



PROGRAM ASSISTANCE LETTER

DATE: June 11, 2014

DOCUMENT NUMBER: 2014-08

DOCUMENT TITLE: Health Center
Program Requirements Oversight

TO: Health Center Program Grantees
Primary Care Associations
National Cooperative Agreements

The purpose of this Program Assistance Letter (PAL) is to provide policy clarification and updated program guidance regarding the Health Resources and Services Administration (HRSA)/Bureau of Primary Health Care (BPHC) Progressive Action process, which was developed to support the review and oversight of Health Center Program requirements¹ and assist health centers in their efforts to achieve Health Center Program objectives. This process is implemented within the HRSA Electronic Handbooks (EHB) system which facilitates the electronic submission and tracking of compliance with program conditions placed on a grantee's award and communicated through Notice of Awards (NoAs), the grantee's response to these conditions, and when appropriate, removal of those conditions.² This PAL also clarifies when and how HRSA will take enforcement actions in cases where grantees materially fail to comply with the terms and conditions of the Health Center Program grant award. In addition, the PAL clarifies when and how compliance status with program requirements and past performance³ is taken into consideration when making award decisions to current grantees.

This PAL supersedes PAL 2010-01 "Enhancements to Support Health Center Program Requirements Monitoring" issued April 8, 2010.

¹ A summary of the Health Center Program Requirements can be accessed online at: <http://www.bphc.hrsa.gov/about/requirements/index.html>.

² In EHB, a grantee's response to a condition of award is referred to as a "submission." The removal or lifting of a condition occurs once a submission that adequately addresses the required corrective action has been reviewed, approved by HRSA and marked as "met" within EHB.

³ Per 42 CFR Part 51c.305.

BACKGROUND

Health Center Program grantees must comply with all applicable statutory, regulatory, and other policy requirements (including those stated in assurances, applications, or notices of award) and it is HRSA's goal to support grantees in successfully maintaining compliance with these requirements. Consistent with applicable law and HRSA's program oversight responsibilities, grantees are assessed for compliance with these program requirements and, whenever possible, are provided an opportunity to remedy areas of non-compliance.

All Health Center Program grant awards approved by HRSA are subject to the requirements, terms and conditions specified in the grant program's authorizing statute;⁴ and regulations;⁵ including, but not limited to, the grants regulations⁶ found in 45 CFR Part 74 or 45 CFR Part 92, as applicable, as well as other requirements as described above. Accordingly, HRSA may impose additional requirements⁷ as needed, if an applicant or recipient:

- has a history of poor or unsatisfactory performance, including program non-compliance;
- is not financially stable (i.e., demonstrates inability to safeguard Federal funds);
- has a management system that does not meet the prescribed standards found in 45 CFR Part 74.21 or 45 CFR Part 92.20;
- has not conformed to the terms and conditions of an award; or
- is not otherwise responsible.

PROGRAM REQUIREMENT OVERSIGHT AND ENFORCEMENT ACTION OVERVIEW

Consistent with previous practice, in circumstances where a grantee is determined to be non-compliant with one or more of the Health Center Program requirements, a condition(s) will be placed on the award, which will follow the Progressive Action policy and process. Non-compliance is most often determined based on findings from the review of the Service Area

⁴ Section 330 of the Public Health Service (PHS) Act (42 U.S.C. §254b), as amended (see: <http://bphc.hrsa.gov/policiesregulations/legislation/index.html>).

⁵ 42 CFR Part 51c (see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b8ad3557b7dc6a8db474a673add5c35&r=PART&n=42y1.0.1.4.27>) and 42 CFR Parts 56.201-56.604 (see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=a1f6b7f64898a75dcc8e5c14ffc293e9&r=PART&n=42y1.0.1.4.41>) for Community and Migrant Health Centers.

⁶ 45 CFR Part 74 (see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2f4ff41a22ff9dbed58d4b0fbea47e65&r=PART&n=45y1.0.1.1.35>) for private nonprofit organizations or 45 CFR Part 92 (see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=f8b56349c7e9664378e6b01e48fc4b08&r=PART&n=45y1.0.1.1.50>) for State, local and tribal organizations.

⁷ For example, in accordance with Federal regulations (45 CFR § 74.14 "Special award conditions"), HRSA may impose special restrictive conditions on a grant award if HRSA determines that the grantee violated program or financial requirements, or has insufficient management systems or practices to ensure stewardship of grant funds or achievement of award objectives. One such condition (implemented within HRSA as a "Grant Specific Term" rather than a "Condition of Award") is called "Drawdown." When a grantee is placed on restricted drawdown, all drawdown of Federal funds from the Payment Management System (PMS) must have approval of the HRSA Office of Federal Assistance Management, Division of Grants Management Operations before funds are drawn.

Competition (SAC) application or from an Operational Site Visit or other compliance-related site visit. Conditions placed on the grantee's award describe:

- The nature of the non-compliant finding and the program requirement it relates to;
- The nature of the required corrective action(s); and
- The time allowed for completing the corrective actions and/or for submission of appropriate documentation of such corrective actions.

This Progressive Action process provides a time-phased approach for resolution of compliance issues. Failure to adequately address conditions through the Progressive Action process will serve as documentation that a Health Center Program grantee has materially failed to comply with the terms and conditions of the grant award. In such a case, the grantee's current project period may be shortened and include the withdrawal of support through the cancellation of all or part of the grant award before the current project period end date, per the actions outlined in 45 CFR 74.62 (a) or 45 CFR Part 92.43(a), as applicable. This material failure to comply with the terms and conditions of the grant award will also result in the announcement of a competition for this service area to identify an organization that can carry out a service delivery program consistent with Health Center Program requirements.

If necessary, HRSA may also take enforcement actions to suspend, discontinue or immediately terminate grant funding during a project period in circumstances that cannot be addressed through the Progressive Action policy and process, including but not limited to:

- documented public health or welfare concerns which require immediate action (e.g., documented threats to health center patient safety);
- failure of a grantee organization to demonstrate operational capacity to continue the health center grant program (e.g., grantees that have ceased operations and are no longer providing primary care services); or
- a determination that continued funding would not be in the best interest of the Federal government and/or to safeguard Federal funds (i.e., a grantee's inclusion as an excluded entity on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals/Entities (LEIE)⁸ and/or inclusion on the System for Award Management (SAM) Excluded Parties List System (EPLS)⁹).

PROGRESSIVE ACTION PROCESS

As noted in the previous section, in circumstances where a grantee is determined to be non-compliant with one or more Health Center Program requirements, relevant conditions are placed on the grantee's award and communicated through Notices of Award (NoAs). HRSA is committed to assisting grantees to remedy identified areas of non-compliance and to providing reasonable time for grantees to take necessary corrective action.

The Progressive Action process provides a uniform structure and a time-phased approach for notifying grantees of compliance issues and for receiving grantee responses to an identified

⁸ <http://exclusions.oig.hhs.gov>

⁹ <https://www.sam.gov>

condition(s). Because these phases are supported within HRSA's EHB, grantees are able to efficiently and effectively respond to conditions, and HRSA is able to promptly initiate the review of the response/supporting materials and take the next steps, including removal of conditions, as warranted. In addition, EHB supports the Progressive Action process by clearly noting condition response deadlines in the grantee's EHB task list and providing periodic email reminders to grantees during the condition response timeframe.

The Progressive Action process includes four distinct condition phases (detailed below), structured to provide specified timeframes for grantee action and response to demonstrate compliance. After initial notification of the compliance issue, a grantee will be notified via a NoA at each Progressive Action stage as to the acceptability of the response and whether further action is needed. At each phase, an inadequate response from a grantee (e.g., failure to adequately document compliance or failure to respond by the specified deadline), will result in the activation of the next Progressive Action phase.

- Initial Notification: a NoA is issued detailing the specific area(s) of non-compliance and the condition(s) that must be met in order to demonstrate compliance.
- Phase One: 90 days for the grantee to submit appropriate documentation that the program requirement has been met or that the grantee has developed an adequate action plan (see Implementation Phase below) for how their organization will comply with the requirement.¹⁰
- Phase Two: 60 days for the grantee to submit appropriate documentation that the program requirement has been met or that the grantee has developed an adequate action plan for how their organization will comply with the requirement.
- Phase Three: 30 days for the grantee to submit appropriate documentation that the program requirement has been met or that the grantee has developed an adequate action plan for how their organization will comply with the requirement.
- Implementation Phase (where applicable): 120 days for the implementation of a HRSA-approved action plan and the submission of appropriate board-approved documentation that the program requirement has been met. The 120 day Implementation Phase can be applied for most conditions¹¹, following a satisfactory grantee response to develop an adequate action plan in Phase One, Two or Three.

HRSA recognizes that grantees may need to make programmatic and organizational changes in response to a condition; therefore, the Progressive Action process is designed to provide grantees with a reasonable amount of time to take appropriate action in response to a condition and for prompt HRSA review and decision-making. For example, in Phase One, for most conditions,¹² a

¹⁰ While the majority of Health Center Program Requirement Progressive Action conditions include a 120 Day Implementation Phase, a limited number of conditions do not. This is because the corrective actions needed to address these conditions would not require a grantee to make major programmatic and organizational changes nor would they necessitate documentation of implementation (e.g., a condition requiring a grantee to provide an updated needs assessment).

¹¹ *Ibid.*

¹² For example, refer to those circumstances described on pages 3-4.

grantee is given 90 days to either demonstrate compliance with the identified program requirement or develop and submit an action plan detailing how their organization will comply with the requirement. If this plan is approved, a new NoA will be issued with an “Implementation Phase” condition notifying the grantee that HRSA has approved the action plan and that within 120 days it must submit board-approved documentation that compliance with the requirement has been implemented per the HRSA approved plan.

As designed, grantees that do not adequately address a condition within the Phase One timeframe (90 days) and/or subsequent Implementation Phase (120 days) will be issued a new NoA with a Phase Two condition giving the grantee an additional 60 days to either demonstrate compliance with the identified program requirement or develop and submit an action plan detailing how the organization will comply with the requirement.

Therefore, conditions in Phase Two (60 Day) and Phase Three (30 Day)¹³ advise that if the grantee does not adequately address the condition within the allotted timeframe (the last opportunity being Phase 3 (30 Day)), the organization will be determined to have materially failed to comply with the terms and conditions of the Health Center Program grant award, resulting in the announcement of a service area competition to identify an organization that can carry out a service delivery program consistent with Health Center Program requirements. In addition, the grantee is notified by these conditions that its current project period may be shortened, which may result in the withdrawal of support through the cancellation of all or part of the grant award before the current project period end date.

HRSA may also assess compliance with Health Center Program requirements through site visits, audit data, UDS or similar performance reports, Medicare/Medicaid cost reports, external accreditation, or other reports, as applicable and may conduct onsite verification of compliance at any point within a project period and/or prior to any final funding decisions. Should such assessments result in findings that document a grantee has not conformed to the terms and conditions of a previous award or is not otherwise responsible (i.e., a site visit documents that HRSA lifted a Progressive Action condition based on false or misrepresented information submitted by the grantee), HRSA may impose additional special award conditions.

Unlike conditions that follow the Progressive Action process, such conditions will require the grantee to document corrective actions within a more immediate timeframe. Specifically, this will consist of a one-time opportunity to respond to a condition within a 60 day timeframe to avoid enforcement actions such as the withdrawal of support through the cancellation of all or part of the grant award before the current project period end date.

¹³ The BPHC website includes a public Health Center Profile for each individual Health Center Program grantee which displays data on the status of a grantee’s compliance with Health Center Program requirements based on the presence of any active 60 and/or 30 day Progressive Action conditions. See: <http://bphc.hrsa.gov/uds/datacenter.aspx> to view individual program grantee data.

PROGRAM REQUIREMENT COMPLIANCE AND COMPETING CONTINUATION APPLICATION REVIEW AND SELECTION

Project period length is based on a comprehensive evaluation of the risks to the Health Center Program posed by each applicant if it receives an award for a new project period, including an assessment of a grantee's compliance with program requirements. Therefore, Health Center Program grantees with a history of non-compliance with Health Center Program requirements may be considered by HRSA to be of higher risk and awarded grant funding for shortened project periods as part of the competing continuation application review process. The specific criteria for determining project period length are further detailed in the annual SAC Funding Opportunity Announcement (FOA).

In addition, if a current grantee has been awarded two consecutive one-year project periods and a review of the subsequent SAC application would, based on the project period length criteria outlined in the SAC FOA, result in a third consecutive one-year project period, this will demonstrate to HRSA that this organization cannot carry out the grant consistent with Health Center Program requirements and its continued unsatisfactory performance in meeting program requirements will be used in selecting applications for funding. In such cases, HRSA will re-announce a competition for that service area to identify an organization that can carry out a service delivery program consistent with Health Center Program requirements.

A grantee's ability to demonstrate compliance with program requirements is critical to ensuring continued grant support and may in certain cases, also directly impact award decisions for supplemental funding, as outlined in the specific FOA.

TECHNICAL ASSISTANCE

HRSA is committed to assisting grantees in meeting all Health Center Program requirements through the provision of appropriate guidance and technical assistance. Throughout each phase of Progressive Action, HRSA encourages frequent communication between the grantee and their designated Project Officer to ensure the preparation of an appropriate and timely response. Grantees are also encouraged to access available technical assistance resources through their Primary Care Association or one of HRSA's national cooperative agreement partners, see <http://www.bphc.hrsa.gov/technicalassistance/>.

For systems assistance with submitting responses to conditions in EHB, please contact the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or bphchelp@hrsa.gov.

/s/

James Macrae
Associate Administrator