



## **ALERT: HRSA Issues Guidance on Contracting between Health Centers and Rural Health Providers**

The Affordable Care Act (ACA) amended Section 330 to encourage collaboration between health centers and various types of rural providers. Section 330(r)(4), as amended, explicitly states that “[No]thing in [Section 330] shall be construed to prevent a community health center from contracting with ...” and providing payment to rural providers (including, but not limited to, rural health clinics, low-volume hospitals, critical access hospitals, sole community hospitals and Medicare-dependent share hospitals) for the provision of primary health care services to patients who would otherwise qualify for no-cost or low-cost care if served at the health center provided that such other provider:

- Does not discriminate based on ability to pay; and
- Establishes a sliding fee scale for low-income patients.

In light of this provision in the ACA, HRSA reaffirmed its commitment to support and encourage collaborative arrangements between health centers and their community-based partners by issuing [Program Assistance Letter #2011-02: Health Center Collaboration](#) (November 23, 2010). PAL #2011-02 articulates HRSA’s belief that “[C]ollaboration among safety net providers is critical to maximizing resources and efficiencies in the health care system in underserved areas.” The PAL further points out that these collaborative efforts will become even more important as health centers move forward in responding to new opportunities to develop models of coordinated care – a key element of Health Reform that will impact all health centers nationwide (not just those located in rural areas).

HRSA recognizes that “collaboration and coordination can be especially critical in rural areas that face unique challenges in providing an integrated system of care ....,” encouraging health centers that are developing expansion plans to:

- Identify the location of other safety net providers located in the community, as well as the services they furnish; and

- Include in the proposed expansion plans how the health center will collaborate with these other providers in furnishing coordinated care to the underserved population in the service area.

**Despite HRSA's strong support for collaboration, we believe this PAL should not be construed as requiring health centers to collaborate.** Rather, health centers should evaluate their options and opportunities and proceed after careful consideration of various factors, including: (1) the circumstances in their individual communities; (2) whether the proposed collaboration is appropriate for and meets the needs of the health center's patients; and (3) the terms and conditions of the proposed arrangement. To that end, PAL #2011-02 explicitly states that, when contracting with other providers, health centers should remember that they must:

- Maintain oversight over all sites and services included in their federally-approved scope of project, including ensuring that all patients have access to the health center's full range of services.
- Assure that all services included in their federally-approved scopes of project (whether provided directly or by contract) are available to all health center patients regardless of their ability to pay.
- For grantees, comply with Section 330, the health center implementing regulations and the DHHS administrative regulations, including requirements regarding the provision of and payment for services provided by contract and the procurement of goods and services.

Further, whether FQHC-related benefits (other than grant funds awarded under Section 330) apply to specific contractual arrangements will be determined by the requirements of each respective program; thus, health centers and their partners should not assume that FQHC benefits (*e.g.*, Federal Tort Claims Act coverage, 340B Discount Drug pricing, and favorable payment under Medicaid and Medicare) will apply to any particular arrangement unless the arrangement itself is structured in a manner that complies with applicable requirements.

In reviewing this new PAL and its impact on your own operations, each health center should keep in mind the following:

- **As already noted, neither the statutory amendment nor the new PAL requires health centers to contract with rural providers in their communities.** The Section 330 amendment is not a mandate; rather, it merely states that health centers are not prohibited from entering into service contracts with community partners, provided that certain Section 330-related requirements regarding non-discrimination and provision of services regardless of ability to pay are met.

- **Similarly, the new PAL does not reflect a shift in existing HRSA affiliation policy, which encourages but does not require collaborative activities.** Rather, it reiterates HRSA's long-standing support of health center collaborations with other community-based providers. In establishing such arrangements, however, health centers must continue to maintain compliance with all Section 330-related requirements, including autonomous and independent board and management decision-making and operation, as well as the overall integrity of the health center program.
  
- **Although the statutory language indicates that payment will be made by the health center to the rural health provider "under this section through a contract," it does not indicate how such payments should be calculated or that any specific payment amount should reflect the payment received by the health center from third party payors (including Medicaid/Medicare).** Keeping in mind that the PAL explicitly requires health centers to comply with: (1) regulatory requirements regarding payment for services provided by contract (including, presumably, federal cost principles requiring reasonable payment); and (2) the procurement of goods and services (which require, among other things, use of a competitive bid process), health centers should treat these agreements as they would other contracts – conduct a careful review of the appropriateness of the arrangement and of all terms and conditions, and ensure that the contractual arrangements:
  - Are procured through competitive processes (to the extent possible), and avoid terms requiring exclusivity;
  - Are negotiated at arm's-length;
  - Comply with all Section 330-related requirements, including patient access and payment requirements, as well as those related to payments to providers for services rendered;
  - Include payment that is reasonable and reflects no more than fair market value for the services provided; and
  - Include standard contractual terms and conditions reflecting sound business judgment overall.

PAL #2011-02 is available on-line at [www.bphc.hrsa.gov/policy/pal1102](http://www.bphc.hrsa.gov/policy/pal1102).

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