

TO: Health Centers

FROM:

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RE: **UPDATE - Sample Policy and Procedure on Legislative Mandates Restricting the Uses of Federal Grant Funds**

NACHC is pleased to provide this revision to the June 18, 2019 memo, which includes a sample Policy and Procedure (P&P) that addresses some of the federal grant restrictions set forth in the annual Department of Health and Human Services (“HHS”) Appropriations Act, commonly referred to as the “Legislative Mandates.” The information contained within was developed in consultation with Feldesman Tucker Leifer Fidell LLC.

The Legislative Mandates specify that federal grant funds, including grants received from the Health Resources and Services Administration (“HRSA”), cannot be used to support certain specific activities.¹ The Legislative Mandates generally recur on a continuing annual basis with the passage of a new Appropriations Act, and are restated in guidance issued by the Office of Federal Assistance Management (“OFAM”) within HRSA. A copy of the HRSA guidance is available on the “Manage Your Grant” page of HRSA’s website.

While the enclosed P&P can serve as a template, note that it must be modified and expanded upon to reflect your health center’s operations.

Limitations of the Attached P&P: Federal law mandates that health centers have written policies and procedures to ensure the appropriate use of Federal funds in compliance with applicable Federal laws, regulations, and the terms and conditions of the Federal award. While the attached P&P lists all the Legislative Mandates enumerated in HRSA Bulletin 2020-04E, HRSA has indicated that the P&P will be deemed inadequate if the health center fails to include procedures to achieve and maintain compliance for each Legislative Mandate. Such procedures may be incorporated within this P&P or set forth in one or more separately adopted P&Ps. While there are no formal criteria to document procedures, it is generally necessary that procedures address (1) the adopted process to ensure compliance, and (2) which staff will be charged with oversight authority. This P&P includes sample procedures that should be modified to align with your particular health center’s practice.

¹ Many of the Legislative Mandates are applicable to federal grants issued by the Departments of Labor, Health and Human Services, and Education, and related agencies.

Additional NACHC Resources: For additional support, NACHC has published sample P&Ps addressing specific Legislative Mandates, including the below:

- (a) a Syringe Services Program P&P that addresses the prohibition of using federal grant funds to purchase sterile needles or syringes for the purpose of hypodermic injection of any illegal drug; and
- (b) a Women’s Reproductive Health Services P&P that addresses the Hyde Amendment² and its exceptions.

The Syringe Services Program P&P and Women’s Reproductive Health Services P&P are available on the NACHC website.³ Health centers may find it helpful to include cross references to these P&Ps within the body of their Legislative Mandates P&P; see below for suggested locations to incorporate such cross-references.

Other Grant Restrictions: This P&P and those described above under “Additional NACHC Resources” do not address all restrictions on the use of federal grant funds; they only address the Legislative Mandates that were explicitly included in the Appropriations Act. For example, this P&P does not address restrictions around the use of federal grant funds for activities associated with aid-in-dying and medical marijuana. Sample P&Ps addressing these activities are available on the NACHC website.

Legal Notice: 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 circumstances. These materials are not legal advice and are not a substitute for legal advice from an attorney familiar with the specific circumstances, goals, and concerns of your individual health center.

When Preparing your Health Center’s P&P: Using the following sample as a guide, health centers should tailor the P&P to reflect their health center’s particular 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 addition, be sure to delete any footnotes that start with “Authors’ Note”; all other footnotes should remain in the final P&P.

If you have additional questions about this P&P, please contact NACHC’s Public Policy and Research Department at 703-739-7307.

² The Hyde Amendment is a statutory provision included as part of the annual Appropriations Act 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).

³ The sample P&Ps are available on the NACHC website at <http://www.nachc.org/health-center-issues/emerging-issues-resources/>.

Legislative Mandates Restricting the Uses of Federal Grant Funds: Sample Policy and Procedure

I. Background: Compliance with Appropriations Act

The Consolidated Appropriations Act includes provisions that restrict grantees from using their federal grant funds to support certain defined activities. These limitations are commonly referred to as the “Legislative Mandates.”

II. Statement of Purpose and Policy

[Health Center] is committed to compliance with all applicable laws and regulations. The purpose of this policy and the associated procedures is to provide safeguards to ensure [Health Center’s] compliance with the Legislative Mandates.

The current Legislative Mandates, which remain in effect until a new Appropriations Act is passed, include the following:

- (1) Salary Limitation
- (2) Gun Control
- (3) Anti-Lobbying
- (4) Acknowledgment of Federal Funding
- (5) Restriction on Abortions
- (6) Exceptions to Restriction on Abortions
- (7) Ban on Funding Human Embryo Research
- (8) Limitation on Use of Funds for Promotion of Legalization of Controlled Substances
- (9) Restriction of Pornography on Computer Networks
- (10) Restriction on Funding ACORN
- (11) Restriction on Distribution of Sterile Needles⁴
- (12) Confidentiality Agreements

III. Policy

- (1) Salary Limitation

⁴ Authors’ note: HRSA Bulletin 2020-04E2 uses the word “distribution” in the heading for the sterile needles restriction. The language of the Appropriations Act does not refer specifically to “distribution,” but rather to “purchase” and to “programs.” Please note that there is more robust Department of Health and Human Services (“HHS”) policy guidance specific to the sterile needle and syringe restriction which should be reviewed in consideration of any sterile needle or syringe exchange program. NACHC has provided guidance and a sample policy, which is available on the NACHC website.

[Health Center] shall not use federal grant funds to pay the salary of an individual at a rate in excess of Executive Level II.

(2) Gun Control

[Health Center] shall not use federal grant funds to advocate or promote gun control.

(3) Anti-Lobbying

A. [Health Center] shall not use federal grant funds, other than for normal and recognized executive legislative relationships, for the following:

- i. For publicity or propaganda purposes; or
- ii. For the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

B. [Health Center] shall not use federal grant funds to pay the salary or expenses of any employee or agent of [Health Center] for activities designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

C. The prohibitions in subsections A and B include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

(4) Acknowledgment of Federal Funding

When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, [Health Center] shall clearly state:

- A. the percentage of the total costs of the program or project which will be financed with Federal money;
- B. the dollar amount of Federal funds for the project or program; and

- C. the percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

(5) and (6) Restrictions on Abortions, and Exceptions to these Restrictions

[Health Center] shall not use federal grant funds for any abortion or for health benefits coverage that includes coverage of abortion. These restrictions shall not apply to abortions (or health benefits coverage of abortions) that fall within the Hyde Amendment exceptions.^{5 6}

(7) Ban on Funding of Human Embryo Research

[Health Center] shall not use federal grant funds for (i) the creation of human embryos for research purposes; or (ii) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(8) Limitations on Use of Grant Funds for Promotion of Legalization of Controlled Substances

[Health Center] shall not use federal grant funds to promote the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act.⁷

(9) Restriction of Pornography on Computer Networks⁸

[Health Center] shall not use federal grant funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

⁵ The Hyde Amendment exceptions include (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case 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.

⁶ **Authors' note:** Health centers may choose to reference their P&P on Women's Reproductive Health Services. If inserting such a reference, we recommend language such as, "[Health center] also maintains a [insert name] policy relevant to this restriction." A sample P&P is available on the NACHC website at <http://www.nachc.org/health-center-issues/emerging-issues-resources/>.

⁷ **Authors' note:** The Legislative Mandates provide a potential exception when "there is significant medical evidence of a therapeutic advantage to the use of [the] drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage." We recommend health centers consult with their legal counsel prior to using this potential exception. Additionally, there is a caveat in the Legislative Mandate permitting "normal and recognized executive-congressional communications."

⁸ **Authors' note:** Health centers should consider the Legislative Mandate requiring that federally funded computer networks block pornography in light of their accounting treatment for information technology expenses. It may be impractical to remove such expenses from indirect cost pools charged in part to federal sources, whereas ensuring the blocking of pornography on computer networks may be reasonably inexpensive. Health centers are encouraged to consult their information technology staff or contractors in making such decisions.

(10) Restriction on Funding ACORN

[Health Center] shall not provide any federal grant funds to the Association of Community Organizations for Reform Now (“ACORN”), or any of its affiliates, subsidiaries, allied organizations, or successors.

(11) Restriction on Distribution of Sterile Needles

[Health Center] shall not use federal grant funds to purchase sterile needles or syringes for the hypodermic injection of any illegal drug. Such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant State or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the State or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with State and local law.

(12) Confidentiality Agreements

[Health Center] shall not require its employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

IV. Procedure⁹

1. Review and Updates of this Policy and Procedure (P&P)

The [insert executive staff title]¹⁰ shall review this P&P upon the passage of a new HHS Appropriations Act or issuance of HRSA guidance regarding the Legislative Mandates, and shall ensure this P&P is updated as necessary. As Appropriations Acts are generally enacted annually, this P&P will generally require annual review. Any modifications to this P&P will require review and approval by [Health Center’s] Board of Directors.

2. Legislative Mandates Training

The [insert executive staff title] shall ensure that the [appropriate personnel]¹¹ receive training regarding the Legislative Mandates and the procedures set forth in this P&P.

⁹ **Authors’ note:** Using the following sample as a guide, health centers should tailor the procedure to reflect their own structure and operations.

¹⁰ **Authors’ note:** We recommend that this individual be the Chief Executive Officer or Chief Financial Officer, although there is no specific legal requirement with respect to this aspect of the sample policy.

¹¹ **Authors’ note:** Health centers should modify this text to define “appropriate personnel” (e.g., key management team and finance department staff) in a manner suitable to their size and operations. Requiring appropriate personnel to obtain training regarding the Legislative Mandates is not mandatory, but is nonetheless recommended.

3. Compliance Program

This Legislative Mandates P&P will be incorporated into [Health Center's] Compliance Program.

4. Financial Management

The Chief Financial Officer (“CFO”) shall ensure that [Health Center's] financial management systems and procedures are structured to ensure that no federal grant funds are used for purposes that are impermissible under this P&P. As necessary, the CFO may establish cost centers/accounts for the accumulation and segregation of such costs. The CFO may use any practical means to do so, consistent with [Health Center's] financial management policies (including by establishing appropriate cost centers and associated accounts to accumulate and segregate the following costs where necessary). Through this process, [Health Center] will adhere to the Legislative Mandates restrictions on use of federal funds for:¹²

- i. “Lobbying” or other “advocacy” activities that may meet the definitions of the applicable Legislative Mandate sections (as well as 45 C.F.R. § 75.450) (including certain advocacy relating to gun control, legalization of controlled substances, consumer products, and other advocacy);
- ii. Payment of a salary (or associated fringe benefits) at a rate in excess of the Executive Level II pay scale;
- iii. Abortions or health benefits coverage that includes coverage of abortion (this restriction shall not apply to abortions (or health benefits coverage of abortions) that fall within the Hyde Amendment exceptions);
- iv. Activities related to distribution of sterile needles for hypodermic injection of any illegal drug;
- v. Human embryo research; and
- vi. Business transactions with (including the funding of) the Association of Community Organizations for Reform Now (“ACORN”).

Acknowledgment of Federal Funding

All statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, will be reviewed and approved by the [Health Center's] [insert position]. The [insert position] shall ensure that such written material include the following:

¹² Authors' note: It is likely that the health center simply does not engage in many of the activities listed in this section 4. Accordingly, the health center may specify in the P&P that it does not, as a matter of policy, engage in certain activities listed this section, or may prefer to simply incorporate the procedure proposed under section 4 with the understanding that, to the extent such costs are not incurred at all, they simply will not exist for later accumulation in “unallowable” cost centers/accounts within the health center’s financial management systems.

“This [publication/procurement] is issued in furtherance of [Health Center’s] federally funded health center project. This year, the [Health Center’s] health center project received \$ [insert] of federal assistance, which is estimated as constituting [insert] percent of project costs. Of total project costs for this year, [Health Center] estimates [insert] percent will be financed with nongovernmental sources.”

5. Restriction of Pornography on Computer Networks

[Health Center’s] computer network¹³ is and shall remain configured to block the viewing, downloading, and exchange of pornography. The CEO, in collaboration with the [information technology support staff], shall ensure appropriate information technology assets and support are made available to ensure continued compliance.

6. Confidentiality Agreements

[Health Center’s] [insert position] shall review any and all confidentiality agreements entered into between [Health Center] and its employees and/or contractors and, prior to execution, shall confirm that such agreements do not prohibit or otherwise restrict the employee/contractor from lawfully reporting waste, fraud, or abuse to (i) federal law enforcement or other federal investigative personnel, or (ii) other representatives of federal departments and agencies.

Signature _____ Date _____
[Name/Title]

¹³ Authors’ note: You may wish to expand upon the description of the computer network software that is installed to block the viewing, downloading, and exchange of pornography.