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## Jacki's Phone is Ringing...

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## AGENDA

- Immigration Enforcement
- Hyde Amendment  
Restrictions
- Medical Marijuana
- Syringe Services Programs
- Assisted Suicide



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## IMMIGRATION ENFORCEMENT

- Recently there has been a sharp rise in federal activity involving immigration, including:
  - A significant expansion of U.S. Immigration and Customs Enforcement (ICE) enforcement actions
  - Issuance of three Executive Orders (“EOs”):
    - *Border Security and Immigration Enforcement Improvements* orders the construction of a wall on the U.S. southern border
    - *Enhancing Public Safety in the Interior of the United States* provides for potential sanctions on “sanctuary jurisdictions,” adds 10,000 immigration officers, gives state and local agencies the authority to perform the functions of immigration officers and expands whom the government considers a priority for deportation
      - NOTE: Potential sanctions on “sanctuary jurisdictions,” if applied at all, would only apply to **public-entity** health center grantees and would not directly affect non-public entity health centers
    - *Protecting the Nation from Foreign Terrorist Entry into the US* suspends entry in the U.S. from seven countries for 90 days – ON HOLD, LIKELY TO BE REWRITTEN
    - The EOs do not directly impact immigrants’ ability to receive care at health centers; however, news coverage has created a great deal of fear and apprehension among immigrant communities that may negatively impact immigrants’ willingness to seek services

## IMMIGRATION ENFORCEMENT

- Health centers are not required to verify the citizenship or immigration status of patients and can treat any person regardless of their immigration status
- According to a 2011 Department of Homeland Security memo, immigration enforcement actions are generally not to occur in certain “**sensitive locations**” including medical treatment and health care facilities, such as doctors’ offices, accredited health clinics, and emergent or urgent care facilities
  - As of February 27, 2017, the “sensitive locations” policy remains in effect, but how it is implemented is determined by the Administration and it can be changed at any time without congressional approval or a public notice-and-comment process
- With a valid court order, warrant, subpoena, or summons, any governmental entity, including ICE, can require a health center to provide protected health information
  - If a health center maintains information regarding the immigration status of patients along with other PHI and receives a request for PHI that complies with HIPAA, the health center should supply its files as maintained in the normal course of business
  - In responding to law enforcement requests for PHI, health centers should comply with HIPAA’s privacy rules as well as any state laws related to confidentiality and privacy
    - For a valid court order signed by a judge, a health center should disclose only the information expressly described and requested
    - If a subpoena is issued by someone other than a judge (*e.g.*, a court clerk or attorney) a health center may disclose PHI only if there is evidence of reasonable efforts to notify the person who is the subject of the information so that the person has an opportunity to object or seek a protect order

## IMMIGRATION ENFORCEMENT

- Health centers are permitted to educate patients about their rights; HOWEVER, we recommend health centers not use Section 330 grant funds for these purposes, unless such activities have been included in the health center's HRSA-approved scope of project (e.g., a medical-legal partnership)
  - Permissible activities can include posting information about rights, distributing information about rights, and holding educational sessions about rights
  - The following "Know Your Rights" documents may be helpful in educating patients:
    - [Wallet card from NILC](#) - available in English, Spanish, simplified Chinese, Arabic, and Korean
    - [Wallet Cards from Asian Americans Advancing Justice](#) - available in Arabic, Bengali, Burmese, Chinese, Gujarati, Hindi, Karen, Khmer, Korean, Nepali, Punjabi, Urdu, and Vietnamese
    - [Three page pdf handout in English](#) from NILC (also available in Spanish, simplified Chinese, Arabic, and Korean)
    - [18-page pamphlet in English](#) and [Spanish](#) on rights when interacting with law enforcement, from Catholic Legal Immigration Network, Inc. (CLINIC)
    - [PowerPoint in English and Spanish](#) from Catholic Legal Immigration Network, Inc. (CLINIC)
    - [One-pager on "Know Your Rights" in various circumstances](#) (e.g., if stopped in your car, if police or immigration officials come to your home) from the ACLU

## IMMIGRATION ENFORCEMENT

- **Reliable sources of legal information on immigration issues:**
  - **National resources**
    - The National Immigration Law Center (NILC) <https://www.nilc.org/> continues to update resources on questions such as:
      - Is it safe for eligible immigrants to apply for health insurance?
      - What protections are currently in place for immigrants who seek care at a hospital or other health care provider?
      - If patients ask how they can prepare themselves for potential enforcement actions, what resources are available?
    - Immigration Legal Resource Center (ILRC) <https://www.ilrc.org/>
    - The American Civil Liberties Union (ACLU) <https://www.aclu.org/issues/immigrants-rights>
  - **State-specific information about immigration:**
    - The American Immigrant Council has state fact sheets highlighting key data about immigrant populations in each state: <https://www.americanimmigrationcouncil.org/>

## COMPLIANCE RISK AREA: HYDE AMENDMENT RESTRICTIONS

- **Hyde Amendment**
  - Statutory provision in annual Department of Health and Human Services (“HHS”) Appropriations Acts since 1976
  - Applies to all health centers that receive funding under Section 330 of the Public Health Service Act
  - Does not apply to Look-Alikes by virtue of Section 330 funding, **however**, the Hyde Amendment may nonetheless apply to Look-Alikes through funding from Medicaid, Medicare, and Title X, as applicable
- **Consolidated Appropriations Act, 2017:**
  - “SEC. 506. (a) “None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.”
  - Sec. 507. (a) “The limitations established in the preceding section shall not apply to an abortion—
    - (1) if the pregnancy is the result of an act of rape or incest; or
    - (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.”

## COMPLIANCE RISK AREA: HYDE AMENDMENT RESTRICTIONS

- In 1978, HHS promulgated regulations to implement the Hyde Amendment
  - Generally applicable to grant programs and projects supported in whole or in part by federal funds (whether by grant or by contract), which are appropriated to HHS and administered by the Public Health Service
  - Prohibits the use of federal funds “for the performance of an abortion in programs or projects to which this subpart applies” with certain exceptions, consistent with those found in the Hyde Amendment (*i.e.*, the life of the mother is endangered by carrying the fetus to term or in the case of rape or incest) (42 C.F.R. § 50.303)
- HHS Grants Policy Statement
  - “HHS funds may not be spent for an abortion.” (See HHS Grants Policy Statement – January 2007, Section II-22)
- HRSA Notice of Award
  - “Pursuant to existing law, and consistent with Executive Order 13535 (75 FR 15599), health centers are prohibited from using Federal funds to provide abortion services (except in cases of rape or incest, or when the life of the woman would be endangered).”
- NOTE: in addition to the federal requirements, most states have enacted laws specific to the provision of certain reproductive health services – health centers MUST consult state law as well to determine the extent of obligations and restrictions

## COMPLIANCE RISK AREA: HYDE AMENDMENT RESTRICTIONS

- Section 330 requires that health centers provide, either directly or through an established arrangement, a broad range of primary health care services
- Required primary health services include:
  - Services related to reproductive health, including “health services related to...obstetrics, or gynecology...” (42 U.S.C. § 254b(b)(1)(A)(i)(I))
  - “Preventive health services, including...prenatal and perinatal services...appropriate cancer screening ...voluntary family planning services” (42 U.S.C. § 254b(b)(1)(A)(i)(III))
  - “Referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (included substance abuse and mental health services).” (42 U.S.C. § 254b(b)(1)(A)(ii))
- “Voluntary family planning services” are defined in the Health Resources and Services Administration (“HRSA”) Service Descriptor Guide as the following:
  - “Voluntary family planning services are *appropriate counseling on available reproductive options* consistent with Federal, state, local laws and regulations. These services may include management/treatment and procedures for a patient’s chosen method (e.g., vasectomy, subdermal contraceptive placement, IUD placement, tubal ligation).” (The Service Descriptor Guide at p. 10)
  - Neither “appropriate counseling” nor “available reproductive options” is defined in Section 330, the implementing regulations, or HRSA guidance

## COMPLIANCE RISK AREA: HYDE AMENDMENT RESTRICTIONS

- Medicaid
  - The Medicaid program is subject to the Hyde Amendment
  - Medicaid regulations do not include an exception for victims of rape or incest
    - HOWEVER, 1998 State Medicaid Director Letter (“SMDL”) recognized that abortions permitted under the Hyde Amendment (i.e., abortions when the life of the woman is endangered as well as pregnancies resulting from acts of rape or incest) are considered “medically necessary services” and eligible for FFP when provided by states. (HHS, HCFA, SMDL, Feb. 12, 1998)
  - The Hyde Amendment does not prohibit a state from paying for an abortion with state-only funds (but no State Medicaid matching funds can be used); however, many states have enacted their own laws prohibiting the use of State funds to pay for abortions and abortion-related activities
- Medicare
  - Abortions are not covered procedures, except “if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury or physical illness, including a life-endangering physical condition by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.”

## COMPLIANCE RISK AREA: HYDE AMENDMENT RESTRICTIONS

- Title X Family Planning Programs
  - Health centers that receive grants under Title X, either directly from the Office of Population Affairs (“OPA”) or as sub-recipients to another entity, are subject to Title X-related requirements, in addition to the Hyde Amendment restrictions
  - Under 42 C.F.R. § 59.5, Title X Family Planning Programs must:
    - Offer pregnant women the opportunity to be provided information and counseling regarding prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination
    - Provide neutral, factual information and non-directive counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates that she does not wish to receive such information and counseling
    - Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning
- AmeriCorps
  - AmeriCorps Members are prohibited from providing abortion services or referrals for receipt of such services, which include any activity that:
    - Directly or indirectly counsels or provides information about the availability of abortion services, and/or
    - Involves providing services to a patient seeking or considering abortion services, including but not limited to—
      - Escorting, in-processing or preparing patients or potential patients for a procedure,
      - Assisting in or attending any part of the procedure, or
      - Providing any post-procedure support, processing or assistance.

## COMPLIANCE RISK AREA: MEDICAL MARIJUANA

- Under the **Federal Controlled Substances Act (“CSA”)**, marijuana is classified as a Schedule I drug
  - 21 U.S.C. § 812, 21 C.F.R. § 1308.11(d) “Schedule I. –
    - (A) the drug or other substance has a high potential for abuse.
    - (B) the drug or other substance has no currently accepted medical use in treatment in the United States.
    - (C) There is a lack of accepted safety for use of the drug or substance under medical supervision.”
  - The possession, manufacturing or distribution of marijuana, even for medical purposes, is illegal as a matter of Federal law.
- **Drug-Free Workplace Act of 1988**, 41 U.S.C. § 702
  - Federal grant recipients are required to publish “a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violations of such prohibition...”

## COMPLIANCE RISK AREA: MEDICAL MARIJUANA

- Health centers must carefully consider the risks of any conduct that may be construed as violating Federal law, even in states that have legalized or decriminalized marijuana:
  - Federal law prohibits a health center from prescribing or dispensing medical marijuana
  - Verifying a patient's eligibility for medical marijuana may violate the CSA: it is an unsettled area of law as to whether completing a written certification constitutes a prescription and, therefore, risks prosecution for aiding and abetting distribution
  - While the DOJ has offered some guidance about its enforcement priorities, it has made clear that nothing precludes the Federal government from prosecuting in circumstances deemed to be of particular Federal interest
- Participating in state medical marijuana programs may result in severe consequences for a provider and/or the health center:
  - Violations of the CSA may result in debarment from participating in Federal health programs
  - The DOJ may refuse to defend a claim under FTCA if the claim is based on a patient obtaining medical marijuana pursuant to a health center provider's certification or prescription
  - Violations of the Drug-Free Workplace Act may result in termination of Section 330 grant funding and a ban on future Federal contracts for up to five years
  - Additional legal exposure may include termination of CMS agreements (and the ability to bill Medicare and Medicaid), False Claims Act violations; or withdrawal of the health center's Federal tax-exempt status

## COMPLIANCE RISK AREA: SYRINGE SERVICES PROGRAMS

### Consolidated Appropriations Act, 2017:

- "SEC. 520. Notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to **purchase sterile needles or syringes for the hypodermic injection of any illegal drug**: Provided, That such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant State or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the State or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with State and local law."

## COMPLIANCE RISK AREA: HHS IMPLEMENTATION GUIDANCE

- In March 2016, HHS released guidance for the use of Federal funds to support syringe service programs (“SSPs”).
- Eligible state, local, tribal, and territorial health departments must consult with the CDC and provide evidence that their jurisdiction is:
  1. experiencing, or
  2. at risk for significant increases in hepatitis infections or an HIV outbreak due to injection drug use.
- In April 2016, HRSA developed specific SSP guidance for its grantees regarding which specific programs may apply and the application process.

## COMPLIANCE RISK AREA: ASSISTED SUICIDE

- **Federal Assisted Suicide Funding Restriction Act of 1997** (42 U.S.C. § 14401 *et seq.*):
  - 42 U.S.C. § 14402 - “no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used ---
    - (a)(1) “to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;...”
    - (a)(2) “to pay (directly, through payment of Federal financial participation or other matching payment, or otherwise) for such an item or service, including payment of expenses relating to such an item or service; or...”
    - (a)(3) “to pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service of any expenses relating to such an item or service.”
- **Public Health Service Act**, 42 U.S.C. § 2380:
  - “Appropriations for carrying out the purposes of this chapter shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [ 42 U.S.C. 14401 *et seq.*]”
- Even if health centers do not engage in assisted suicide activities, staff should receive training regarding:
  - The prohibition on participating in such activities within the Section 330-supported health center program
  - Limitations on participating in such activities outside of the Section 330-supported health center project, such as the prohibition on furnishing health care items or services for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide activities

## QUESTIONS?

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