

Checklist of Key Provisions For Health Center Bylaws

Most health center organizations adopt corporate Bylaws that contain certain “common” provisions. Some of these provisions are grounded in Section 330 of the Public Health Service Act and its implementing regulations (42 C.F.R. § 51c.304); others reflect policies of the Bureau of Primary Health Care that elaborate specific requirements and set forth additional suggestions (e.g., Policy Information Notice 98-23, *Health Center Program Expectations*). The following checklist reviews several provisions typically found in health center Bylaws, including requirements related to the size, composition, selection, and authorities of the health center Board of Directors and recommendations regarding meetings, officers and committees. Strict compliance with this checklist is not mandatory; it is, however, strongly advised. Further, this checklist is not intended to be exhaustive of all potential Bylaw provisions, nor does it reflect the requirements particular to any State’s Non-Profit Corporation Law. Accordingly, each health center should customize its Bylaws to incorporate specific State law requirements, as well as the health center’s particular circumstances and needs (taking into consideration its specific goals and objectives and sound business practices relevant to its locale).¹

| BOARD SIZE AND COMPOSITION | YES | NO |
|--|------------|-----------|
| 1. Is the size of the Board at least 9 but no more than 25 members? | | |
| 1a. Is the exact number specified? If not, is a reasonably narrow range specified (i.e., 11-15)? | | |
| 2. Is it specified that a majority of the members must be users of the Health Center? | | |
| 3. Are User members appropriately defined in the Bylaws consistent with applicable law, regulations and BPHC policy? | | |
| 3a. Is it specified that, as a group, User Board members must be representative of the demographics of the Health Center’s service area in terms of such factors as income, ethnicity and sex? | | |

¹ For additional information regarding sample Bylaws provisions, please see the NACHC issue brief entitled “Ensuring Compliant Health Center Bylaws and Effectively Addressing Conflicts of Interest.”

| BOARD SIZE AND COMPOSITION | | YES | NO |
|----------------------------|---|-----|----|
| 3b. | Is it specified that User Board members must live in the Health Center's service area? | | |
| 3c. | Are User members defined as individuals who are (or, for planning grantees, will be) served by the Health Center and who utilize the Health Center as their principal source of primary care and who have used the Health Center's services within the last two years? | | |
| 3d. | Is it specified that a legal guardian of a consumer who is a dependent child or adult, or a legal sponsor of an immigrant consumer, may be considered a consumer for purposes of Board representation? | | |
| 4. | Is it specified that no more than one-half of the non-user members of the Board may be individuals who derive more than ten percent (10%) percent of their annual income from the health care industry? [Note: For health centers serving <i>only</i> migratory and seasonal farmworkers, the pertinent rules state that two-thirds (2/3) of the non-users may be such individuals.] | | |
| 5. | Is it specified that the remaining "non-user" members of the Board will be representative of the community in which the Health Center's service area is located and should be selected for their expertise in community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within the community? | | |
| 4a. | Is it specified that non-user Board members should live or work in the Health Center's service area? | | |
| 6. | Is it specified that no member of the Board may be an employee of the center, or a spouse, child, parent, or sibling, by blood or marriage, of such an employee? | | |

| BOARD MEMBER SELECTION, REMOVAL & RELATED TERMS | YES | NO |
|---|-----|----|
| 1. Do the Bylaws specify a process for the regular selection (<u>i.e.</u> , at the annual meeting) of a rotation of Board member seats (<u>i.e.</u> , one-third of the seats each year) by the current Board? | | |
| 2. Do the Bylaws grant a third party (or parties) the ability to select one or more representatives to serve on the governing Board? | | |
| 2a. Is it specified that such third party(ies) may not select a majority of the total number of Health Center Board members or a majority of the non-user members? | | |
| 2b. Is it specified that such third party(ies) may not preclude the selection of Board member candidates not appointed by the third party? | | |
| 3. Is there a provision for, at a minimum, the removal of any Board member for cause? [Note: Typical causes include the repeated failure to attend Board meetings, for conduct detrimental to the interests of the Health Center, for refusing to act in a manner consistent with the Health Center's mission and priorities, or if an individual is suspended or debarred from participation in federal programs.] | | |
| 3a. Is it specified that a third party may not require the removal of any current Board member not appointed by that third party? | | |
| 4. Do the Bylaws provide for the regular rotation of Board members? | | |
| 4a. Do the Bylaws specify the length (<u>e.g.</u> , 2 years) of a Board member's term of office? | | |
| 4b. Do the Bylaws specify the number of consecutive terms a member may serve? Note: BPHC does not state any particular limitation but stresses that there should be reasonable, periodic change in Board leadership. | | |
| 5. Is there a specified process for Board members to resign from the serving on the Board? | | |

| BOARD MEMBER SELECTION, REMOVAL & RELATED TERMS | YES | NO |
|---|------------|-----------|
| 6. Is there a specified process for filling vacancies on the Board? | | |

| AUTHORITIES OF THE BOARD OF DIRECTORS: Do the Bylaws specify that the Board of Directors has ultimate and autonomous authority for the following: | YES | NO |
|--|------------|-----------|
| 1. Hiring, annually evaluating, and dismissing the Executive Director. | | |
| 2. Developing, adopting, and periodically updating the Health Center's personnel policies and procedures, including: | | |
| 2a. selection and dismissal procedures | | |
| 2b. salary and benefit scales | | |
| 2c. employee grievance procedures | | |
| 2d. equal opportunity practices | | |
| 3. Evaluating Health Center activities, including: | | |
| 3a. service utilization patterns | | |
| 3b. productivity | | |
| 3c. patient satisfaction | | |
| 3d. achievement of project objectives | | |
| 3e. developing a process for hearing and resolving patient grievances | | |
| 4. Developing, adopting, and periodically updating Health Center policies for financial management practices, including | | |

| AUTHORITIES OF THE BOARD OF DIRECTORS: Do the Bylaws specify that the Board of Directors has ultimate and autonomous authority for the following: | | YES | NO |
|--|--|------------|-----------|
| 4a. | a system to assure accountability for corporate resources | | |
| 4b. | long-range financial planning | | |
| 4c. | approval of the annual project budget submitted as part of the 330 grant application, and the annual budget procedures; | | |
| 4d. | budget priorities | | |
| 4e. | eligibility for services, including criteria for partial payment schedules | | |
| 5. | Developing, adopting, and periodically updating Health Center health care policies, including | | |
| 5a. | scope and availability of services | | |
| 5b. | location and hours of services | | |
| 5c. | undertaking a quality of care audit | | |
| 6. | Assuring that Health Center activities are conducted in compliance with applicable federal, state, and local laws (Note: Is a corporate compliance program authorized?) | | |
| 7. | Evaluating Health Center achievements at least annually, and using the knowledge gained to revise its mission, goals, objectives, plans, and budgets as may be appropriate and necessary | | |
| 8. | Selecting the independent auditor and officially accepting the annual audit report | | |
| 9. | Evaluating itself periodically for efficiency, effectiveness, and compliance with all Section 330 requirements | | |
| 10. | Is it specified that no third party(ies) (including any corporate member(s)) may be granted approval or veto rights regarding any of the aforementioned authorities? | | |

| AUTHORITIES OF THE BOARD OF DIRECTORS: Do the Bylaws specify that the Board of Directors has ultimate and autonomous authority for the following: | | YES | NO |
|--|--|------------|-----------|
| BOARD MEETINGS AND RELATED PROCEDURAL PROVISIONS | | YES | NO |
| 1. | Do the Bylaws provide for an annual Board meeting (if required under State law)? | | |
| 2. | Is it specified that the Board meets at least monthly (subject to exception for good cause)? Note: Meetings of the Executive Committee do not suffice. | | |
| 3. | Do the Bylaws authorize special meetings of the Board to address urgent matters? | | |
| 4. | Do the Bylaws specify a threshold for establishing a quorum? [Note: it is strongly recommended that a quorum be defined as at least a majority of the total Board members in office to ensure that Board decisions are not made without the presence and involvement of a single consumer Board member.] | | |
| 5. | Do the Bylaws require Board actions to be authorized by an affirmative vote of at least a majority of the members of the Board present at a meeting at which a quorum exists? | | |
| 6. | Do the Bylaws contain any provisions that arguably usurp the ability of the User members of the Board to direct the Board (e.g., by granting non-user members (or members appointed by a third party) “two votes” and other Board members “one vote”)? | | |
| 7. | Is it specified that the Board record, distribute, and store minutes of Board meetings? | | |

| AUTHORITIES OF THE BOARD OF DIRECTORS: Do the Bylaws specify that the Board of Directors has ultimate and autonomous authority for the following: | | YES | NO |
|--|---|------------|-----------|
| 8. | Do the Bylaws provide for the Board to meet in executive session (i.e., to call special meetings not open to the public or staff members, other than the CEO/executive director, to handle sensitive matters such as litigation or the evaluation of personnel, receipt of the annual audit results)? | | |
| 9. | Do the Bylaws specify the conditions and/or limit the ability of individual Board members to act or speak on the behalf of the entire Board, without express Board approval/consent? | | |

| OFFICERS AND COMMITTEES | | YES | NO |
|--------------------------------|---|------------|-----------|
| 1. | Do the Bylaws provide for the selection by the Board of the officers of the corporation (i.e., chair (or president), vice-chair (or vice-president), secretary and treasurer) from the pool of governing Board members? | | |
| 1a. | Is it specified that a Board member appointed/selected by a third party may not serve as the chair/president? | | |
| 2. | Do the Bylaws provide for the regular rotation of Board officers? | | |
| 2a. | Do the Bylaws specify the length (e.g., 2 years) of an officer's term of office? | | |
| 2b. | Do the Bylaws specify the number of consecutive terms an officer may serve? Note: BPHC does not require any particular limit. | | |

| OFFICERS AND COMMITTEES | | YES | NO |
|--------------------------------|---|------------|-----------|
| 3. | Do the Bylaws contain an explanation of the duties/responsibilities of each office consistent with the requirement that the Board not usurp or unnecessarily impinge on the CEO/executive director's authority for the day-to-day management of the Health Center's operations? | | |
| 4. | Is there a provision for the removal of an officer with or without cause? Is it clear that removal from the Board automatically includes removal as an officer? | | |
| 5. | Is it specified that the CEO/executive director is an agent of the governing Board and is directly accountable to the Board? Note: the CEO/executive director may be a non-voting, ex officio Board member. | | |
| 6. | Is there a specified process for officers to resign? | | |
| 7. | Is there a specified process for filling vacancies for officers? | | |
| 8. | Do the Bylaws specify appropriate standing Board committees (i.e., executive, finance, personnel, quality assurance, strategic planning) and their respective duties? | | |
| 8a. | Is it specified that only the Executive Committee is authorized to act for the full governing Board? | | |
| 8b. | Is it specified that the Executive Committee acts for the Health Center only during the interim periods between Board meetings (i.e., in emergencies) and must act consistent with established Board policies and/or direction? | | |
| 8c. | Is it specified that a majority of the Executive Committee may not be comprised of Board members (or non-Board members) selected by a third party(ies)? | | |
| 9. | Do the Bylaws specify terms regarding committee membership, appointment and chairpersons? | | |

| OFFICERS AND COMMITTEES | | YES | NO |
|--------------------------------|---|------------|-----------|
| 9a. | Is it specified that Board members comprise at least a majority of each standing committee? Note: We recommend this approach for at-large health centers that permit at-large individuals to serve as committee members to assure that the Board is appropriately represented. | | |

| OTHER ISSUES | | YES | NO |
|---------------------|---|------------|-----------|
| 1. | Do the Bylaws include a provision addressing conflict of interests or the appearance of conflicts of interest (or requiring the establishment of establishing written corporate policies that prohibit conflicts of interest or the appearance of such conflicts) by employees, consultants, Board members, or those providing services/goods to the Health Center? | | |
| 2. | Do the Bylaws provide a procedural process for adopting amendments? | | |
| 2a. | Do amendments require the approval of a third party? | | |
| 3. | Do the Bylaws (or Articles of Incorporation) address dissolution of the Corporation and distribution of its assets (<i>i.e.</i> , consistent with IRS requirements for charitable organizations)? | | |

This checklist was prepared for the National Association of Community Health Centers, Inc. ("NACHC") by attorneys with the law firm of Feldesman Tucker Leifer Fidell LLP. Further, NACHC would like to acknowledge the Bureau of Primary Health Care ("BPHC"), whose funding helped to make this document possible. Although this document was prepared with the financial assistance of BPHC, please note that such assistance does not indicate an endorsement from BPHC, or any other governmental agency.

While based on principles of Federal law, as well as general corporate law and sound corporate principles, the recommendations provided do not constitute, and are not a substitute for, legal advice. If legal advice or other expert assistance is required, the

services of a competent professional should be sought. In particular, a health center with questions regarding whether its Bylaws satisfy all legal requirements and restrictions should consult with competent legal counsel.