

99-01

DATE: December 7, 1998

Document Title: Restrictive  
Covenants and Health Centers

TO: All BPHC-Supported Programs

This Policy Information Notice (PIN) describes the Bureau of Primary Health Care's (BPHC) policy for Health Centers on restrictive covenants. A separate PIN will be issued for National Health Service Corps (NHSC) scholars and loan repayors concerning restrictive covenants once a review of their placement experiences has been completed. Attached are some of the issues concerning the NHSC and restrictive covenants.

For purposes of this PIN, a restrictive covenant or no-compete clause is an agreement that restricts the right of a clinician to practice for a specified period of time or in a specified area upon termination of an employment, partnership or cooperative agreement with a provider entity (e.g., a Health Center).

The issue of restrictive covenants has been raised as a critical concern for BPHC-supported programs and providers. The current issue relates to whether clinicians may enjoy unrestricted movement in their choice of when and where to practice upon leaving a Health Center or a NHSC site. Further, the issue is whether clinicians, upon leaving these Health Centers or NHSC sites that have invested in their recruitment, can be barred for a contractually specified time period from opening a practice within a contractually specified distance from the Health Center or NHSC site.

The restrictive covenant issue impacts on the Bureau's defined mission to provide access to preventive and primary health care services for people living in medically underserved areas, which includes the recruitment and retention of community-responsive, culturally competent clinicians. The viability of the Health Centers and the distribution of clinicians to meet access needs are thus impacted.

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The following is the Bureau policy for Health Centers on restrictive covenants:

Health Centers and Restrictive Covenants

- . Local discretion will be allowed for Health Centers as to the use of restrictive covenants, and other Bureau communications will remain silent on the subject.
  
- . The expectation is that Health Centers that utilize restrictive covenants in their contracts should follow State law, and generally follow reasonable practices that are widely used by other community providers regarding both time and distance. The Bureau's current position on the use of restrictive covenants is neutral. The Bureau's policy will be neither to approve or disapprove these restrictive covenant clauses.

If you have any questions or comments regarding the restrictive covenant policy position described in this PIN, please contact Rhoda Abrams or Bill Melling at (301) 594-4060.

/s/

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Assistant Surgeon General  
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Director

Attachment

ATTACHMENT

National Health Service Corps and Restrictive Covenants

Described below is information on the Bureau's decision to review the placement experiences of National Health Service Corps (NHSC) scholars and loan repayors with restrictive covenants:

- . The NHSC is reviewing the initial stages of the 1999 placement cycle, as to the implementation of restrictive covenants and its effect on NHSC scholars and loan repayors. Among the questions being asked are:
  - . How many sites have restrictive covenants?
  - . How many sites have removed or are removing restrictive covenants?
  - . What has been the experience if sites have been asked to remove them?
  - . Has the issue of restrictive covenants and Corps members come up as a problem at Health Centers and/or at other sites?
  - . If not a current problem, may it be a potential problem?
  - . Should scholar sites and loan repayor sites be looked at differently?
- . Upon completion of this review, a final decision on NHSC scholars and loan repayors and restrictive covenants will be made in the next few months.