MAHB
Assisting Massachusetts Boards of Health through training, technical assistance and legal education

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Guidance on Certain Exemptions to M.G.L. ch. 30B related to Municipal Spending of Opioid Abatement Funds

I. Background

M.G.L. ch. 30B (30B) is a state law that governs municipal procurements, including bid solicitation standards, contract terms, and other procedural requirements that municipalities must comply with when purchasing supplies, real property, or services.

This document focuses on two potential exceptions to 30B requirements for municipal spending of opioid abatement funds: contracts with healthcare providers (Section III) and grant agreements (Section IV). Municipal contracts are exempt from 30B requirements only in limited circumstances. Potential exemptions for opioid abatement funds are outlined in guidance issued by the Office of the Inspector General (OIG Guidance). The statutory references for these two exceptions are:

- **Contracts with Healthcare Providers** (M.G.L. ch. 30B, §1(b)(16)); and
- **Grant Agreements** (M.G.L. ch. 30B, §2).

II. Important Considerations

Municipalities and collaboratives should consult with their attorney or the OIG Public Procurement Technical Support about the specific contract arrangement at issue. OIG Public Procurement Technical Support can be reached at (617) 722-8838 or OIGProcurementSupport@mass.gov. Whether a contract is subject to 30B often depends on the particular facts and circumstances of the arrangement. The guidance below is based on the law and on guidance issued by OIG.

While 30B processes may not be required in some instances, municipalities may have their own required contracting procedures that need to be followed regardless of state law. Additionally, municipalities and regional collaboratives are encouraged to use open, fair, and competitive procedures for all procurements.

III. Contracts with Healthcare Providers

General Rule: Contracts with health care providers for provision of health care services are exempt from 30B requirements. Health care providers specifically include physicians, nurses, and social workers. This exception applies to contracts with individual health care providers or with entities and vendors to provide health care services.

The contract must be for health care services, which the OIG has interpreted to mean services "that could reasonably be restricted exclusively to physicians, dentists and other health care individuals or entities." **A contract is not automatically exempt from 30B merely because it is with a health care provider or organization.**

Although health care services are generally direct health services, the OIG has also noted that a contract with a health care provider to consult on the use of opioid abatement funds would likely be exempt, since the provider's expertise is needed for the initiative.

The 30B exemption is applicable to all providers providing health care services. Recovery coaching is a recognized behavioral health service, with mandates for coverage by MassHealth and private insurers. **Recovery coaches providing this service would therefore likely fall within the exemption, and contracts with them for this service would likely be exempt from 30B.**

IV. Grant Agreements

General Rule: This section addresses a separate question: whether an arrangement qualifies as a "grant agreement." Under 30B, "grant agreements" are not considered contracts for municipal services and therefore are not required to meet the requirements of 30B. To be considered a grant agreement, the contract must have 3 elements:

1. **A contract for services.** Contracts for supplies must comply with 30B unless another exception is met;
2. **Between a municipality and an individual or a non-profit organization.** Grants to for-profit organizations are subject to 30B unless another exception applies, including the health provider exception; and
3. **With a purpose of public support and stimulation *instead of* procuring services for the benefit or use of the governmental body**. (M.G.L. ch. 30B, §2).

Element 3 turns on a narrow interpretation of a "purpose of public support": a grant agreement provides "direct support or stimulation to the public" rather than "performing services for the [governmental body]." Although most government initiatives serve the public in some way, that alone does not establish this distinction. **Most municipal service contracts are subject to 30B,** including municipal contracts with nonprofit organizations to provide services paid for with opioid abatement funds.

Grant agreements are generally found when a program or initiative provides direct services to community members. By contrast, contracts that support the municipal government in fulfilling its duties, contract

requirements, or general public service goals are considered service agreements subject to 30B. **The questions below may indicate whether an arrangement is a grant agreement or a service contract:**

- **Who receives the benefit?** Assistance flowing to residents points toward a grant. Work that feeds the municipality's own operations or obligations points toward a contract.
- **Whose program is it?** Funding a nonprofit's own initiative points toward a grant. A municipality defining a scope of work that the nonprofit performs for it points toward a contract.
- **Is it fulfilling the municipality's role?** If the municipality would otherwise perform the function itself or is legally required to provide it, the agreement looks like a contract.
- **How is the contract structured?** Support for an existing non-profit program, with reporting and recapturing terms, looks like a grant. Payment for specified deliverables or hours looks like a contract.

<u>Opioid abatement initiatives more likely to qualify as grants:</u>

- Operating support for a nonprofit's existing recovery community center, sober housing, or harm reduction program.
- A competitive mini-grant program where nonprofits propose and run their own projects, with reporting and recapturing terms.
- Capacity-building funds to help a nonprofit expand the services it provides to residents.

For the examples below, the grant-agreement analysis is separate from the health care provider exemption discussed in Section III: an arrangement that does not qualify as a grant agreement may still qualify for another 30B exemption. For the health care provider exemption, the contract must be for health care services; a contract is not automatically exempt merely because it is with a health care provider or organization.

<u>Opioid abatement initiatives more likely to qualify as service contracts:</u>

- Consultant services to conduct a needs assessment, develop a strategic plan for spending abatement funds, or prepare the municipal or regional settlement reports.
- Design services for prevention campaigns, materials, or curriculum.
- Purchases of supplies to stock municipal harm reduction vending machines from a healthcare supplier.
- N.B. Procurement contracts that are less than $10,000 are not subject to 30B.

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