

DATE: April 20, 1999 DOCUMENT TITLE: Implementation of the
Balanced Budget Act Amendment of the
Definition of Federally Qualified
Health Center Look-Alike Entities for
Private Nonprofit Entities

TO: Community Health Centers
Migrant Health Centers
Health Care for the Homeless Grantees
Health Services for Residents of Public Housing Grantees
Federally Qualified Health Center Look-Alikes
Primary Care Associations
Primary Care Offices

The Social Security Act, section 1905, describes a Federally Qualified Health Center (FQHC) Look-Alike as an entity which, based on the recommendation of the Health Resources and Services Administration (HRSA) within the Public Health Service (PHS), is determined by the Secretary to meet the requirements for receiving a grant under section 330 of the PHS Act. This provision permits clinics that do not receive Federal grant funds under the above authority but satisfy the requirements for receiving such monies, to be treated as FQHCs for purposes of reimbursement under Medicare and Medicaid.

Section 4712(d) of the Balanced Budget Act (BBA) of 1997 (Public Law 105-33), modifies the FQHC Look-Alike definition. The Social Security Act, as amended by the BBA, defines a FQHC Look-Alike as an entity which, based on the recommendation of the HRSA within the PHS, is determined by the Secretary to meet the requirements for receiving [a section 329, 330 or 340] grant including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity. The effective date of this amendment was August 5, 1997. As a result of this amendment, we placed a moratorium on the processing of new applications for FQHC Look-Alike status as well as the recertification of existing FQHC Look-Alikes. This moratorium

was to remain in force until HRSA and the Health Care Financing Administration (HCFA) could formally interpret and implement this statutory change.

BPHC Policy Information Notice

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The legislative history of the BBA does not illuminate congressional intent as to how the statutory change is to be interpreted and applied to public and private nonprofit entities, and the Secretary is mandated to establish the requirements under the BBA. The attached Policy Information Notice (PIN) presents HRSA's interpretation and implementation of the revised language with respect to private nonprofit entities. A separate PIN provides the interpretation and implementation of the revised language for public entities. Both PINs are the products of extensive discussions between Federal staff representing HRSA and HCFA and with representatives of both public and private nonprofit health centers.

We have identified PIN 97-27, Affiliation Agreements of Community and Migrant Health Centers, dated July 22, 1997, and the amendment PIN 98-24, dated August 17, 1998, as statements of the requirements the Department was mandated to establish under the BBA. The Department's use of the policy set forth in PIN 97-27 and PIN 98-24 to implement the amended statutory definition of FQHC Look-Alike entities assures consistency in the Bureau of Primary Health Care's (BPHC) determinations concerning section 330 grantees and FQHC Look-Alike entities.

Private nonprofit entities seeking FQHC Look-Alike designation or recertification are encouraged to consult with Field Office and Headquarters staff if there are questions about the application of this policy to their particular case. Additionally, the BPHC's Program Assistance Letter 98-05, issued April 3, 1998, requested currently designated FQHC Look-Alike entities and organizations now seeking FQHC Look-Alike designation to submit additional documents to enable HRSA to complete its assessments. These documents will assist in the review for compliance with this policy. Recertifications and requests for designation that are now in a pending status will be released if determined to be unaffected by the amendment. Entities with recertification requests found to be affected by the amendment will be so advised, and the entities will have 1 year or until their next recertification date to become compliant or risk loss of designation.

Marilyn H. Gaston, M.D.
Assistant Surgeon General
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Attachments

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I. INTRODUCTION

Section 4712(d) of the Balanced Budget Act (BBA) of 1997 modifies the definition contained in section 1905 of the Social Security Act for a Federally Qualified Health Center (FQHC) Look-Alike entity. The Social Security Act, as amended by the BBA, defines an FQHC Look-Alike as an entity which **is based on the recommendations of the Health Resources and Services Administration within the Public Health Service, is determined**

by the Secretary to meet the requirements for receiving a [section 329, 330 or 340] grant including requirements of the Secretary that an entity may not be owned, controlled or operated

by another entity (emphasis denotes BBA language). The effective date of this amendment was August 5, 1997, the date the Act was signed. At that time, the Health Resources and Services Administration (HRSA) and the Health Care Financing Administration agreed to place a moratorium on the processing of applications for FQHC Look-Alike designation and/or recertification.

This Policy Information Notice (PIN) establishes the Bureau of Primary Health Care's (BPHC) interpretation of the statutory limits on the involvement of another entity in the ownership, control and/or operation of a private nonprofit FQHC Look-Alike entity. It also formally ends the moratorium on HRSA processing of applications from private nonprofit entities for FQHC Look-Alike designation and recertification.

A separate PIN provides the interpretation of the statutory limits for public FQHC Look-Alike entities.

II. COMPLIANCE ASSESSMENTS

This PIN identifies PIN 97-27, Affiliation Agreements of Community and Migrant Health Centers, issued July 22, 1997, and clarified by PIN 98-24, dated August 17, 1998, as the statements of the requirements the Department was mandated to establish under the BBA. Use of the policy set forth in PIN 97-27, to implement the amended statutory definition of FQHC Look-Alike entities assures consistency in the BPHC's determinations relative to section 330 grantees and FQHC Look-

Alike entities. Private nonprofit entities submitting applications for FQHC Look-Alike designation under PIN 97-22, Federally Qualified Health Center Look-Alike Guidelines and Application, dated May 21, 1997, or for annual recertification, will be subject to an assessment against the standards and principles in these two policy documents.

III. GENERAL ISSUES

As stated in PIN 97-27, the review of affiliation relationships will include an evaluation of the health center's corporate structure, with particular attention to corporate integration. Of particular concern are corporate structures that give another entity overriding approval authority, prohibit or restrict through dual majority or super-majority vote requirements, action on any authority or responsibility that is vested in the health center board through legislation or regulation. Sole corporate member and other parent-subsidiary approaches to corporate integration are permitted under PIN 97-27, if deemed to meet all statutory and regulatory requirements by demonstrating there is no violation of any aspect of the affiliation policy standards. Applicants for FQHC Look-Alike designation, or recertification, proposing a corporate integration model may be subject to a review by the Department's Office of the General Counsel against State law reserved authorities.

In addition to corporate structure, we also are concerned about health centers that delegate a substantial portion of the scope of the project to another entity or entities. These delegations are usually carried out through administrative or management services contracts. Contracts or agreements for specific services such as ancillary and allied health services generally are acceptable since they do not pose risk to the health center's integrity or autonomy. A primary concern is health centers that contract all or a substantial portion of their administrative, financial management and/or clinical operations to one or more other entities. This diminishes the health center's role in carrying out the center's activities and may be perceived as the health center serving as a conduit to another party for financial benefit. The BPHC review will assess the level of dependence of the FQHC Look-Alike on

another entity or entities, and the health center's maintenance of accountability over the operation of the project.

Employment arrangements for key management staff will be evaluated. Key management staff include the Chief Executive Officer (CEO), the Chief Medical Officer (CMO) and the Chief Financial Officer (CFO). **The CEO must be selected by the governing board and directly employed by the health center.** It is not acceptable for any other entity to have the authority to select or dismiss the CEO.

It is recognized that there are situations in which exceptions to the BPHC's preference that health centers directly employ personnel to fill the positions of CFO and CMO and/or the majority of its primary care clinicians may be necessary and appropriate in order to maximize patient access to comprehensive, effective, cost-effective and quality health care. The BPHC is committed to allowing exceptions to the preference model upon a health center's assurance that full accountability is maintained. Programmatic accountability will be monitored once an exception is approved and implemented to assure that the health center continues to meet its mission and FQHC requirements. The PIN 98-24 sets forth criteria for reviewing requests for exceptions to the BPHC's preference that a health center directly employ its CFO, CMO and its core staff of full-time primary care providers, and explains the process for determining whether affiliation arrangements are in compliance with program policy requirements.

IV. BPHC REVIEW

The HRSA process for reviewing applications for FQHC Look-Alike designations will continue to be overseen by Headquarters staff in the BPHC, Division of Community and Migrant Health. The BPHC review will include the health center's bylaws, articles of incorporation, full audit, and any and all affiliation documents, including substantial contracts that have been executed, or are being proposed, between the health center and any other entity or entities. A completed copy of the checklist attached to PIN 98-24 must accompany each application. Organizational entities that are currently designated as FQHC Look-Alikes and

do not meet the requirements of PIN 97-27 and PIN 98-24 will have

1 year from date of notification or until their next recertification date, whichever is longer, to satisfactorily address non-compliant areas. If compliance is not achieved, FQHC Look-Alike designation is at risk and may be withdrawn.

Guidance is available through the appropriate HRSA Field Office (see attached list). Headquarters staff are available to assist with questions concerning affiliation issues. Questions should be directed to Ms. Tonya Rousmaniere at (301) 594-4329.

HRSA FIELD OFFICES

HRSA NORTHEAST CLUSTER
Boston Field Office

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