

**TO:** Health Centers

**FROM:** Vacheria Keys, Director of Regulatory Affairs

**DATE:** April 2022

**RE:** Sample Policy and Procedure on Prohibition on Distributing Medical Marijuana

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NACHC is pleased to provide the attached sample Policy and Procedure (P&P) regarding the federal prohibition on distributing medical marijuana.

The federal Controlled Substances Act prohibits the possession, manufacturing, and distribution of marijuana, a Schedule I drug, even for medical purposes. As federal Section 330 grantees or look-alikes, health centers are bound by such prohibitions, regardless of whether the possession, manufacturing, and/or distribution of marijuana are permitted under state law. Accordingly, health centers shall not distribute, or aid and abet the distribution of, medical marijuana to patients, through prescription or otherwise.

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 April 2022. Health centers that seek to adapt and adopt this sample P&P to align with the health center's particular operations are advised to seek legal advice from qualified legal counsel to ensure that the P&P reflects current requirements, both from a federal and state level.

**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 to your health center'. In particular:

- **Referrals to other providers for purposes of obtaining medical marijuana:** It is an unsettled legal issue as to whether a provider's act of furnishing a patient with a referral to another medical facility or provider for the purpose of obtaining medical marijuana would be considered by federal enforcement officials or federal courts to be an activity that "aids and abets" the distribution of medical marijuana. *Health centers that seek to engage in activities that may be legally interpreted as "aiding and abetting" the distribution of medical marijuana should obtain legal advice from qualified legal counsel before proceeding.*
- **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:** It is not mandatory to require applicable staff and volunteers to sign the certification in Exhibit A; however, it is encouraged, as 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.

Please contact [Regulatoryaffairs@nachc.org](mailto:Regulatoryaffairs@nachc.org) if you have any questions.



## Sample Policy and Procedure:

### Prohibition on Distributing Medical Marijuana<sup>1</sup>

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#### I. Purpose of Policy and Procedure

[Health Center Name] ("Health Center") is committed to high standards and compliance with all applicable federal, state, and local laws and regulations.<sup>2</sup>

The purpose of the Policy and Procedure prohibiting the distribution of medical marijuana is to provide safeguards to ensure Health Center's compliance with laws and regulations relating to medical marijuana that apply to health centers that receive federal grant funds or look-alike designations under Section 330 of the Public Health Service Act ("Section 330") through the U.S. Department of Health and Human Services ("HHS").<sup>3</sup>

#### II. Compliance with the Federal Controlled Substances Act

Health Center will assure compliance with the federal Controlled Substances Act. The federal Controlled Substances Act prohibits the possession, manufacturing, and distribution of marijuana, a Schedule I drug, even for medical purposes. As a federal grantee, Health Center is bound by such prohibitions, regardless of whether the possession, manufacturing, and/or distribution of marijuana are permitted under state law. Accordingly, Health Center shall not distribute, or aid and abet the distribution of, medical marijuana to patients, through prescription or otherwise.

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<sup>1</sup> Authors' note: The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidel 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.

<sup>2</sup> Authors' note: This sample Policy and Procedure was drafted to conform with relevant federal laws, regulations, and guidance effective as of April 4, 2022. 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.

<sup>3</sup> Authors' note: This Policy and Procedure should be drafted in tandem with Health Center's policy of maintaining a drug-free workplace. The Drug-Free Workplace Act of 1988 prohibits the unlawful manufacture, distribution, possession, or use of a controlled substance in a federal grantee's workplace. In accordance with the Drug-Free Workplace Act of 1988, federal grantees, such as federally-funded health centers, are required to maintain a drug-free awareness program.



### **III. Procedure**<sup>4</sup>

#### **1. Training Regarding the Prohibition on Distributing Medical Marijuana.**

Health Center employees and contractors ("Health Center Staff") and volunteers<sup>5</sup> will be trained on the requirements of the federal Controlled Substances Act, including but not limited to, the prohibition on distributing medical marijuana.

Health Center will maintain records indicating the completion of such training in the personnel files.

#### **2. Certification of Compliance**

All Health Center Staff and volunteers are required to comply with this Policy and Procedure by signing and returning the certification attached to this document as Exhibit A.<sup>6</sup>

#### **3. Distributing Medical Marijuana**

Health Center Staff and volunteers are strictly prohibited from distributing medical marijuana to patients, through prescribing medical marijuana or otherwise engaging in activities that aid and abet the distribution of medical marijuana.<sup>7</sup>

#### **4. Review and Updates of this Policy and Procedure**

**The Policy and Procedure prohibiting the distribution of medical marijuana 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.**

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<sup>4</sup> Using the following sample as a guide, health centers should tailor the procedure to reflect their own structures and operations.

<sup>5</sup> Authors' note: This Policy and Procedure 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 this Policy and Procedure, 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 ..."

<sup>6</sup> Authors' note: Requiring staff and volunteers 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.

<sup>7</sup> Authors' note: It is an unsettled legal issue as to whether a provider's act of furnishing a patient with a referral to another medical facility or provider for the purpose of obtaining medical marijuana would be considered by federal enforcement officials or federal courts to be an activity that "aids and abets" the distribution of medical marijuana. Health centers that seek to engage in activities that may be legally interpreted as "aiding and abetting" the distribution of medical marijuana should obtain legal advice from qualified legal counsel before proceeding.



NATIONAL ASSOCIATION OF  
Community Health Centers

**Responsible Parties:**

Signature  
CEO

Date

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Signature  
Board Chairperson

Date

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**EXHIBIT A**

**CERTIFICATION OF COMMITMENT TO COMPLY WITH [HEALTH CENTER'S  
NAME]'S PROHIBITION ON DISTRIBUTING MEDICAL MARIJUANA POLICY AND  
PROCEDURE**

I hereby acknowledge and certify that I have received and reviewed a copy of [Health Center's name] Prohibition on Distributing Medical Marijuana 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 Prohibition on Distributing Medical Marijuana Policy and Procedure during the term of my employment,<sup>8</sup> 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 Prohibition on Distributing Medical Marijuana 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

\_\_\_\_\_  
<sup>8</sup> Authors' note: Requiring staff and volunteers 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.