

Guide for Developing Legal Documents Governing Shared Services Arrangements Between Local Health Departments and Health Centers



How to Use This Tool

This tool was prepared by the Center for Sharing Public Health Services (the Center) to assist in developing legal agreements that govern shared services arrangements between local health departments (LHDs) and health centers (HCs), or federally qualified health center “look-alikes,” as defined by Section 330 of the Public Health Service Act. This document is part of a set of six tools produced by the Center in collaboration with the National Association of County and City Health Officials (NACCHO).

Each sharing agreement is based on unique needs and thus has unique formats and characteristics. In addition, LHD-HC agreements vary according to state and local laws, regulations, ordinances, and procedures. It is difficult, therefore, to develop a uniform, detailed legal template for these arrangements, but it is possible to provide guidance in the form of a checklist like this. The checklist is organized under headings that represent sections of an agreement and lists components that should be considered for inclusion in a legal agreement. It is recommended that interested parties go through the checklist and make sure that the relevant issues listed are addressed in the legal documents drafted to support their specific sharing arrangements.

Keep in mind some assumptions and limitations while using this document. First of all, this guide does not replace the need for legal advice in developing and actual-

ing the legal agreement for an LHD-HC shared services arrangement. It is critically important to work with legal counsel when preparing any agreements. Second, this guide contains only items that are specific to the service sharing components of an agreement. Legal counsel will help you determine if more generic provisions should also be included in the legal document.



In addition, the checklist contained in this document should be used as general guidance, not as a step-by-step guide. Some elements may not be universally applicable, and the order in which items are arranged may need to be changed, depending on local needs and circumstances.

Furthermore, some sections may need to be modified depending on the specific characteristics of the programs or services to be shared.

Finally, **this document is not a substitute for the careful exploration and planning of a sharing arrangement that must take place** before a discussion on the legal agreement even starts. The content of the legal agreement will only be as strong as the clarity reached among the partners about the goals of the sharing arrangement and the process to implement it. These are primarily policy and program issues, rather than legal. That process is described in the [*Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers*](#).

If you have questions or need additional guidance about how to use this tool, please email phsharing@khi.org.



Checklist

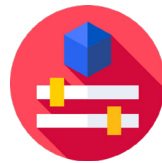
Background

This section of the legal agreement introduces the rationale for the agreement, the issue(s) to be addressed, the parties involved and general expectations. Components may include answers to the following questions:

- What issue is to be addressed? Why?
- Who are the parties involved in this agreement?
- What are specific responsibilities of each party?
- What resources are expected to be shared under this agreement? For example, personnel, equipment, services, etc.
- What outcomes are expected?
- Who is signing the agreement and how are they referenced in the document?

Please note that depending on how the document is structured, some of these components may find a better place in other sections, rather than in the background.

Reference: [*Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers*](#), Phase One: Explore – *WHY would you consider shared services arrangements? WHO are the partners that should be involved?*



Scope

This section defines the scope of the agreement. Components may include answers to the following questions:

- Does the agreement clearly outline the scope of services or purpose, such as staff sharing; office space sharing or leasing; supplies/equipment sharing or transfer; information technology or system sharing; or one-party delivering services on behalf of another party?
- What actions are expected to occur as a result of this agreement?
- Are there clear parameters, definitions, and boundaries for the shared services?

In some cases, a contract addendum may be helpful to describe some of the details of the specific actions and responsibilities.

Reference: [*Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers*](#), Phase One: Explore – *WHAT services and resources would be shared?*



Governance

This section describes the governance model for the shared service(s), including authorities and powers.

Components may include answers to questions related to the form of the agreement and the decision process for the shared service(s).

Decision-Making Process: Who

- Who will approve the agreement for the signing parties?
- Who has the authority to sign?
- Who will approve changes to the agreement once signed?
- Once the agreement is signed, who will have the authority to make decisions on how to implement it?
- Is lead responsibility for decision-making delegated from one agency to the other(s), (for example, through a contractual arrangement)?

- If the decision-making power is jointly shared by the signing partners, will decisions be made by individual agency heads or delegates, or will there be a formal group of people in charge, such as a board?

If there is a formal group of people in charge:

- Who is included in this group?
- How do the roles and functions of this group relate to the HC governing board, consistent with the requirements set in federal rules?
- Who selects and appoints the members?
- How long does the appointment of each member last?
- Are multiple terms allowed?
- How will vacancies be filled?
- Do all members have equal rank and status, or are there some with special status (such as a chair or officers of a board)?
- Do all members have an equal vote?

Decision-Making Process: How

Will there be formal meetings of the partners during which decisions are made?

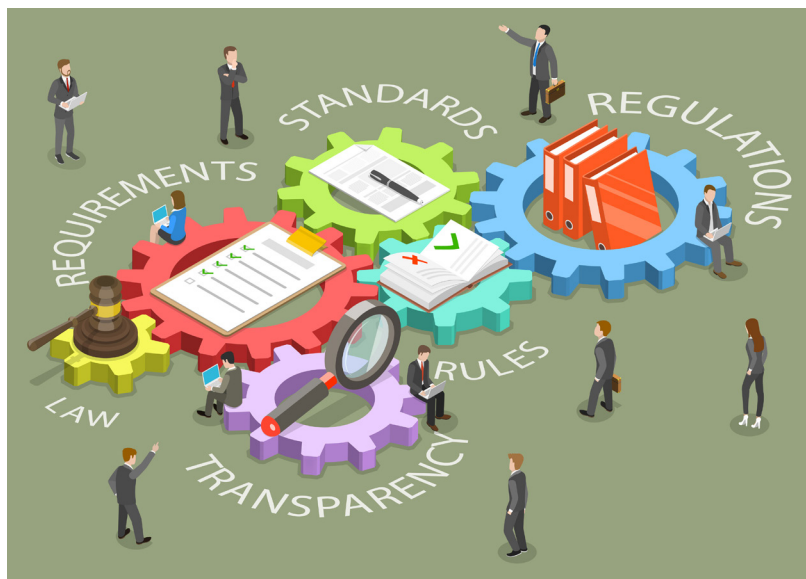
- How often will the meetings occur?
- Who will convene and chair the meetings?
- Are the meetings required to be open to the public?
- Are documents required to be open to the public?

Is the decision-making process clearly identified?

- How will decisions be made?
- Is a quorum needed before action can be taken?
- Will all decisions be made by simple majority or by another mechanism?

Are decisions binding for all participating agencies?

- Does any partner have veto power?
- Is a dispute resolution process clearly in place?
- Is there a mechanism to report progress and result-



sagreement to each agency's governing body (such as board of health, health center governing board, etc.)?

- Do some decisions require endorsement from the governing bodies?
- In the case of a single agency having been delegated lead responsibility for carrying out the arrangement, is there a clear reporting process for informing the other participating agencies on the progress?
- What could trigger a request to revisit and amend the agreement (in part or in its entirety) and what is the process?

References: [*Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers*](#), Phase Two: Prepare and Plan – Governance and Oversight, Legal Sharing Agreement; Public Health Service Act, Section 330 (k)(3).

Form of the Agreement

What kind of agreement is at the base of the LHD-HC arrangement?

- Contract,
- Memorandum of understanding, or
- Other.

- Is the agreement and its format in compliance with state and federal laws?
- Are there entities other than those directly involved in sharing services that need to review or approve the agreement before it can be executed (for example, state agencies or co-applicant HC boards)?

Duration

This section describes the duration of the agreement and the process to amend it. Components may include answers to the following questions:

- Is the duration of the agreement clearly identified, including the option of continuing in perpetuity unless altered?
- Is the renewal process (if applicable) of the agreement clearly identified?
- Is there a clearly identified mechanism for termination or severability of the agreement?
- If one of the parties wants out of the agreement, is there a mechanism for that? Would the entire agreement be voided in that case?
- Is there a mechanism for the disposition of any shared assets, should the agreement come to an end or if a partner decides to step out?

References: [Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers, Phase Two: Prepare and Plan – Legal Sharing Agreement, Change Management, Workplan and Timeline.](#)

Cost-Sharing

This section defines how the costs of implementing the sharing arrangement and providing the shared services or functions will be distributed. Components may include answers to the following questions:

- How will the shared activities or functions be funded?
- Who will have the authority to allocate resources?
- How will the costs be shared?
- Is there a mechanism to support the costs of implementing the agreement (e.g., communicating with decision-makers, legal fees, handling logistics associated with board meetings if applicable, etc.)?

References: [Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers, Phase Two: Prepare and Plan – Fiscal; Determining and Distributing Costs of Shared Public Health Services](#) (Note: this tool was developed for collaborations among health departments in different jurisdictions. Some of the elements may not be applicable to collaborations between local health departments and health centers.)

Other Legal Issues

This section defines other legal issues such as personnel, liability, and outsourcing. Some of these components could have their own section in the document. Components may include answers to the following questions:

- Is there (or will there be) a detailed implementation plan describing specific actions and responsibilities for the parties involved?
- What is the timeline for implementation of the agreement?
- Is a business associate agreement (BAA) or other HIPAA-related documentation needed for this agreement?
- Are the liability aspects adequately addressed?
 - Is liability for the project going to be shared evenly by all the members?
 - Do the parties agree to cover their own liability, or are there parties that will be held harmless throughout the process?



- Are there liability implications in relation to Federal Tort Claims Act (FTCA) protection (particularly for Federally Qualified Health Centers)?
- If portions of the arrangement are assigned, sub-contracted or delegated to other entities, can those portions be excluded from the agreement? In this case, will the permission of the other partners be required?
- Are there issues related to vendors and procurement?
- Are there issues related to personnel contracts?
 - Will staff hired by one agency be working outside of their own agency to fulfill the goals and requirements of this agreement? If so, what are the implications regarding:
 - Workers' compensation
 - Union agreements
 - Travel reimbursement
 - Internal Revenue Service code
 - Use of agency vehicles
 - Liability (including FTCA)
 - Other

Are there issues related to office space and occupancy?

- Rent
- Phone and administrative costs (e.g., copying)
- Equipment depreciation
- Other
- How will the implementation of this agreement be evaluated? Are there specific deliverables that each party will consider acceptable?
- What will occur in the event one or more parties to the agreement do not perform according to terms of agreement (i.e., a breach of contract)?

References: [*Roadmap to Develop Shared Services Arrangements Between Local Health Departments and Health Centers, Phase Two: Prepare and Plan – Legal Issues; Logistical Issues. HCs: Public Health Service Act, Section 330 \(k\)\(3\); HRSA Federal Tort Claims Act \(FTCA\) Health Center Policy Manual*](#)

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