



Federal Tort Claims Act Medical Malpractice Program June 1, 2017

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(HRSA)



Polling Question 1

My knowledge of FTCA would be best categorized as:

- A. I am totally new to FTCA. I need to taught the basics.
- B. I have some knowledge of the FTCA program but would benefit from a refresher.
- C. I am an FTCA expert, and I am aiming for Chris' job if I am given the opportunity.

Overview

This training will cover:

- **FTCA application process**
- **FTCA program overview**
- **FTCA division**
- **FTCA site visits**



FTCA Application Process

To receive status under Federally Supported Health Centers Assistant Act (FSHCAA), entities seeking deemed status must demonstrate compliance with all applicable FTCA Program requirements.

- Submit an application.
- Demonstrate implementation of required policies, procedures, and requirements.
- Submit and provide documentation for all material facts during the application process.



Policy Information Notice (PIN)

- The PIN explains the requirements in more details for all Bureau of Primary Health Care- supported centers.
- This policy apply to all health center practitioners, employed or contracted, volunteers and locum tenens.
- Requires that all Health Centers assess the credentials of each licensed or certified health care practitioner to determine if the individual meets the health standards.



Submitting FTCA Applications

- All FTCA applications must be submitted electronically within the HRSA Electronic Handbook (EHB).
- FTCA application will be an initial deeming or annual redeeming application.
- HRSA reviews, and processes applications, and sends out electronic notice of deeming status to grantees.
- HRSA will notify contact person(s) of final determination via EHB within 30 days.



How the Program Works

- **The FTCA program provides immunity from lawsuit.**
- **FTCA coverage is similar to an occurrence malpractice policy.**
 - If an incident occurs during the period of time when a health center is deemed, if that incident becomes a claim, the health center will be covered no matter when the claim is filed.
 - Example: Health center X is FTCA deemed for calendar year 2015. On April 1, 2015, a medical error occurs. On January 3, 2017, a plaintiff's lawyer files a claim with the Department of Health and Human Services.
 - This claim will be eligible for FTCA coverage because the medical error occurred in 2015 when the health center was FTCA deemed.



How the Program Works (continued)

- Under FSHCAA, health centers are eligible to be deemed “federal employees.”
- It provides immunity from a lawsuit alleging medical malpractice for the performance of medical, dental, surgical, and related functions .
- Plaintiff’s only remedy is a claim under Federal Tort Claims Act (FTCA).



Eligibility Requirements

- **Who, what, when, where?**
 - Who is covered - relationship to health center.
 - What is covered – medical malpractice.
 - Where is it covered – scope of project.
 - When is it covered – scope of employment.

Covered Individuals

Who is covered

- Employees
- Officers
- Directors
- Governing board members
- Contractors (some, not all)
- **Volunteers (Not Yet!! Application Process Starts Fall 2017)**



Covered Employees

Who is covered

- All employees, full time or part time, are covered.
- Verification of employment status is demonstrated by issuing a W-2 at end of year to the individual.



Covered Contractors

- **Who is covered**

- Any full time contract provider (over 32 .5 hours per week).
- Part time contract provider of services in the fields of family practice, OB-GYN, general internal medicine, or general pediatrics.
- Contract must be between the deemed health center and the individual provider.
- Contracts between the deemed health center and a corporation (including professional corporations) are not covered.

Volunteers

- **Cures Act**

- The Cures Act, which was enacted in December 2016, coverage was extended to Health Center Volunteers.

- **Coverage is not automatic**

- You must sponsor each individual volunteer, submit an application on their behalf and that application must be approved.

- **Program will Start Fall 2017**

- The deeming process for volunteers will occur in the Fall of 2017 after the annual deeming process.



What is Covered

- Medical malpractice.
- More specifically, medical, surgical, dental, and related activities (if within the scope of employment and scope of project).

Polling Question 2

I am a dentist. Does FTCA cover my profession?

- A. No, there is no way for you to receive coverage.
- B. Yes, there is coverage under the current setup.
- C. Yes, but it is under a different setup.

When are activities covered?

- Coverage is only for acts that are within the scope of employment of the covered individual.
- FTCA does not cover moonlighting.
- All activities must be conducted on behalf of the deemed health center.
- All activities must be performed *on health center patients*, unless it falls within one of the exceptions for providing care to non health center patients or the health center has a Particularized Determination (PD).

Exceptions For Care To Non-Health Center Patients

Federal Register Notice September 25, 1995 (Volume 60 Number 185) page 49417 – 49418.

- Community-Wide Intervention
School-Based Clinics
- School-Linked Clinics
- Health Fairs (Participate or Conduct)
- Immunization Campaigns
(Participate or Conduct; Adults and Children)
- Migrant Camp Outreach
- Homeless Outreach
- Hospital-Related
Activities
- Coverage-Related
Activities
- Emergency Situations

Other situations require a “Particularized Determination.” Please see FTCA Policy Manual.



Polling Question 3

My health center is in the process of signing a contract with America Health Care for an OB-GYN for 20 hours a week. We are waiting for the representative from America Health Care to sign the contract. Is there FTCA coverage?

- A. Yes
- B. Yes, but you would have to change contract hours to 32 hours per week.
- C. No

FTCA Division



Administration

- **FTCA Division**

- Division within the Office of Quality Improvement (OQI) in the Bureau Of Primary Health Care (BPHC)
- Consists of three teams
 - Deeming and Compliance Team (Lead: Christopher Gibbs)
 - Risk Management and Patient Safety Team (Patricia Breen)
 - Policy and Data Team (Desha Anderson)
- Focus of the division is on FTCA policies, procedures, risk management, patient safety, presentations, data, TA, and site visits

FTCA Site Visits



Site Visit Process

- HRSA may conduct a site visit at any point during the application process.
- Site visits are conducted to ensure that the program requirements under the relevant statutory authority within 42 U.S.C. 233(h) have been implemented.
- If a site visit results in a finding of a lack of implementing of the FTCA program requirements, this may be grounds for a negative deeming determination.



Site Visit Process

Factors that may initiate a site visit, but not limited to :

- Submission of an initial FTCA deeming application
- Documentation submitted that indicates possible non-compliance with program requirements
- The need to follow-up based on prior site visit findings or other identified issues
- History of repeated pertinent conditions, or current conditions, placed by HRSA on the Health Center Program grant, as documented
- History of medical malpractice claims



Site Visit Process

Site visit reviewers will assess whether the grantees has the following:

- Implemented the appropriate policies and procedures to reduce risk of malpractice.
- Reviewed and verified the professionals credentials, references, claims history, fitness to perform duties, professionals' review organizational findings, and license status of physicians and other certified healthcare practitioners.
- Should a claims history exists, validate that the grantee has fully cooperated with Attorney General in defending against any claims.



Polling Question 4

Can I come under FTCA malpractice claims protection through a contract with my group, or my professional corporation?

- A. Yes
- B. Yes, but you would have to change contract hours to 32 hours per week.
- C. No



Disclaimer

We ask you to please keep in mind that this conference is not the appropriate place to discuss detailed case specific aspects of unresolved claims or litigation. Likewise, risk management information provided in this conference is not to be considered legal advice and, as with any information provided by ECRI Institute is intended as guidance to be used consistent with the internal needs of your organization. This information is not to be viewed as required by ECRI Institute, KEPRO or HRSA. Any detailed fact specific health center issues should be addressed to the FTCA helpline and all questions regarding pending legal cases should be directed to your own organization's private attorneys.



Open Discussion

What questions do you have ?



Office Contact

FTCA/BPHC Help Line

Phone: 1-877-974-BPHC (877-974-2742)

9:00 AM to 5:30 PM (ET)

Contact: <http://www.hrsa.gov/about/contact/bphc.aspx>

FTCA Website: <http://www.bphc.hrsa.gov/ftca/>

