

TO: Health Centers

FROM: Colleen Meiman
Director of Regulatory Affairs
National Association of Community Health Centers

DATE: July 2017

RE: **Sample Policy and Procedure on Assisted Suicide Activities**

NACHC is pleased to provide the attached sample Policy and Procedure (P&P) regarding assisted suicide activities.

The Assisted Suicide Funding Restriction Act of 1997 prohibits health centers from using federal funds, including Section 330 grant funds and related program income, to either directly or indirectly provide or pay for any health care item or service furnished for the purpose of causing, or assisting in causing, “the death of any individual, such as by assisted suicide, euthanasia, or mercy killing”. This prohibition extends to facilities in which the Federal government holds and interest, and providers employed by the Federal government.

The sample P&P is designed to help health centers assure that they are in compliance with the Assisted Suicide Funding Restriction Act. It must be tailored to reflect your health centers’ policy and procedures, starting with whether your health center:

- has no involvement in Assisted Suicide activities under any circumstances, or
- is involved in these activities completely outside of your 330 project and consistent with Federal law.

Please note the following important points:

- **Legal Notices:** When adapting this sample P&P for your health center, please note:
 - 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.
 - This sample P&P was drafted to conform with relevant 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 state level.

- **Which health centers should adopt a P&P on Assisted Suicide?** Even if your health center does not furnish services for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing, we nonetheless recommend that you consider adopting a P&P on Assisted Suicide Activities, *particularly if assisted suicide / aid-in-dying activities are legal in your state*. We also recommend that applicable staff receive training regarding the prohibition on participating in such activities within the Section 330-supported health center program and limitations on participating in such activities outside of the Section 330-supported health center project, as set forth section entitled “Restrictions on Facilities and Staff” in the draft P&P.
- **Special notes for health centers in states with aid-in-dying legislation:**
 - State requirements: In some states that have enacted aid-in-dying legislation, the legislation presumes that providers will participate in aid-in-dying activities unless the provider opts out pursuant to prescribed methods for opting out under the legislation. Accordingly, it is recommended that health centers become familiar with the requirements applicable in their particular state and take appropriate action to ensure compliance with federal law.
 - Referrals: As discussed in Footnote 3, it is unclear whether the statute prohibits providers from furnishing a patient with a referral to another medical facility or provider for the purpose of causing or for the purpose of assisting in causing the death of any individual. Prior to implementing any referral arrangement(s) with other organizations or providers that may be legally interpreted as being for the purpose of “causing or assisting in causing” the death of an individual, *we strongly advise consulting qualified legal counsel* to ensure compliance with applicable federal, state, and local laws and regulations.

When preparing your Health Center’s P&P: Using the following sample as a guide, health centers should tailor the procedures to reflect their own structure and operations, as well as any relevant requirements in their state. When revising the sample, please pay particular attention to those footnotes that begin with “Authors’ note”, as they contain information that is important for tailoring this P&P. In particular:

- **Choose the appropriate policy statement for Section III.A:** This section contains two sample policy statements, both of which are labelled “A”: one for a health center that has no involvement in Assisted Suicide activities under any circumstances, and a second for a health center that is involved in these activities completely outside of its 330 project and consistent with Federal law. It is important to choose only one of these two statements (to reflect your health center’s policy) and delete the other.
- **Determine which staff this P&P should apply to:** This sample P&P, as drafted, may not be applicable to all health center staff and volunteers. Accordingly, a health center may wish to modify the description of who must comply with the P&P, and sign the

certification set forth in Exhibit A. For example, a health center may wish to modify the phrase “All Health Center employees, contractors, and volunteers” to state “All Health Center employees, contractors, and volunteers who provide clinical services and non-clinical support services ...”

- **Decide whether to require the Certification in Exhibit A:** Requiring staff to sign the certification set forth in Exhibit A is not mandatory, but such certifications would serve as useful documentation of the health center’s efforts to comply. A health center that opts to require its staff to sign this certification should also extend that requirement to its volunteers.
- **Delete the “Authors’ Notes” in footnotes:** As the footnotes that start with “Authors’ note” contain information to assist in tailoring this sample to your health center’s unique structure and operations, they should be deleted before the P&P is finalized. All other footnotes should remain in the final P&P.

If you have additional questions about this P&P, please contact Colleen Meiman at cmeiman@nachc.org or 202-296-0158.

Sample Policy and Procedure: Assisted Suicide Activities

I. Purpose of Policy and Procedure

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

The purpose of the Assisted Suicide Activities Policy and Procedure is to provide safeguards to ensure Health Center’s compliance with laws and regulations that prohibit the use of federal grant funds (and related funding) to support the costs of assisted suicide, euthanasia, and/or mercy killing.

II. Background: Compliance with the Assisted Suicide Funding Restriction Act of 1997

Health Center will assure compliance with the Assisted Suicide Funding Restriction Act of 1997.

A. General Restrictions

Under the Assisted Suicide Funding Restriction Act of 1997,¹ Health Center is prohibited from using federal funds, including Section 330 of the Public Health Service Act (“Section 330”) grant funds and program income related to their Section 330 project,² either directly or indirectly,³ to:

1. provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing (hereinafter, collectively “Assisted Suicide Activities”);⁴

¹ 42 U.S.C. § 14401 *et seq.*

² Authors’ note: Section 330 grantees must use program income in accordance with Section 330(e)(5)(D) (42 U.S.C. § 254b(e)(5)(D)) which provides that program income “shall be used as permitted under [Section 330], and may be used for such other purposes as are not specifically prohibited under [Section 330] if such use furthers the objectives of the project.” HHS will likely interpret expenditures that are for the purpose of causing or for the purpose of assisting in causing the death of any individual, such as by assisted suicide, euthanasia, or mercy killing as being “specifically prohibited” under Section 330 and thus an impermissible use of Section 330 grant-related program income.

³ Authors’ note: It is unclear whether the term “indirectly” reaches a provider’s act of furnishing a patient with a referral to another medical facility or provider for the purpose of causing or for the purpose of assisting in causing the death of any individual. Health centers that seek to engage in activities that may be legally interpreted as “assisting in causing” the death of an individual should obtain legal advice from qualified legal counsel before proceeding.

⁴ According to the House Report (H.R. No. 105-46) accompanying the 1997 statute, Congress used the definition in *Webster’s Third New International Dictionary Unabridged* (Merriam-Webster, 1986) of “suicide” as “the act of an instance of taking one’s own life voluntarily and intentionally; self-destruction” and of “euthanasia” as “the act or practice of painlessly putting to death persons suffering

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2. pay for such an item or service, including payment of expenses relating to such an item or service; or
3. pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service or of any expenses relating to such an item or services.⁵

B. Additional Restrictions on Facilities and Staff Restrictions

The Assisted Suicide Funding Restriction Act of 1997 further specifies that no health care items or services may be furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by Assisted Suicide Activities:

1. by or in a health care facility owned or operated by the Federal government; or
2. by any physician or other individual employed by the Federal government to provide health care services within the scope of the physician's or individual's employment.

Accordingly, if Health Center operates a facility in which there is a federal interest,⁶ then Health Center is prohibited from engaging in any Assisted Suicide Activities at such facility, regardless of whether such activities are outside of the health center's Section 330-supported program (or outside of its "scope of project").

C. Carved Out Activities

The Assisted Suicide Funding Act of 1997 restriction does not apply to the following "Carved Out Activities":

1. the withholding or withdrawing of medical treatment or medical care;
2. the withholding or withdrawing of nutrition or hydration;

from incurable conditions or diseases." The legislative history defined "assisted suicide" as "the provision of any means (including, but not limited to, a lethal drug overdose) to another person with the intent of enabling or assisting that person to kill himself or herself." Medicare regulations define assisted suicide as "[a]ny health care service used for the purpose of causing, or assisting to cause, the death of any individual." 42 C.F.R. § 411.15(q).

⁵ Authors' note: Under the vast majority of instances, this requirement #3 would be inapplicable to health centers given that health centers are not "payors," even if the health center subsidizes care provided under a health plan.

⁶ Authors' note: Federal rules specify that the Federal government enjoys a reversionary interest in property, where the cost of acquisition or improvements was borne, in whole or in part, with Federal grant funds. See 45 C.F.R §§75.2 and 75.343. There would be a federal interest in a facility if, for example, the construction or improvement of the site was paid for in part, in whole or in part, with a HRSA capital grant. Furthermore, given the total budget concept, unless a health center can demonstrate that no federal grant funds were used, many health centers will err to the side of caution and consider facilities paid for or improved within the "total budget" to have a federal interest attached.

3. abortion;⁷ or
4. the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

D. Participating in Assisted Suicide Activities Outside of the Section 330-Supported Program⁸

If Health Center chooses to participate in Assisted Suicide Activities outside of its Section 330-supported program (or outside of its “scope of project”), such activities shall only be implemented in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997, as well as applicable state and local laws, regulations, and guidance. Specifically:

1. Prior to furnishing any out-of-scope Assisted Suicide Activities, Health Center will confirm that:
 - there is no federal interest in the facility in which it intends to conduct such activities, and
 - the provider is not a physician or other individual employed by the Federal government to provide health care services within the scope of the physician’s or individual’s employment.
2. Health Center will not use Section 330 grant funds or program income related to the Section 330 project to pay for such out-of-scope Assisted Suicide Activities or associated overhead costs.
3. Health Center will ensure that the revenue from such out-of-scope activities is 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.
4. Health Center will ensure that it maintains documentation in its accounting records and systems of such segregation practices and relevant allocations.

⁷ Authors’ note: Health centers are required to comply with the Hyde Amendment with respect to the provision of abortions. For a discussion regarding the application of and compliance with the Hyde Amendment, please see the Women’s Reproductive Health Services Policy and Procedure.

⁸ Authors’ note: As discussed below, a health center that adopts a policy whereby participation in Assisted Suicide Activities is strictly prohibited under any circumstances may choose to delete this Subsection.

III. Policy

Note: Health centers must choose only one of the following two policy statements “A”, and delete the other.

- A. Participation in any Assisted Suicide Activities is strictly prohibited at Health Center. This prohibition applies to all Health Center employees, contractors, and volunteers, and to all Health Center Name facilities and equipment.⁹

OR

- A. Health Center chooses to participate in Assisted Suicide Activities outside the scope of its Section 330-supported project. Such activities shall only be implemented in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997, as well as applicable state and local laws, regulations, and guidance. Specifically:
1. Prior to furnishing any out-of-scope Assisted Suicide Activities, *Health Center* will confirm that there is no federal interest in the facility in which it intends to conduct such activities and that the provider is not a physician or other individual employed by the Federal government to provide health care services within the scope of the physician’s or individual’s employment.
 2. Health Center will not use Section 330 grant funds or program income related to the Section 330 project to pay for such out-of-scope Assisted Suicide Activities or associated overhead costs. *Health Center*
 3. Health Center will ensure that the revenue from such out-of-scope activities is segregated from the Section 330-supported project 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.
 4. Health Center will maintain documentation in its accounting records and systems of such segregation practices and relevant allocations.

⁹ Authors’ note: Health centers who adopt this policy may choose to delete Section II.D of this draft P&P, which addresses “Participating in Assisted Suicide Activities Outside of the Section 330-Supported Program.”

IV. Procedures¹⁰

A. Training regarding the Prohibition on Assisted Suicide Activities¹¹

All Health Center employees, contractors, and volunteers who furnish clinical services¹² will be trained on the requirements relevant to Assisted Suicide Activities, including the prohibition on participating in Assisted Suicide Activities within the Section 330-supported health center program and limitations on participating in such activities outside of the Section 330-supported health center project. Health Center shall maintain records indicating the completion of such training in each applicable employee's and contractor's personnel file.

B. Certification of Commitment to Comply with Assisted Suicide Activities Policy and Procedure

All Health Center employees, contractors, and volunteers who furnish clinical services are required to certify their commitment to comply with this Assisted Suicide Activities Policy and Procedure by signing and returning the certification to this document as Exhibit A.

C. Review and Updates of this Policy and Procedure

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

¹⁰ Authors' note: Health centers may wish to include additional procedural steps specific to engaging in aid-in-dying activities that do not fall within the definition of Assisted Suicide Activities, if permitted under applicable state law. In addition, health centers may expand upon the procedure to clarify whether health center providers may refer patients to other organizations that participate in Assisted Suicide Activities. Prior to implementing any referral arrangement(s) with other organizations or providers that may be legally interpreted as being for the purpose of "causing or assisting in causing" the death of an individual, we strongly advise consulting qualified legal counsel to ensure compliance with applicable federal, state, and local laws and regulations.

¹¹ Authors' note: While not required, we generally recommend incorporating the requirements applicable to Assisted Suicide Activities into staff training. Health centers are advised to modify this sample text as appropriate to specify which staff must receive the training.

¹² Authors' note: A health center may wish to modify the description of the staff members who must comply with this P&P and sign the certification set forth in Exhibit A. Note that requiring applicable staff to sign the certification set forth in Exhibit A is not mandatory, but such certifications would serve as useful documentation of the health center's efforts to comply.

Responsible Parties:

Signature _____ Date _____
CEO

Signature _____ Date _____
Board Chairperson

EXHIBIT A

**CERTIFICATION OF COMMITMENT TO COMPLY WITH
ASSISTED SUICIDE ACTIVITIES POLICY AND PROCEDURE¹³**

I hereby acknowledge and certify that I have received and reviewed a copy of the Health Center Assisted Suicide Activities 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 Assisted Suicide Activities Policy and Procedure during the term of my employment, contract, volunteer commitment, 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 Assisted Suicide Activities 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

¹³ Authors’ note: Requiring applicable staff to sign this certification is not mandatory, but such certifications would serve as useful documentation of the health center’s efforts to comply.