



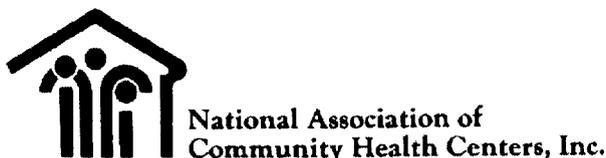
Carla Devoe <CDEVOE@NACHC.COM> on 04/08/2004 04:48:23 PM

To: politicalcommitteestatus@fec.gov
cc:

Subject: Political Committee Comments



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April 9, 2004

Mai R. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Request for Public Comments on: Political Committee Status; Proposed Rule, 11 CFR Parts 100, 102, 104, 106, and 114 (March 11, 2004); Notice 2004-6

Dear Ms. Dinh:

The National Association of Community Health Centers, Inc. (“NACHC”) is responding to the above-cited Federal Register solicitation for comments regarding the Federal Election Commission’s (the “Commission”) proposal to amend the definition of “political committee” applicable to nonconnected committees and its current regulations regarding when disbursements for certain election activity should be treated as “expenditures.” NACHC is the national membership organization for Federally-supported and Federally-recognized health centers (hereinafter interchangeably referred to as “health centers” or “FQHCs”) throughout the country, and is an Internal Revenue Code Section 501(c)(3) organization.

I. BACKGROUND

There are, at present, more than 1000 FQHCs nationwide. Most of these FQHCs receive Federal grants under Section 330 of the Public Health Service Act (42 U.S.C. §254b) from the Bureau of Primary Health Care (“BPHC”), within the Health Resources and Services Administration of the Department of Health and Human Services (“HHS”). Under this authority, health centers fall into three general categories: (1) those centers serving medically underserved (invariably poor communities), (2) those serving homeless populations within a particular community or geographic area, and (3) those serving migrant or seasonal farm worker populations within similar community or geographic areas. Except for a limited number of public health centers (*i.e.*, health centers operated by local governmental units such as health departments), each health center is a charitable, non-profit, tax-exempt IRC Section 501(c)(3) corporation formed under the laws of the particular State in which it operates. Although there are some slight differences in the grant requirements for each of these three program types, for all intents and purposes, the ways in which these health centers operate are identical.

To qualify as a Section 330 grantee, a health center must be located in a designated medically underserved area or serve a medically underserved population. In addition, a health center's Board of Directors must be composed of at least fifty-one percent (51%) users of the health center, and the health center must make services available to all persons in its catchment area, regardless of their ability to pay.

BPHC's grants are intended to provide funds to assist health centers in serving uninsured, indigent patients, as well as to maintain the health center's infrastructure. Patients from eligible communities¹ who are not indigent and able to pay or who have insurance, whether public or private, are expected to pay for the services rendered. Approximately thirty-six percent (36%) of the patients served by health centers are Medicaid recipients and approximately nine percent (9%) are Medicare beneficiaries.

II. COMMENTS

A. **General Comment**

NACHC believes that issue advocacy, communication to members regarding legislative and public policy matters, is fundamental to the success of our organization and our members. As NACHC and our member- health centers continue to fight for access to health care for our nation's most vulnerable populations-- the 43 million uninsured-- we rely on our ability to make our issues known and promote the cause of the uninsured and underinsured. This proposed rule threatens our ability to advocate on behalf of our patients.

We believe that this proposed rule reaches well beyond the intent of the Bipartisan Campaign Reform Act of 2002 ("BCRA") and Supreme Court decision in McConnell v. FEC, 540 U.S. ___ at ___ [slip op. at 80], which upholds BCRA. We urge the Commission to withdraw this proposed rule. The provisions set forth in the proposed rule are extremely vague and could effectively bar public education on health care issues by organizations like NACHC and our members. The lack of organization of the rule demonstrates that the Commission does not have a good understanding as to the real purpose of the rule or, perhaps more alarmingly, the potential impact of the rule. Further, providing meaningful comment on the proposed rule is virtually impossible because there is no actual proposed rule to comment on--only a series of convoluted questions.

B. **Specific Comments**

(1) **Exempt 501(c)(3) organizations**

If the Commission promulgates a final rule, it should state that certain tax-exempt organizations, in particular those organized under Section 501(c)(3) of the Internal Revenue Code, will not meet any of the "major purpose tests" because of the nature of their tax-exempt status, and should exempt them from the definition of "political committee." A wholesale inclusion of

¹ We use the term "community" in this context to refer to either a geographic area or the specific population toward which the program is aimed.

501(c)(3) organizations into the realm of regulated federal political committees defies the purported purpose of the rule, which arguably is to prevent undue corporate influence. Instead, including 501(c)(3) organizations into the definition of political committee serves not to prevent such corporate influence, but instead to put a stranglehold on everyday citizens trying to take part in the issues that concern their own communities, such as, in our case, health care for the medically underserved.

The Commission has acknowledged the unique role of 501(c)s in the NPRM. The proposed rule does not expressly include 501(c) organizations. In fact, in the comments to the rule, the Commission states specifically that it has not included 501(c)(3) and (c)(4) organizations because, according to the Commission, these organizations could lose their tax-exempt status if their primary purpose were to influence elections. 69 Federal Register 11749. This statement is absolutely correct--in order to maintain their tax-exempt status with the Internal Revenue Service, 501(c)(3) and c(4) organizations are already required to comply with significant restrictions on their ability to engage in election-related activity.

Unfortunately, the rule stops there. The NPRM does not state affirmatively that 501(c)(3) and (c)(4) organizations are exempt from the rule. Instead, the comments pose a number of alternatives under which the rule could apply to those organizations. In a series of questions, the Commission discusses ways in which the rule could apply. These proposals would put considerable restraints on the issue advocacy in which NACHC and our member-health centers participate. The restrictions set forth in the NPRM should create protection from the antics of unregulated partisan organizations and campaigns, not impose additional restrictions on 501(c)(3) organizations that are already regulated in their activities by the IRS.

(2) Permissible Voter Registration Activities

In addition to creating issues of overregulation for groups like NACHC and our members, adoption of this rule also would create a direct conflict with obligations imposed on many health centers by other federal regulations and policy. By way of example, under the National Voter Registration Act of 1993, health centers with State, city, or county employees as outstationed Medicaid eligibility workers are considered public assistance offices and must provide nonpartisan voter registration services.² Health centers that use non-governmental employees as outstationed Medicaid eligibility workers (e.g., clinic staff, volunteers) may provide nonpartisan voter registration services in accordance with applicable rules for Section 501(c)(3) organizations.³ Clearly, the proposed rule would conflict with current federal regulations under which health centers are required to operate.

III. CONCLUSION

It is clear that the Commission should withdraw this proposed rule. We urge it to do so. The rhetorical language of the rule itself is evidence enough that the issues are too large, too complex and

² See p.1, Bureau of Primary Health Care Program Assistance Letter 96-17, "Federally Qualified Health Centers Participation in Implementation of the National Voter Registration Act."

³ Ibid.

there are too many unanswered questions and unknown variables to make a sound rule at this time. The Commission should, not issue rules without further guidance from Congress. Major changes such as those contemplated deserve full debate and action by elected representatives. At a minimum, the Commission ought to issue a second NPRM before taking any final action, giving the public the opportunity to comment on the choices that the Commission makes, and its reasons, from the many alternatives proposed in the first NPRM. In any event, the Commission ought to exempt from regulation 501(c) organizations that are already appropriately regulated in their activity.

Thank you for the opportunity to comment on the Commission's proposed rule on political committee status. We appreciate your consideration and favorable action on these comments. Please do not hesitate to contact me at (202) 296-0158 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel R. Hawkins, Jr.", written in a cursive style.

Daniel R. Hawkins, Jr.
Vice President for Federal, State, and Public Affairs