

between or among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits Respondents from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing health care providers' collective bargaining with payors, certain kinds of agreements are excluded from the general bar on joint negotiations. First, Tenet and Frye would not be barred from activities solely involving their employed physicians. Second, Tenet and Frye are not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing hospitals and physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." However, such arrangements must not restrict the ability, or facilitate the refusal, of the arrangements' physician members to deal with payors on an individual basis or through any other arrangement. As discussed below in connection with Paragraph V, Tenet and Frye are required to notify the Commission about such an arrangement prior to negotiating on behalf of the arrangement's members or before those members jointly discuss any terms of dealing with a payor.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, all physician and hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician or hospital participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

As defined in the proposed order, a "qualified clinically-integrated joint arrangement" also must satisfy two conditions. First, all physician and hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain

significant efficiencies through the joint arrangement.

Paragraph III requires Tenet to assure that no physician practicing in a medical group practice owned or controlled in any manner by Tenet or Frye submits claims for payment pursuant to a preexisting contract between PHA and any payor, where such claims are for services provided at any time 90 or more days after the date the order becomes final. However, the order permits these physicians to continue to submit claims for services pursuant to certain PHA contracts listed in Confidential Appendix A. The purpose of Paragraph III is to prevent Tenet and Frye employed or contracted physicians from continuing to receive the benefit of the unlawfully fixed prices under PHA's contracts with payors.

Paragraph IV prohibits Tenet and Frye, for four years, from directly or indirectly entering into any arrangements with any physicians practicing in the Unifour area under which Tenet or Frye would act as an agent or messenger for those physicians regarding contracting or terms of dealing with payors. An exception is made for those physicians employed by Tenet or Frye.

In the event that Frye or Tenet forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph V requires the Respondents, for five years, to notify the Commission at least 60 days prior to initially contacting, negotiating, or entering into agreements with payors concerning the arrangement. This notice is not required for arrangements in which all the physician participants are employed by Frye or Tenet. Notification is not required for subsequent negotiations or agreements with payors pursuant to any arrangement for which notice was already given under Paragraph V. Paragraph V.B sets out the information necessary to make the notification complete. Paragraph V.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph VI.A prohibits Tenet and Frye from challenging or interfering with the termination, required by any Commission order, of any contract between PHA and any payor, pursuant to which Frye is reimbursed for hospital, physician, or other healthcare services. This provision helps to ensure the effectiveness of any future Commission order against PHA.

Paragraph VI.B requires Tenet to distribute the order and complaint, within 30 days after the order becomes final, to each officer who is at the level

of senior vice-president or higher, each member of the board of directors, and each Tenet regional director of managed care; to the CEO, the CFO, and each person having primary responsibility for managed care contracting of each hospital, other than Frye, owned or controlled by Tenet; and to each officer, each member of the board of directors, and each person having primary responsibility for managed care contracting for Frye.

Paragraph VI.C requires Tenet to distribute the complaint and order, within 30 days after the order becomes final, to every payor with which Frye has been in contact since January 1, 1994, regarding the provision of hospital or physician services.

Paragraph VI.E.3 requires Tenet to cooperate with Commission staff in any litigation, or other action taken by the Commission, against PHA and any of its member physicians.

The remaining provisions of Paragraph VI, and Paragraphs VII through IX, of the proposed order impose obligations on Tenet (or Frye, if it is no longer owned or controlled by Tenet), with respect to distributing the proposed complaint and order to payors that contract with Frye and to other specified persons, and the reporting of certain information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission.

**C. Landis Plummer,**

*Acting Secretary.*

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Agency for Toxic Substances and Disease Registry**

#### **Statement of Organization, Functions, and Delegations of Authority**

Part T (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129-25130, dated June 17, 1985, as amended most recently at 67 FR 67858, dated November 7, 2002) is amended to reflect the reorganization of the Agency for Toxic Substances and Disease Registry (ATSDR).

Section T-B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of the Administrator (TA)*, delete

the title and functional statement for the *Office of the Assistant Administrator (TB)*, and insert the following:

*Office of the Director (TB)*. (1) Manages, directs, coordinates, and evaluates all health-related programs of the National Center for Environmental Health (NCEH) and the Agency for Toxic Substances and Disease Registry (ATSDR); (2) provides overall leadership in health-related activities for hazardous substances, hazardous waste sites and chemical releases; (3) provides overall coordination for the research programs and science policies of the agencies; (4) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (5) provides overall budgetary and human resource management and administrative support; (6) provides information, publication and distribution services to NCEH/ATSDR; (7) maintains liaison with other Federal, State, and local agencies, institutions, and organizations; (8) coordinates NCEH/ATSDR program activities with other CDC components, other Federal, State and local Government agencies, the private sector, and other nations; and (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program and employee development.

Delete the title and functional statement for the *Office of Program Operations and Management (TB1)* and insert the following:

*Office of Financial and Administrative Services (TB1)*. (1) Plans, manages, directs, and conducts the administrative and financial management operations of NCEH/ATSDR; (2) reviews the effectiveness and efficiency of administration and operation of all NCEH/ATSDR programs; (3) develops and directs systems for human resource management, financial services, procurement requisitioning, and travel authorization; (4) provides and coordinate services for the extramural award activities of NCEH/ATSDR; (5) formulates and executes the budget; and (6) develops and directs a system for cost recovery.

Abolish in their entirety the following titles and functional statements: *Program Analysis Branch (TB12)*, *Program Support Branch (TB13)*, and the *Information Resources Management Branch (TB14)*.

Delete the title and functional statement for the *Office of Policy and External Affairs (TB4)* and insert the following:

*Office of Policy, Planning, and Evaluation (TB4)*. (1) Coordinates, develops, recommends and implements strategic planning and tracking for NCEH/ATSDR; (2) develops and manages an evaluation program to ensure adequacy and responsiveness of NCEH/ATSDR activities; (3) participates in reviewing, coordinating, and preparing legislation, briefing documents, Congressional testimony, and other legislative matters; (4) maintains liaison and coordinates with other Federal agencies for program planning and evaluation; (5) assists in the development of NCEH/ATSDR budget and program initiatives; (6) provides liaison and staff offices and other officials of CDC; (7) monitors and prepares reports on health-related activities to comply with provisions of relevant legislation; (8) coordinates the development, review, and approval of Federal regulations, Federal Register announcements, request for OMB clearance, and related activities; (9) develops and strengthens strategic partnerships with key constituent groups; and (10) facilitates communication between NCEH/ATSDR and its partners.

Retitle the *Office of Regional Operations (TBC)* to the *Division of Regional Operations (TBC)*.

After the *Division of Regional Operations (TBC)*, insert the following:

*Office of Communications (TBD)*. (1) Provides technical assistance to Divisions on management issues, public affairs, and health communications strategies; (2) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that effective findings and their implications for public health reach the public; (3) collaborates closely with Divisions to produce materials designed for use by the news media, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (4) secures appropriate clearance of these materials within NCEH/ATSDR and CDC; (5) coordinates the development and maintenance of Center/Agency-wide information systems through an Internet Home Page; (6) develops strategies and operational systems for the proactive dissemination of effective findings and their implications for prevention partners and the public; (7) apart from the clearinghouses, hotlines, or other contractual mechanisms, responds to public inquiries and distributes information materials; (8) provides editorial, graphics, and publishing services for NCEH/ATSDR staff; (9)

operates a NCEH/ATSDR Information Center; (10) maintains liaison with CDC public affairs and communications staff offices; (11) provides publications-related activities including editing, preparing articles and drafting news releases, distributing publications, and bibliographic services; and (12) provides public relations and publication-related activities.

Delete in their entirety the following titles and functional statements for the *Program Evaluation, Records and Information Services Branch (TB64)*, *Division of Health Assessment and Consultation (TB6)*: *Program Enhancement Section (TB642)* and *Spatial Analysis and Information Dissemination Section (TB643)*.

Delete in their entirety the following titles and functional statements within the *Exposure Investigations and Consultations Branch (TB68)*: *Consultations Section (TB682)*, *Exposure Investigations Section (TB683)*, and *Petition Response Section (TB685)*.

Within the *Federal Facilities Assessment Branch (TB69)*, delete in their entirety the following titles and functional statements: *Defense Section (TB692)*, *Energy Section A (TB694)*, and *Energy Section B (TB695)*.

Within the *Superfund Site Assessment Branch (TB6A)*, delete in their entirety the following titles and functional statements: *Section A (TB6A2)*, *Section B (TB6A3)*, and *State Programs Section (TB6A4)*.

Within the *Emergency Response and Scientific Assessment Branch (TB95)*, *Division of Toxicology (TB9)*, delete in their entirety the following titles and functional statements: *Emergency Response Section (TB952)* and the *Scientific Assessment Section (TB953)*.

Dated: December 16, 2003.

**William H. Gimson,**

*Chief Operating Officer, Centers for Disease Control and Prevention (CDC).*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Statement of Organization, Functions, and Delegations for Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR