

## **Comments & Response on Draft Policy Information Notice, “Confirming Public Agency Status under the Health Center Program and FQHC Look-Alike Program”**

On August 14, 2009, the Health Resources and Services Administration (HRSA) made the draft Program Information Notice (PIN), “Confirming Public Agency Status under the Health Center Program and FQHC Look-Alike Program,” available for public comment. The purpose of this Policy Information Notice (PIN) is to describe the documentation that will be considered by the Health Resources and Services Administration (HRSA) in confirming public agency status for organizations that self-identify as public agencies (also referred to in previous PINs as “public entities” or “public applicants”) for the Health Center Program authorized under section 330 of the Public Health Service (PHS) Act, as amended, and/or for Federally Qualified Health Center (FQHC) Look-Alike designation. Comments were due to HRSA by October 13, 2009.

Sixteen parties, including both individuals and groups, submitted a total of 31 comments regarding the draft PIN. After review and careful consideration of all comments received, HRSA amended the PIN to incorporate certain recommendations from the public. The final PIN reflects these changes.

Relatively minor changes in response to recommendations from the public were incorporated throughout the final PIN. The purpose of this document is to summarize the major comments received and convey HRSA’s response, including any corresponding changes made to the PIN. Where comments did not result in a revision to the PIN, explanations are provided.

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### **Issue: Documentation Requirements**

#### **Comments**

Six commenters found the language in Section IV(2), that the public agency can “otherwise demonstrate through supporting documentation,” was too ambiguous. Commenters suggested that HRSA provide specific examples of acceptable documentation and suggested potential examples.

#### **HRSA Response**

HRSA has removed this criterion from the final PIN. The number of criteria has been expanded to cover the full range of organizations that could qualify as a “public agency.” Specific documentation examples have been given under each criterion.

### **Issue: Stronger Language on Compliance**

#### **Comments**

Six commenters found the language in Section III: Background, to be too permissive on the necessity of a co-applicant agreement to meet program requirements. Suggestions included using “must” instead of “may” or “are expected to.”

#### **HRSA Response**

In response to these comments, HRSA deleted language describing/defining co-applicant arrangements from the final PIN to focus on describing the documentation that will be considered by HRSA in confirming public agency status for organizations that self-identify as public agencies. More specific language on co-applicant arrangements will be included in future PINs.

### **Issue: Effect on Non-Taxed Entities**

**Comment:** Five commenters noted that tribal entities and affiliated sovereign States cannot comply with the PIN's criteria due to a lack of formal relationship with the Internal Revenue Service (IRS).

**Response:** In response to this comment, HRSA determined that the final PIN will not apply to health centers that self-identify as non-profit private entities or those operated by federally recognized Indian tribes or tribal or Indian organizations under the Indian Self-Determination Act or urban Indian organizations under the Indian Health Care Improvement Act. The final PIN includes an additional criteria allowing for affiliated sovereign States to submit formal documentation from the sovereign State's taxing authority equivalent to the IRS or authority granting the entity one or more governmental powers.

### **Issue: Restrictive Documentation Requirements**

#### **Comments**

Four commenters found the documentation requirements restrictive in that these would only easily be fulfilled by instrumentalities of government and would be burdensome for other types of public agencies to obtain.

#### **HRSA Response**

HRSA recognized these concerns. The final PIN incorporates two additional criteria and documentation examples that should be less burdensome for other types of public agencies to obtain. States or political subdivisions of States with one or more sovereign powers may submit an "Affirm Instrumentality Letter" from the IRS or a letter of authority from the government granting the entity one or more sovereign powers. Affiliated sovereign States may submit formal documentation from the sovereign State's taxing authority equivalent to the IRS or authority granting the entity one or more governmental powers.

### **Issue: Perceived Contradiction with Statute**

#### **Comments**

Four commenters found that some language in Section III: Background contradicted Section 330(e)(1)(B), as amended, specifically that Health Center Program applicants must meet eligibility requirements at the time of application. Further commenters noted that the definition of a public center includes language about funding which is not applicable to FQHC Look-Alikes.

#### **HRSA Response**

The sentence following Section 330(k)(3)(M) of the PHS Act, as amended, states that "the term 'public center' means a health center funded (or to be funded) through a grant under this section to a public agency." Language has been included in the final PIN to explicitly outline that FQHC Look-Alike designated public centers have an identical definition to the statutory definition of public centers funded under section 330 of the PHS Act, as amended, since they must meet the requirements of the Health Center Program.

Language in Section III: Background, on "all health center applicants are expected to meet the Health Center Program eligibility requirements at the time of application for a section 330 grant and/or FQHC Look-Alike designation," has been deleted from the final PIN.

### **Issue: Applicability of PIN**

#### **Comments**

Three commenters sought clarification on the applicability of the PIN to non-profit health centers, or non-Health Center Program HRSA/BPHC grants (such as planning grants and Native Hawaiian Health Care Improvement Act grants.)

**HRSA Response**

The final PIN applies to health centers funded or seeking funding under the Health Center Program authorized in subsection 330 (e), (g), (h), and/or (i) of the PHS Act, as amended, that self-identify as public agencies. The PIN also applies to organizations that are designated or are seeking designation as FQHC Look-Alikes that self-identify as public agencies. The PIN does not apply to other organizations. Language has been included in the final PIN to emphasize that it does not apply to planning grants and Native Hawaiian Health Care Improvement Act grants.