

Is Your Governing Board HRSA-Compliant?

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AGENDA

- I. Section 330 Governance High Risks
- II. Other Governance Hot Topics
- III. Managing High Risks Through the Compliance Program



I. Section 330 Governance High Risks

#2: REQUIRED & ADDITIONAL SERVICES

Required and Additional Services: Health center provides all required primary, preventive, enabling health services and additional health services as appropriate and necessary, either directly or through established written arrangements and referrals. (Section 330(a) of the PHS Act)

Note: Health centers requesting funding to serve homeless individuals and their families must provide substance abuse services among their required services. (Section 330(h)(2) of the PHS Act)

REQUIRED & ADDITIONAL SERVICES: HIGH RISKS

- Ensure that the mix and level of services reflects the needs assessment / strategic plan
- Confirm that the board-approved budget supports the approved scope, locations, and schedule of services

#7: SLIDING FEE DISCOUNTS

Sliding Fee Discounts: Health center has a system in place to determine eligibility for patient discounts adjusted on the basis of the patient's ability to pay.

- This system must provide a full discount to individuals and families with annual incomes at or below 100% of the Federal poverty guidelines (only nominal fees may be charged) and for those with incomes between 100% and 200% of poverty, fees must be charged in accordance with a sliding discount policy based on family size and income.*
- No discounts may be provided to patients with incomes over 200 % of the Federal poverty guidelines.*
- No patient will be denied health care services due to an individual's inability to pay for such services by the health center, assuring that any fees or payments required by the center for such services will be reduced or waived.
(Section 330(k)(3)(G) of the PHS Act, 42 CFR Part 51c.303(f)), and 42 CFR Part 51c.303(u))

SLIDING FEE DISCOUNTS: HIGH RISKS

- Annual review of schedule of charges to ensure the charges cover the health center's reasonable costs of operation and are consistent with locally prevailing rates
- Approve and update policy regarding eligibility / income verification documentation balancing the need to ensure no barrier to care with requirements to offer discounts/nominal fee to patients with certain levels of annual income
- Evaluate annually whether discounts or “nominal” fee amount(s) create a barrier to care
- Approve and update policy regarding whether and in what circumstances a waiver or reduction of fees is authorized for individuals who cannot afford to pay
- Approve and update policy regarding partial payment schedules
- Approve and update billing and collection policies

#17: BOARD AUTHORITY

Board Authority: Health center governing board maintains appropriate authority to oversee the operations of the center, including:

- Holding monthly meetings;
- Approval of the health center grant application and budget;
- Selection/dismissal and performance evaluation of the health center CEO;
- Selection of services to be provided and the health center hours of operations;
- Measuring and evaluating the organization’s progress in meeting its annual and long-term programmatic and financial goals and developing plans for the long-range viability of the organization by engaging in strategic planning, ongoing review of the organization’s mission and bylaws, evaluating patient satisfaction, and monitoring organizational assets and performance;* and
- Establishment of general policies for the health center.

(Section 330(k)(3)(H) of the PHS Act and 42 CFR Part 51c.304)

Note: In the case of public centers (also referred to as public entities) with co-applicant governing boards, the public center is permitted to retain authority for establishing general policies (fiscal and personnel policies) for the health center. (Section 330(k)(3)(H) of the PHS Act and 42 CFR 51c.304(d)(iii) and (iv))

BOARD AUTHORITIES: HIGH RISKS

- Ensure the bylaws are up to date and include provisions required by the Site Visit Guide and new governance PIN; comply with the bylaws at all times!
- Determine which policies must be board-approved, determining method and frequency for review and update, and **document** approval
- Ensure meaningful participation in monthly meetings – set attendance expectations, send board packets in advance
- Provide board training on appropriate exercise of authorities (including not overstepping roles)
- Documentation is critical

#18: BOARD COMPOSITION

Board Composition: The health center governing board is composed of individuals, a majority of whom are being served by the center and, this majority as a group, represent the individuals being served by the center in terms of demographic factors such as race, ethnicity, and sex. Specifically:

- Governing board has at least 9 but no more than 25 members, as appropriate for the complexity of the organization.*
- The remaining non-consumer members of the board shall be representative of the community in which the center's service area is located and shall be selected for their expertise in community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within the community.*
- No more than one half (50%) of the non-consumer board members may derive more than 10% of their annual income from the health care industry.*
- **Note:** Upon a showing of good cause the Secretary may waive, for the length of the project period, the patient majority requirement in the case of a health center that receives a grant pursuant to subsection (g), (h), (i), or (p). (Section 330(k)(3)(H) of the PHS Act and 42 CFR Part 51c.304)

BOARD COMPOSITION: HIGH RISKS

- Recruitment and retention of board members
 - Vacancies, inadequate number of board members
- Determine who is a “patient” for consumer board member representation purposes, not meeting the 51% threshold
- Ensure “reasonable representation” from a demographics perspective
- Define “health care industry”
- Assess the need for various types of expertise
- Ensure compliance with affiliation policies and new governance PIN 2014-01

#19: CONFLICT OF INTEREST POLICY

Conflict of Interest Policy: Health center bylaws or written corporate board approved policy include provisions that prohibit conflict of interest by board members, employees, consultants, and those who furnish goods or services to the health center.

No board member shall be an employee of the health center or an immediate family member of an employee.

The Chief Executive Officer may serve as a non-voting ex-officio member of the board.

(45 CFR Part 74.42 and 42 CFR Part 51c.304(b))

CONFLICT OF INTEREST POLICY: HIGH RISKS

- Approve and annually update a comprehensive Conflict of Interest Policy (“Standards of Conduct”)
 - Adopt policies that define “conflict of interest” and establish other prohibitions regarding: gifts and gratuities, nepotism, and bribery
 - Establish procedures to disclose and manage potential or actual conflicts of interest for board members, employees, contractors and other agents of the health center
 - Specifically consider the following governance level risks:
 - Board members or immediate family members providing services to the health center
 - Board member expense reimbursement policies
 - Confidentiality
 - Address consequences for violating the policies

II. Other Governance Hot Topics

ADDITIONAL GOVERNANCE HIGH RISKS

- “Rogue” conduct:
 - Individually speaking for or acting in an official capacity on behalf of the health center without specific authorization
 - Publicly disagreeing with decisions made or actions taken by the full board and/or management
 - Communicating with health center staff directly (except in “special” circumstances, *e.g.*, staff assigned to support board committees)

ADDITIONAL GOVERNANCE HIGH RISKS

- Preferential treatment:
 - Scheduling patient appointments
 - Discounts, waivers of fees/collections
 - 340B
 - Contracting with health center to provide goods/services
- Crossing the line between (1) the Board's role in establishing priorities and key policies, with oversight and (2) implementation of priorities and policies by management team

ESTABLISHING REASONABLE COMPENSATION

- Must establish reasonable CEO compensation package & other wage and benefit scales:
 - Health centers may pay reasonable compensation
 - Comply with Internal Revenue Service requirements (to avoid “intermediate sanctions”) and the applicable Federal cost principles when establishing CEO compensation and, more generally, when approving salary and benefit scales for all other categories of personnel
 - Documentation of comparability
 - No conflicts of interest
 - Remember, ALL compensation must be considered, including: fringe benefits, insurance, car allowances, incentives, *etc.*

DISTINGUISHING LOBBYING AND POLITICAL ACTIVITY

- **Lobbying:** written or oral communication that is an attempt to influence (for or against) specific legislation, including referenda, initiatives, or similar ballot measures
 - Tax law: Health centers may lobby, within certain limits
 - Federal cost principles: federal grant funds may not be used to support the cost of lobbying activities
 - Education is not lobbying!
- **Political activity:** Health centers may not intervene in any election for public office or attempt to influence the outcome of any federal, state or local election
 - Board members may support or oppose candidates and engage in political process as individuals, **PROVIDED THAT** they do not act on behalf of the health center or use any health center resources

III. Managing High Risks Through the Compliance Program

MANDATORY COMPLIANCE PROGRAMS

- Caremark Decision:
 - Delaware Court held that a Board's failure to adopt a compliance program may constitute a breach of fiduciary duties
- Section 330 implementing regulations require a health center's Board of Directors to ensure that the health center is operated in compliance with applicable Federal, State and local laws and regulations (42 C.F.R. § 51c.304(d)(3)(v))
- New York State requires that every health center (and other providers) has a compliance program

7 ELEMENTS OF EFFECTIVE COMPLIANCE PROGRAMS (PER FEDERAL GUIDELINES)

1. Designate a compliance officer/contact
2. Conduct internal monitoring and audits
3. Develop written standards and policies to implement the Compliance Program and govern health center operations
4. Conduct culturally and linguistically competent training and education programs
5. Develop effective, clear, open lines of communication between compliance and health center personnel - open door policy and policy prohibiting retaliation
6. Investigate detected problems and develop corrective action
7. Publicize and enforce disciplinary standards

NEW YORK STATE'S EIGHT ELEMENTS OF EFFECTIVE COMPLIANCE PLANS

1. Written policies and procedures that describe compliance expectations
2. A designated compliance officer and compliance committee
3. Education and training of all affected employees and persons associated with the provider
4. Communication lines and processes for the reporting of compliance concerns
5. A system for responding to, investigating, correcting and reporting compliance issues as they are raised
6. Enforcement and disciplinary policies and procedures to encourage good faith participation in the compliance plan
7. Monitoring and auditing systems to aid in the routine identification of compliance risk areas
8. A policy of non-intimidation and non-retaliation against any person for good faith participation in the compliance plan

BOARD'S ROLE IN ENSURING COMPLIANCE

- Review and update compliance program policies
- Review the annual compliance program work plan and, during the year, monitor progress toward its implementation
- Receive regular reports from the compliance officer about Compliance Program activities; consult with management about investigations of significant compliance concerns (as appropriate)
- Periodically evaluate the effectiveness of the Compliance Program

COMPLIANCE COMMITTEE'S ROLE

- Compliance Committee of the Board
If the Board decides to delegate some of the oversight activities, then it may establish a Compliance Committee to:
 - Review draft policies and make recommendations to the Board
 - Receive regular reports from the Compliance Officer
 - Evaluate the Compliance Program, making recommendations to the full Board

GENERAL COMPLIANCE ADVICE FOR THE BOARD

- **Do:**
 - Participate in training and education regarding compliance program and high risks
 - Be prepared to be consulted and act aggressively if material compliance issues are identified
 - NOTE: Review compliance issues in Executive Session
 - Request periodic independent audits of the compliance program
- **Do not:**
 - Succumb to the temptation to be an outlet for employees who want to “end run” the established compliance process
 - Expect management to report all unsubstantiated allegations (as opposed to substantiated and significant compliance concerns)
 - Pay lip service to compliance without a true commitment, including a commitment with words, actions, and financial support

QUESTIONS?

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