may support the costs of care furnished to such patients under certain circumstances:

- First, if the health center collects less than full fees from patients whose annual incomes exceed 200% of FPG, Section 330 grant funds and related resources cannot be used to cover the shortfall. Thus, the center must have non-Section 330 financial resources (e.g., other federal funds [such as Ryan White funds]; state, local or private grant funds; private donations, etc.) that are dedicated to and/or earmarked for supporting the costs of care provided to health center patients, including those who would not otherwise qualify for discounts under Section 330, which will be used to make the center "whole" in accordance with its fee schedule. It is not necessary that

these funds be dedicated specifically or solely to individuals above 200% of FPG, ***so long as the funder / donor requires the funds to be expended to support care to certain individuals, some of whom may fall above the 330-related cap.***

- Second, the amount of non-Section 330 resources should be sufficient to support the shortfall between the payments received from patients and the health center's full charge (i.e., the total of the non-Section 330 resources plus the reduced patient payments should equal the amount of payment that the health center would expect to receive based on its fee schedule as established by its governing Board of Directors). While the full charges do not have to be paid directly by the patients themselves, the total payment per service should not deviate from the charge and discount schedules.
- Third, the health center should distinguish between the reduced payments received from patients whose annual incomes exceed 200% of FPG and the discounted fees received from patients who qualify for the health center's SFS. Reduced payments should not be addressed as part of the health center's SFS and discount policy; rather, they should be addressed in a separate policy applicable to individuals who do not qualify for SFS but who require financial assistance in meeting their full payment obligations.

Finally, it is important to remember that ***health centers are not authorized to, and in practice should not, discount their fee schedules for services provided to any patients whose incomes exceed 200%***, regardless of whether the center has non-Section 330 related resources to support care for such patients. As such, the reduced payments collected by health centers from such patients **are not** "discounts" – unlike discounted services provided pursuant to Section 330 rules, ultimately the health center should recoup full payment for services provided to all patients whose incomes exceed 200% of FPG through a combination of reduced patient payments and non-Section 330 resources. Absent non-Section 330 financial support, health centers must charge and attempt to collect from such patients the full fees for services rendered – without application of any discounts.

For further information regarding reduced fees for patients who do not qualify for discounted "SFS" payments, please contact Pamela Byrnes at 860-739-9224 or pbyrnes@nachc.com or Roger Schwartz at 202-296-0158 or rschwartz@nachc.com. For additional information on setting fee schedules in general, please be on the look out for an upcoming NACHC Issue Brief entitled "*Establishing and Collecting Fees for Health Center Services.*"

(1) Please note that the suggestions offered herein do not constitute legal advice nor do they bind the Health Resources and Service Administration (HRSA). While informally HRSA has indicated its approval of the types of arrangements described in this Alert, its position has yet to be formalized in written agency guidance. Thus, NACHC cannot state definitively that any specific arrangement that deviates from the regulatory guidelines will be approved.

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