

Issue Brief

ENSURING COMPLIANT HEALTH CENTER BYLAWS AND EFFECTIVELY ADDRESSING CONFLICTS OF INTEREST

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In order to ensure that Federally Qualified Health Centers (“FQHCs” or “health centers”) maintain compliance with the statutory-driven mission that such entities fundamentally represent the interests of the medically underserved communities they serve, health centers are subject to an array of unusually detailed regulatory requirements addressing the structure of corporate governance and management. The organizational documents (*i.e.*, the Articles of Incorporation and Bylaws), and, in particular, the Bylaws, are the principle corporate documents that establish the structure and rules applicable to governance and management. As health centers are frequently required to document affirmatively their compliance with these regulatory requirements in various situations (*i.e.*, upon initially attaining FQHC status, submitting grant applications, obtaining approval of certain affiliations with third parties) through the submission of Section 330-compliant organizational documents (and, in particular, the Bylaws), it is critical that health centers periodically evaluate their Bylaws to ensure such compliance.

This Issue Brief sets forth a detailed summary of the key regulatory requirements affecting health center governance and how health centers can ensure that their organizational documents are fully compliant with FQHC requirements of Section 330 of the Public Health Service Act, 42 U.S.C. §254b, implementing regulations codified at 42 C.F.R. Part 51c and Health Resources and Services Administration, Bureau of Primary Health Care (“BPHC”) policy guidance (in particular, the revised Program Expectations set forth in BPHC Policy Information Notice (“PIN”) 98-23, and affiliation policies set forth in PINs 97-27 and 98-24), including the provision of sample Bylaw language in particular areas. This Issue Brief also emphasizes the particular governance-related concerns that commonly arise in health center affiliations where cross-governance participation is one of the terms of affiliation and (given the Federal requirements that attach to Federal grant funding) addresses conflicts of interest, including those conflicts that typically arise in health center affiliations with other providers.

I. Board Composition, Selection and Authorities

A. Board Composition

The essence of the governance of an FQHC is its community-based (*i.e.*, consumer-controlled) governing Board that autonomously exercises key authorities regarding operational and service-related policies (*e.g.*, health, financial, personnel). To further this fundamental

principle, Section 330, the implementing regulations¹ and BPHC policy guidance² establish the following specific composition requirements for a health center's governing Board that the Bylaws should expressly recognize:

- The Board must be comprised of at least nine (9), but no more than twenty-five (25) members. [The Bylaws should either specify a specific number or a smaller range within this broader range³]
- A majority of the board members must be individuals who are (or, for planning grantees, will be) served by the health center ("consumers") and who, as a group, represent the individuals being or to be served in terms of demographic factors, such as race, ethnicity, sex.⁴ Consumer Board members should utilize the health center as their principal source of primary care and should have used health center services within the last two years. 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.
- The remaining ("non-user") members of the Board should be representative of the community in which the center's catchment area is located and should be selected for their expertise in community affairs, local government, finance and banking,

¹ See 42 C.F.R. §51c.304(b).

² See BPHC PIN 98-12; BPHC PIN 98-23 at p.21.

³ The Program Expectations state that "the number of board members must be specified in the bylaws of the organization. The bylaws may define a specific number or provide a limited range if there are reasons for not maintaining a specific number of members. The size should be related to the complexity of the organization and the diversity of the community served." See BPHC PIN 98-23 at p. 23.

⁴ BPHC policy requires that, for operational health centers, these Board members must be individuals who are served by the health center, not those "who will be" served by the center. See BPHC PIN 98-23 at p.22 (emphasis added). Moreover, if a health center's Section 330 funding exclusively supports service delivery for a special population (e.g. migratory or seasonal farmworkers), the consumer majority must be comprised of individuals from that special population. If a health center's Section 330 funding includes both community health center and special population grants, the consumer representation from the special population should be reasonably proportional to the percentage of health center consumers who are from that special population -- at a minimum, there should be at least one representative of the special population group. See BPHC PIN 98-12, at pg. 5; BPHC PIN 98-23 at p.22. Section 330 offers certain good cause exceptions for health centers that receive grant funding only to serve homeless populations, migrant or seasonal farmworkers, or the residents of public housing. See BPHC PIN 98-12 at pg. 5-6; BPHC PIN 98-23 at p.28.

legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within the community.

- 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. [For health centers *only* serving migratory and seasonal farmworkers, the pertinent rules state that two-thirds (2/3) of the non-users may be such individuals.]
- No member of the Board may be an employee of the center, or a spouse, child, parent, or sibling of such an employee.

In addition, it is also customary for Bylaws to provide that the Executive Director of the corporation shall be an ex-officio, nonvoting member of the governing Board.

B. Board Selection

In order to comply with Section 330 requirements, the governing Board must be responsible for selecting the majority of both its consumer and non-consumer members.⁵ In practice, the selection of new Board members should typically occur at the organization's annual meeting. State corporate law generally grants the Board substantial discretion regarding procedural aspects, such as the nomination process. However, to ensure compliance with Board composition requirements, nominating procedures should be consistent with such requirements and should be expressly addressed in the Bylaws.

BPHC has also imposed additional restrictions regarding the Board member selection and removal processes in situations where a third party is granted representation on the governing Board (or some other level of involvement in health center governance).⁶ A third party (or parties) may not select a majority of the total number of health center Board members or a majority of the non-consumer Board members. In addition, a Board member selected by a third party may not serve as the chairperson of the governing Board and a majority of the Executive Committee may not be comprised of Board members (or non-Board members) selected by a third party(ies). Furthermore, a third party may not limit the selection of certain Board member candidates or, conversely, require the dismissal of any current Board member not appointed by that third party. We generally advise that health center Bylaws contain express language reflecting such restrictions, especially if the health center has entered into an affiliation with a third party that includes the right to appoint representation on the health center's governing Board.

⁵ See BPHC PIN 97-27 at p.13.

⁶ See BPHC PIN 97-27 at p.9-13.

C. Board Authorities and Responsibilities

As noted above, the essence of the governance of an FQHC is its community-based (*i.e.*, consumer-controlled) governing Board which autonomously exercises key authorities in primary decision-making areas, such as operating and service-related policies. In addition to these specific authorities, Section 330, the implementing regulations and BPHC Program Expectations set forth numerous additional responsibilities that the governing Board of a health center is expected to exercise. It is advisable that a health center's Bylaws expressly acknowledge these specific powers and responsibilities of the governing Board, including the following:

- Hiring, annually evaluating, and dismissing the Executive Director of the corporation who is an agent of, and accountable to, the governing Board;
- Developing, adopting, and periodically updating the corporation's personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;
- Developing, adopting, and periodically updating the corporation's policies for financial management practices, including a system to assure accountability for corporate resources and long-range financial planning;
- Developing, adopting, and periodically updating the corporation's health care policies, including scope and availability of services, location and hours of services, and quality of care audit procedures;
- Evaluating the corporation's activities, including service utilization patterns, productivity, patient satisfaction, and achievement of project objectives, and developing a process for hearing and resolving patient grievances;
- Conducting an annual strategic planning process and translating strategic planning goals into operational planning objectives;
- Approving the annual project plan;
- Approving the annual project budget, priorities and eligibility for services (including criteria for partial payment schedules);
- Evaluating the corporation's achievements at least annually, and using the

knowledge gained to revise its mission, goals, objectives, plans, and budgets as may be appropriate and necessary;

- Evaluating itself periodically for efficiency, effectiveness, and compliance with all requirements imposed upon health centers as set forth in Section 330 of the Public Health Service Act, 42 U.S.C. §254b and otherwise assuring that the corporation's activities are conducted in compliance with applicable federal, state, and local laws; and
- Selecting an independent auditor and officially accepting the annual audit report.

BPHC policy explicitly requires the governing Board to maintain all Board authorities and responsibilities required by law or regulation, and prohibits a third party (e.g., an affiliation partner) from securing overriding approval authority, veto authority (through "super-majority" requirement or other means), or "dual majority" authority with respect to such authorities and responsibilities, including the amendment of the health center's corporate documents (i.e., the Articles of Incorporation and Bylaws).⁷ Similar to third party restrictions regarding Board selection, we generally advise that health center Bylaws contain express provisions reflecting these limitations.

II. Other Board Member-Related Provisions

A. Term, Vacancy, Removal and Resignation.

Unless otherwise provided by State law, health centers have discretion to customize Bylaw provisions addressing a Board member's term of office (e.g., two years) on the governing Board, as well as any limits regarding the number of terms (consecutively or otherwise) a Board member may serve. However, BPHC policy expects that elections for Board members and officers will occur at reasonable, regular intervals.⁸

Bylaws should also contain provisions regarding Board member removal and resignation (i.e., to whom a resignation should be submitted and when it becomes effective) as well as filling vacancies on the governing Board as a result of removal or resignation⁹. At a minimum, it is advisable that the Bylaws allow for the removal of any Board member for cause if a majority (or greater percentage) of the other Board members determine that the best interests of the

⁷ See BPHC PIN 97-27 at pp. 12-13.

⁸ See BPHC PIN 98-23 at pp. 23.

⁹ See BPHC PIN 98-23 at p. 26.

corporation would be served by such removal. Specific causes may include the repeated failure to attend Board meetings, for conduct detrimental to the interests of the corporation, for lack of sympathy with the corporation's purposes, or for refusing to render reasonable assistance in carrying out the corporation's purposes. Health centers should also consult (and incorporate into the Bylaws) any applicable State law requirements regarding notification or other procedural requirements for removal, such as allowing a Board member the opportunity to defend himself/herself prior to such a vote for removal.

When a Board seat is vacated before the term has expired due to the removal or resignation of a Board member, or if a new Board seat is created, the Bylaws should specify a process for filling such vacancies (in a manner that ensures compliance with the Board composition requirements) for the duration of the unexpired term of the particular Board seat. To enhance procedural flexibility, it is often advisable for Bylaws to allow replacement Board members to be elected by a majority vote of a quorum of the remaining Board members at any regular or special meeting of the Board.

B. Action by Individual Board Member

In order to promote the collective unity of the health center Board, we suggest that Bylaws contain a provision restricting the power of individual Board members. This type of provision is important because it codifies the expected organizational and functional distinctions between the governing Board and management, and it provides assurance that the corporation is governed by the full, consumer-directed Board and not by individual members of the Board. Sample Bylaw language reflecting this expectation is provided below:

No individual Board member shall act for the governing Board except as may be specifically authorized by the Board. Board members shall refrain from giving personal advice or directives to any staff personnel of the corporation.

C. Board Member Compensation

Health center Board members are expected to serve voluntarily. However, Federal regulations do authorize health centers to reimburse volunteer Board members for reasonable expenses actually incurred in participating in Board activities (e.g., attending Board meetings).¹⁰ In addition, the regulations allow for the reimbursement of lost wages by reason of participation in Board activities for low income Board members (i.e., if the Board member is from a family with an annual family income below \$10,000 or if the Board member is a single person with an annual income below \$7000). It is advisable that the Bylaws address the issue of Board member compensation in a manner which is consistent with these principals and limitations.

¹⁰ See 42 C.F.R. §51c.107.

III. Board Meetings and Related Procedural Provisions

A. Annual, Regular and Special Meetings

The Section 330 statute, as well as the implementing regulations, require that health center governing Boards meet on a regular basis and at least once a month.¹¹ In addition, State law typically requires health center corporations to hold an annual meeting for the election of new Board members and/or Board officers and the transaction of such other business as may properly come before the Board. Health center Bylaws should codify these meeting requirements, including any notification requirements established by State law or by the Board in its discretion.¹²

The Bylaws should also authorize special meetings of the Board to address more urgent situations that may require the attention and action of the full Board of Directors. Health center Bylaws frequently state which person(s) may call such a special meeting and how (*e.g.*, by the chairperson or vice-chairperson or by the chairperson upon written request signed by at least three (3) Board members). In addition, State law frequently establishes affirmative notice requirements for special meetings (*e.g.*, notice must be given which identifies the purpose(s) for which the special meeting has been called). Accordingly, it is important to consult such State law provisions during the Bylaw drafting process.

B. Quorum/Voting

State law often establishes minimum (or default) requirements regarding the number of Board members that must be present to constitute a quorum, as well as how many Board members must cast an affirmative vote to authorize an action. Typically, the attendance of at least a majority of the Board members at a meeting of the Board is required to constitute a quorum under State law. However, some States allow for lower thresholds (*e.g.*, one-third of the Board members). For health centers, 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.

Similar to defining a quorum, State law frequently requires Board actions to be authorized

¹¹ See 42 U.S.C. §254b(j)(3)(H).

¹² The Board should consider whether the Bylaws should also allow for the waiver of any required notice for Board members who either submit a signed waiver of notice (either before or after the meeting in question), or who attend the meeting without protesting prior thereto or at its commencement the lack of notice.

by an affirmative vote of at least a majority of the members of the Board present at a meeting at which a quorum exists. In addition, State law may authorize the establishment of a greater threshold (i.e., two-thirds of the members of the Board) or may require higher thresholds for certain decisions of the Board (e.g., merger, dissolution, removal of a Board member). While a health center typically is granted substantial discretion to establish voting procedures, a health center should ensure that its Bylaws create a voting procedure(s) that meets State law requirements and that does not usurp the ability of the consumer 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”).

In addition, a related (and optional) Bylaw provision frequently authorized under State law is one which grants the Board the ability to take any action either required or permitted to be taken at any Board meeting, without having such a meeting, if: (i) the text of the action agreed upon is sent to all Board members then in office; and (ii) all Board members then in office consent in writing to such action. We have provided sample language, below:

Any action required or permitted to be taken at any meeting of the governing Board may be taken without a meeting if the text of the action or resolution agreed upon is sent to all Board members then in office, provided that all Board members then in office consent in writing to such action or resolution. Such consent in writing shall have the same force and effect as a vote of the governing Board at a meeting thereof, and may be described as such in any document executed by the corporation.

C. Additional Related Provisions

The Program Expectations state that health center Bylaws should also address, among other things, the “recording, distribution, and storage of minutes.”¹³ Accordingly, it is advisable to expressly require that minutes of Board and/or committee meetings be recorded and stored (i.e., at the office of the corporation).

Health center Bylaws should also authorize the Board to go into executive session (i.e., to call special meetings not open to the public or staff members, other than the Executive Director) to address particularly sensitive matters, e.g., litigation.¹⁴ We have provided the following sample language authorizing executive session:

¹³ See BPHC PIN 98-23 at p. 24.

¹⁴ The Program Expectations state that bylaws should address "executive session". See BPHC PIN 98-23 at p. 24.

The Board may conduct all or any part of a meeting in executive session for such purpose as it deems necessary including, but not limited to, discussion of litigation (actual or threatened), evaluation of personnel or discussion of personnel issues, or receipt of the results of the annual audit. The chairperson may invite the Executive Director and such other persons as he or she deems appropriate to attend an executive session. However, members of the public and any staff members shall be excluded from executive sessions except when invited to give testimony or advice, after which they will be excused.

Finally, health centers should consider whether it is advisable, for practical purposes, to add a provision in the Bylaws authorizing one or more Board members to conduct a meeting via conference call or other electronic means. State law frequently allows for such a practice but usually requires that all participating Board members must be able to hear and converse with all other Board members.

IV. Officers/Committees

A. Officer Selection

Health center Bylaws typically provide for the selection of four primary officers of the corporation (i.e., chair (or president), vice-chair (or vice-president), secretary and treasurer) from the pool of governing Board members. As mentioned above, it should be noted that, under current BPHC policy, a Board member appointed/selected by a third party may not serve as the chairperson of the governing Board.¹⁵ Analogous to the election of the Board, itself, officers should be elected by a majority (or other percentage) of the governing Board at the annual meeting and the Bylaws should contain provisions regarding term (and re-election), resignation, removal and filling officer vacancies.

B. Powers and Duties of Officers

Bylaws should specify the responsibilities of officers consistent with the Program Expectations requirement that the Board not usurp or unnecessarily impinge on the Executive Director's authority for the day-to-day management of the health center's operations.¹⁶ As an example, we have provided the following sample provisions regarding typical officer duties:

Chairperson. The Chairperson of the governing Board shall: (i) preside at all meetings of the Board and all meetings of the Executive Committee at which he or she is present;

¹⁵ See BPHC PIN 97-27 at pp. 12-13.

¹⁶ See BPHC PIN 98-23 at p. 28-29.

(ii) appoint committee chairpersons; (iii) represent the Board at public functions; and (iv) perform such other duties as may be required of him or her by the governing Board. The Chairperson may elect to be an ex officio member of all standing and special committees of the Board. The Chairperson, or another officer designated by the Chairperson, may sign any document or instrument requiring the signature of an officer of the corporation that is necessary and incident to the purposes of the corporation, except where the signing of such document or instrument is expressly delegated by the Board to another officer or agent of the corporation or as otherwise required by law.

Vice-Chairperson. The Vice-Chairperson of the Board shall perform the duties of the Chairperson during the absence of the Chairperson and such other duties as the Board of Directors shall direct.

Secretary. The Secretary shall: (i) keep and oversee an accurate record of the proceedings of all meetings of the Board; (ii) present such record to the Board for approval and adoption; (iii) give or cause to be given all notices in accordance with these Bylaws or as required by law; (iv) be responsible for such other actions of the corporation as the Board shall direct; and (v) in general, perform all duties customary of the office. The Secretary shall be the sole person permitted to seal and certify official Board approval of matters before the Board.

Treasurer. The Treasurer shall: (i) oversee the fiscal affairs of the corporation; (ii) report on the financial condition of the corporation to the governing Board at its regular meetings, the annual meeting and at such other times as the Board may require; and (iii) function as chairperson of the Finance Committee. The Treasurer shall ensure that all funds of the corporation shall be deposited to the credit of the corporation in such banks and depositories and under such terms and conditions as may be determined by the Board.

C. Executive Director

In order to conform to the Program Expectations¹⁷, it is advisable that health centers specify the general duties and authorities of the Executive Director (i.e., chief executive officer) as well as the Executive Director's fundamental relationship with the Board (i.e., that the

¹⁷ The Program Expectations states that "The Board must approve the selection and dismissal of the chief executive... of the health center...the Board must evaluate the performance of the chief executive and hold him or her accountable for the performance of the health center." BPHC PIN 98-23 at p.25.

governing Board shall select, hire, annually evaluate the performance of, and terminate the Executive Director and that the Executive Director is an agent of the governing Board and shall be accountable to the Board). With respect to the Executive Director's duties and authorities, we have provided the following sample language as an example:

The Executive Director shall be the chief executive officer of the corporation and, subject to the control of the Board, shall have responsibility for the general care, supervision, and direction of its affairs in furtherance of the policies and programs established by the Board. The Executive Director shall have the authority to employ, supervise, and discharge all staff personnel in accordance with the policies established by the Board. The Executive Director may negotiate and execute contracts for the corporation, and shall report such action promptly to the Board, except that the Board may designate specific proposed contracts, or a threshold contract price above which the contract is, to be signed by one or more officers, or to be submitted to the Board for approval prior to execution. The Executive Director shall be an ex officio, non-voting member of the Board and an officer of the corporation. The Executive Director or his/her designee shall attend all meetings of the Board, unless the Board requests the Executive Director's absence during evaluation of the Executive Director's performance.

D. Standing Committees

A standing committee is a permanent Board committee that typically is comprised of at least a majority of Board members and which is charged with oversight (on behalf of the full Board) of a specific area of the corporation's policies (i.e., personnel, finance). Program Expectations state that health center Bylaws should provide for the establishment of particular committees (as noted below) as well as terms regarding committee membership (i.e., appointment, chairpersons), term, removal, resignation and filling committee vacancies.¹⁸ In addition, health centers may want to add provisions regarding committee meetings and related procedures (i.e., quorum, voting).

The Program Expectations state that only the Executive Committee should be authorized to act for the governing Board.¹⁹ Accordingly, most committees of the Board should serve exclusively in an advisory capacity (i.e., to make regular reports/recommendations or such other reports as may be requested by the governing Board or Chairperson). It is advisable that the recommendations of all committees should be made subject to examination, review, and approval by the full Board.

¹⁸ See BPHC PIN 98-23 at p. 24, 26.

¹⁹ See BPHC PIN 98-23 at p. 26.

Common standing committees include executive, finance, personnel/human resources, quality assurance and strategic planning and development. Other, less common, committees may include Bylaws, nominating and fundraising.

As noted above, only the Executive Committee should be authorized to act for the Board. Typically, the Executive Committee is exclusively comprised of the officers of the corporation (with the Executive Director serving as an ex-officio, nonvoting member). In addition, to maintain and protect the fundamental objective of ensuring that the health center is governed by a community-directed Board, health center Bylaws (and/or policies) should ensure that the Executive Committee acts for the corporation only during the interim periods between Board meetings (i.e., in emergencies) and acts consistent with established Board policies and/or direction. In this regard, health centers should consider whether it is advisable to require that actions taken by the Executive Committee be ratified at the next meeting of the full Board. In addition, as noted previously, a majority of the Executive Committee may not be comprised of Board members (or non-Board members) selected or appointed by a third party(ies).²⁰

V. Conflicts of Interest, Amendment and Dissolution

A. Conflicts of Interest

The Program Expectations declare that "[T]he organization's Bylaws or written corporate Board-approved policy must include provisions that prohibit conflict of interest or the appearance of conflict of interest by Board members, employees, consultants and those who furnish goods or services to the health center."²¹ (Emphasis added). Such conflicts of interest policies have become increasingly important in light of the pressure for health centers to affiliate with local providers and organizations and to become leaders in their respective communities. In particular, because such affiliations often include cross-Board representation between the affiliating parties, it is especially important for health centers to draft a conflicts of interest policy that takes into account the representation of third parties (i.e., vendors, other providers) on the health center Board. Moreover, health centers are subject to strict procurement standards that require health centers to take affirmative action to minimize any potential conflicts of interest in the procurement of goods or services using Federal funds²², an issue that may arise in connection with cross-Board representation.

²⁰ See BPHC PIN 97-27 at p.13.

²¹ See BPHC PIN 98-23 at pg.23.

²² See 45 C.F.R. §74.42.

Accordingly, it is important that health centers adopt, either in the Bylaws or as a written corporate policy that is distributed to Board members, employees and other relevant individuals, mechanisms and procedures to manage actual or potential conflicts of interest. Such “conflict management” should minimally require affirmative disclosures of actual or potential conflicts and the recusal of Board members (or other persons) with a conflict from voting on (or otherwise influencing) the matter. In addition, such a policy or Bylaw provision should emphasize that each Board member has a fiduciary duty to the corporation and must give it his/her loyalty, as well as an obligation to maintain the confidentiality of the health center’s proprietary information presented to such Board member.

B. Amendment

The Bylaws should specify the procedural requirements for adopting amendments to the Bylaws (and Articles of Incorporation, as appropriate). Specifically, consistent with any applicable State law requirements, this should include stating when amendments can take place (*i.e.*, regular or special meeting), any notification requirements (*e.g.*, must be submitted to the Board for review at least thirty days prior to the vote on such amendment) and what voting threshold is required to adopt such amendment(s) (*e.g.*, majority, two-thirds). We generally advise that amendments require the affirmative vote of at least a majority of the total Board members to ensure that fundamental changes to the health center’s organizational documents (and the rules applicable to governance and management contained therein) cannot be implemented without the involvement of at least a single consumer Board member.

C. Dissolution and Related Limitations Arising From Status as Charitable Organizations

Consistent with the requirement that health centers qualify as charitable organizations under Section 501(c)(3) of the Internal Revenue Code, the Program Expectations suggest that the health center Bylaws contain a provision with respect to dissolution.²³ In particular, consistent with Section 501(c)(3) restrictions, if a health center’s Articles of Incorporation do not otherwise address this issue, the Bylaws should provide that, upon the dissolution of the corporation, no Board member, officer, or employee of, or any other person connected with, the corporation, or any other private individual, shall be entitled to share in the distribution of any of the corporate assets. We have provided the following sample language addressing dissolution:

No Board member, officer or employee shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the assets of the

²³ See BPHC PIN 98-23 at p.24.

corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction upon the application of the Board, exclusively to charitable, religious, scientific, literary or educational organizations (i) which then qualify for exemption from Federal income taxation under the provisions of Code Section 501(c)(3) and the Treasury Regulations thereunder (as they now exist or as they may hereafter be amended) and (ii) contributions to which are deductible under Code Section 170(c)(2) and the Treasury Regulations thereunder (as they now exist or as they hereafter may be amended).

In addition, it may be advisable for the health center's Bylaws to also contain express prohibitions against any Board member, officer, employee or agent from: (i) taking any action which is not permitted to be taken by a charitable, tax-exempt organization under Section 501(c)(3); or (ii) receiving any of the net earnings or pecuniary profit from the operations of the corporation (*i.e.*, no private inurement).²⁴ Health centers should also consider whether it is advisable to codify in the Bylaws the applicable restrictions for charitable, tax-exempt organizations regarding the health center's involvement in political activities.

IV. Conclusion

As noted at the outset and described in the body of this Issue Brief herein, health centers are subject to a vast array of statutory, regulatory and policy-related requirements that define the governance and management framework within which the health center operates. The cornerstone of this framework is the health center's governance by a community-based governing Board that exercises key authorities and decisions in an autonomous, independent manner. To achieve (and document) full compliance with this fundamental principle of health center governance, it is strongly advisable that each health center review and amend, as appropriate, its organizational documents to accurately incorporate all such governance and management requirements.

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²⁴ This prohibition should not prevent either the payment to any such person of reasonable compensation for services rendered to, or for the benefit of, the corporation or the reimbursement of expenses incurred by any such person on behalf of the corporation, in connection with effectuating any of the purposes of the corporation.