GOVERNANCE
LEGAL BRIEF 4

NATIONAL ASSOCIATION OF Community Health Centers®

The Board's Role in Evaluating Collaborative Relationships

Health centers frequently collaborate with other providers. Collaborations are maintained with hospitals, community behavioral health centers, and specialty practices to assure coordinated, continuous, and accessible care. In fact, such collaborations are a hallmark of the Health Center Program. It is also common for health centers to collaborate with others to provide important services such as employment support, housing, and more.

As the "eyes," "ears," and "voice" of the community, health center board members play a critical role in assessing the health center's collaborative relationships. They help to determine whether these relationships are consistent with the health center's mission and strategic goals, and whether they benefit the community and/or special population(s) served by the health center. The board's input and review are particularly important if the collaboration: impacts the health center's scope of project; includes the purchase or sale of high value goods or services; modifies the health center's corporate structure; or otherwise affects the health center's operations and/or finances.

In assessing collaborative relationships, board members should refer to the Health Resources and Services Administration (HRSA) **Health Center Program Compliance Manual** (Compliance Manual). It includes specific requirements that limit a third party's ability to select board members and/or exercise authorities that conflict with the board's mandated health center project authorities. In addition, board members should consider that the Compliance Manual requires that health center boards approve decisions to subaward the Health Center Project grant or to contract for a substantial portion of the services.

This Governance Legal Brief:

- Describes why health centers collaborate with other providers, defines common collaboration goals, and discusses potential types of collaborative relationships.
- Examines the board's role in evaluating collaborative relationships by assuring, among other things:
  - that the health center maintains its mission;
  - that the collaboration aligns with the health center's strategic plan; and
  - that the transaction complies with applicable federal and state laws, regulations, and guidance. This includes ***Section 330-Related Requirements*** and ***Grant Requirements***.
- Highlights certain requirements applicable to health center board autonomy in the context of collaborative relationships.
- Highlights certain key decisions that must be approved by the board, including decisions to subaward a portion of the federal Health Center Project grant.

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COLLABORATION MODELS

Required Collaborations with Other Community Providers

Maintaining collaborative relationships with other community providers is a key health center program requirement. **Chapter 14: Collaborative Relationships** of the Compliance Manual explains the following:

- The health center must make and must continue to make every reasonable effort to establish and maintain collaborative relationships, including with other health care providers that provide care within the catchment area [service area], local hospitals, and specialty providers in the catchment area of the center, to provide access to services not available through the health center and to reduce the non-urgent use of hospital emergency departments.
- To the extent possible, the health center must coordinate and integrate project activities with the activities of other federally-funded, as well as state and local, health services delivery projects and programs serving the same population.

Health centers are required to document their collaborative relationships. Examples of such documentation, as set forth in the **Health Center Program Site Visit Protocol,** include but are not limited to:[1]

- Memoranda of Agreement (MOAs) or Memoranda of Understanding (MOUs)
- Letters
- Collaboration meeting agendas with health center leaders
- Cross-referral of patients between health centers
- Evidence of membership in a city-wide community health planning council or emergency room diversion program

HRSA does not require that health center boards review and/or approve such documentation. However, it is a best practice for health center boards to periodically assess the type and nature of the health center's collaborative relationships, taking into consideration the Compliance Manual requirements described above.

Other Types of Collaborative Relationships

In addition to collaborative relationships with other community healthcare providers, it not uncommon for health centers to collaborate with safety net organizations to coordinate access to services such as employment support, housing, and other critical services for the community in the center's catchment area.

Scope of Collaborative Relationships

The subject and nature of collaborative relationships and agreements are as varied as the mission and scope of each organization. They can include arrangements to:

- Purchase/lease clinical staff capacity, such as from a locum tenens group (i.e., that provide temporary staffing) or a local hospital/physician group.
- Purchase/lease management support staff and/or administrative support services, such as from a local hospital/physician group.
- Establish a residency training program with a teaching hospital.
- Provide, via contract, specific health care services to health center patients that are not furnished directly by the health center (or to supplement the services provided by the health center), such as diagnostic laboratory/radiology services.

1 This list is from the **Health Center Program Site Visit Protocol, Collaborative Relationships**.

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- Lease space, equipment, or non-clinical personnel, such as leasing primary care clinic space and medical equipment from a hospital.
- Co-locate services, such as a health center establishing a primary care site on a hospital campus as an alternative to inappropriate non-emergent Emergency Room (ER) use, or having a specialist provide care at the health center site.
- Merger or practice acquisition.
- Establish joint purchasing arrangements, such as with other health centers to jointly purchase prescription drugs.
- Create a network entity composed of member organizations for whom services, such as backroom functions or negotiating managed care contracts, are provided.
- Establish an Accountable Care Organization (ACO), Managed Care Organization (MCO), Independent Provider Association (IPA) or similar organization, which will be owned by the health center and other organizations.

Often, collaborative relationships with other healthcare providers involve more than one of the above arrangements. For example, an arrangement to establish and operate a family practice residency program may also include a preceptor clinical capacity lease with the teaching hospital.

Collaborative Relationship Goals

The goals of a health center and its partner organization set the foundation for their collaborative relationship. Typical examples of collaborative goals include:

- Expanding the amount and type of services available, such as specialty services and programs that enhance the continuum of care and reduce service gaps.
- Maintaining and enlarging patient bases and target populations.
- Enhancing and improving clinical, administrative/managerial capacities, resources, expertise, procedures/ systems including "backroom functions" by sharing, purchasing, selling, or integrating such functions.
- Reducing operational costs, to become more cost effective.
- Maximizing and enhancing revenue.
- Obtaining entry into health plans and networks, gaining ownership and control of managed care organizations, and/or developing other approaches to managed care participation.
- Increasing sources of, and access to, capital and financial support or other resources.
- Expanding access to important safety net services, such as employment and housing support.

THE BOARD'S ROLE IN EVALUATING COLLABORATIONS

Overseeing the Health Center Program Project and Assuring Compliance

Chapter 19: Board Authority of the Compliance Manual explains that the board must oversee the Health Center Program project and assure that the center is operated in compliance with applicable federal, state, and local laws and regulations. For this reason, it's important for the board to review a collaboration opportunity and assure that it is consistent with the health center's mission, vision, and goals, and is structured and implemented in a compliant manner. The board provides related input to the management team. The management team should then work with the health center's consultants and counsel to ensure due diligence is done to evaluate the opportunity, negotiate the terms, and draft and review applicable contracts.

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Board members can ask questions when reviewing a collaboration opportunity, such as:

1. Will the arrangement preserve (or enhance) patient access, service continuity, and/or freedom of choice?
2. Is the collaboration consistent with the health center's mission and strategic plan?
3. Does the collaboration present any financial risk to the health center?
4. Can the health center implement the collaboration without the need for additional HRSA grant funds?
5. Will the collaboration contribute to the health center's survival and growth?
6. Is the collaboration consistent with Federal, State, and local laws, regulations, and policies, including but not limited to Section 330-Related Requirements and Grant Requirements? Has the relationship been assessed by qualified counsel?

Laws, Regulations, and Bylaws

State and local laws and regulations, as well as the health center's bylaws, may include requirements that impact the board's role in establishing, approving, and monitoring collaborative relationships with other providers and non-clinical safety net organizations.

Protecting the Autonomy of the Governing Board

Chapter 19: Board Authority and **Chapter 20: Board Composition** of the Compliance Manual include specific requirements to ensure that collaborative relationships do not undermine the autonomy and integrity of the health center program and its independent board. Specifically, the Compliance Manual includes the following requirements:

- Board Authority:[2] The organizational structure, articles of incorporation, bylaws, and other relevant documents ensure that the health center's governing board maintains the authority to oversee of the Health Center Program project, specifically:
  - The health center's organizational structure and documents do not allow any other individual, entity, or committee (including, but not limited to, an executive committee authorized by the board) to reserve approval authority or have veto power over the health center board with regard to the board's required authorities and functions.
  - In cases where a health center collaborates with other entities to fulfill part of the health center's HRSA-approved scope of project, such collaboration or agreements do not restrict or infringe upon the health center board's required authorities and functions.
  - For public agencies with a co-applicant board, the health center has a co-applicant agreement that delegates required authorities and functions to the co-applicant board, and clearly defines the roles and responsibilities of the public agency and the co-applicant to carry out the Health Center Program project.

- Board Composition:[3] Health center bylaws and other relevant documents must not permit any other entity, committee, or individual (other than the board) to select either the board chair or the majority of health center board members, including a majority of the non-patient board members.

Although autonomy issues could arise for the governing board in the context of any collaborative relationship, they most fre-

2 Excerpt is from Compliance Manual, Chapter 19: Board Authority, Demonstrating Compliance, a.
3 Excerpt is from Compliance Manual, Chapter 20: Board Composition, Demonstrating Compliance, a.

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quently arise when an external party seeks to retain certain control over the health center's operations during a transaction, such as with a corporate integration strategy (e.g., the formation of a parent-subsidiary relationship), a practice acquisition, and/or a formal affiliation.

To ensure compliance with the above requirements, board members should closely scrutinize any transaction that provides the external party with authority to select health center board members and/or exercise authorities that could interfere with the health center board's mandated authorities (**Chapter 19: Board Authority** of the Compliance Manual). In addition, the board should not approve any amendment to its health center bylaws that conflict with the above restrictions.

Complying with Procurement Policies and Procedures, and Standards of Conduct

In assessing collaborations that include the purchase and/or sale of goods and services from other providers, health center board members should ensure that the procurement is conducted in a manner consistent with State and Federal law and regulations, including but not limited to the ***Section 330-Related Requirements*** and ***Grant Requirements***, and aligns with the health center's standards of conduct and procurement policies/ procedures.

For example, **Chapter 13: Conflict of Interest** of the Compliance Manual establishes that no board member (nor any employee, officer, or agent of the health center) may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

While not required by the ***Section 330-Related Requirements*** or the ***Grant Requirements***, many health center procurement policies (and/or bylaws) also establish that the board must approve contracts or similar arrangements over a particular value, and/or contracts paid for with federal grant dollars.

Conflicts of Interest

For more information on the board's role in disclosing and managing conflicts of interest, see the NACHC Governance Legal Brief 1: Identifying, Disclosing, and Managing Board Members' Conflicts of Interest. This document is available from NACHC on the Health Center Resource Clearinghouse (**https://www.healthcenterinfo.org/**).

Collaborative Relationships that Require the Board's Approval

Generally, HRSA does not require a health center's board to review and/or formally approve a collaboration before implementation. Whether and how the board is involved in the planning and approval of a collaborative relationship varies depending on the type of transaction, and the health center's internal policies and procedures.

Still, there are a few scenarios where HRSA requires the health center's board to formally approve a collaborative effort, prior to implementing a transaction with anther provider. Such contractual arrangements may be unrelated to the obligation to maintain collaborative relationships, as set forth in **Chapter 14: Collaborative Relationships** of the Compliance Manual.

Scenarios include:

Changes in Scope of Project

Collaborative relationships often impact the health center's scope of project, notably if it adds a new service and/or a new site to the health center's scope. Prior to implement-

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ing such change(s), the health center must submit of a Change in Scope (CIS) request to HRSA. When submitting a CIS to HRSA, health centers are asked to certify that certain statements related to the preparation of the CIS request are true, complete, and accurate (see **CIS Assurances)**. This includes the statement, "the health center's governing board approved this CIS request prior to submission to HRSA, as documented in board minutes (must be made available upon request)."

If a collaborative relationship triggers the need for a CIS, the board must approve the change before the request is submitted to HRSA. To do this, the board should review the **CIS Assurances** along with the management team. The expansion must be consistent with ***Section 330-Related Requirements***. For example, the board should assess whether the CIS can be accomplished without additional Health Center Program Federal award funds (for awardees only) and that it will not shift resources away from the health center's current HRSA-approved scope of project.

Subawards and Contracts for a Substantial Portion of Services

Chapter 19: Board Authority of the Compliance Manual explains that the board must approve decisions to: (1) subaward a portion of the federal Health Center Project grant[4] to a subrecipient for a defined service; or (2) contract for a substantial portion of services. Note that while the board is not required to review written subaward agreements, the board's approval/disapproval to implement such relationship should be reflected in the board meeting minutes.

Contracts for Substantive Programmatic Work

If a health center seeks to contract with another organization to perform "substantive programmatic work," which (according to the Compliance Manual) means contracting with a single entity for the majority of the health center's health care providers, the health center must submit a request to HRSA and obtain HRSA's prior approval.[5] The Compliance Manual does not explicitly state that contracts for substantive programmatic work must be approved by the board first. However, such approval aligns with the board's mandated authority to approve the "Health Center Program applications," as described in **Chapter 19: Board Authority** of the Compliance Manual. Accordingly, if a health center intends to submit a request to HRSA to contract for substantive programmatic work, the board's prior review and approval should be documented in board meeting minutes and/or in a board resolution.

Collaborations that Change the Health Center's Organizational or Corporate Status

Certain collaborations impact a health center's structure, such as through a merger or an acquisition. The **HRSA Technical Assistance Resource: Health Center Mergers, Acquisitions and Other Organizational Changes and Related Successor-in-Interest Requests** includes the following:

> *Decisions regarding changes to a health center's organizational or corporate status are the sole responsibility of the health center's governing board. In making these decisions, the board should carefully consider the impact of the changes on potential eligibility for continued Health Center Program funding.*

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4 A "subaward" is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (45 CFR 75.2)

5 The acquisition of supplies, material, equipment, or general support services is not considered programmatic work. Substantive programmatic work may be further defined within HRSA Notices of Funding Opportunity (NOFOs) and applications.

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When a change to a health center's organizational or corporate status impacts the identity of the HRSA Health Center Program award recipient, then the health center must submit a prior approval request for HRSA to recognize the new Health Center Program award recipient. This is also referred to as "Successor-in-Interest" (SII).

The board of the health center (and the other party) must approve the SII Agreement.

Legal Exposure Concerns

Transactions between providers often raise legal exposure concerns based on a range of laws, including federal tax, antitrust, anti-kickback, anti-self-referral, and false claims statutes, as well as insurance, licensure, and employment-related laws. In addition, health centers may need to secure certain regulatory approvals prior to proceeding with the transaction. As applicable, the board should ensure that transactions are reviewed by a qualified attorney before an collaboration is implemented.

CONCLUSION

The health center board should assure that the center maintains collaborative relationships in accordance with HRSA requirements. Health center boards should participate in the planning process for certain collaborative relationships, especially if the relationship: (1) will meaningfully impact the health center's operations and/or finances, or (2) raises compliance and/or regulatory approval considerations. In some scenarios, the board's formal approval is, in fact, required by HRSA.

It is important for health centers to seek the assistance of qualified legal counsel and other appropriate professional advisors when developing and/or evaluating complex collaborative relationship proposals, especially if due diligence reviews are required to ensure that an agreement complies with requirements as well as clinical and financial expectations.

Collaborative relationships can yield great results for a health center, yet they require appropriate strategic consideration and oversight from the board in order to be successful.

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The term **"health center"** refers to public or private nonprofit entities that: (1) receive grants under Section 330 of the Public Health Service Act (Section 330), including Sections 330(e), 330(f), 330(g) and 330(h) (collectively "Health Center Program Grantees"); and (2) entities that have been determined by the Department of Health and Human Services (DHHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant ("health center look-alikes").

The term **"Section 330-Related Requirements"** refers to requirements set forth in:

- Health Center Program Statute
- Program Regulations: **42 CFR Part 51c** and **42 CFR Parts 56.201-56.604**
- Health Center Program Compliance Manual: **https://bphc.hrsa.gov/programrequirements/compliancemanual/introduction.html**
- HRSA's Federal Financial Assistance Conflict of Interest Policy

The term **"Grant Requirements"** refers to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: 2 CFR Part 200, as adopted by DHHS at 45 CFR Part 75.

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This document was written in 2020 for NACHC by Carrie B. Riley, Esq., Feldesman Tucker Leifer Fidell LLP, Washington, D.C. This version supersedes a prior version of this document that was previously published as a Governance Information Bulletin by NACHC in January 2016. The original version was written for NACHC by Marcie H. Zakheim, Esq., Feldesman Tucker Leifer Fidell LLP, Washington, D.C.

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling $6,375,000 financed with non-governmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by HRSA, HHS, or the U.S. Government. For more information, please visit HRSA.gov.

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