

POLICY INFORMATION NOTICE

DOCUMENT NUMBER: 2007-16

DATE: August 22, 2007

DOCUMENT TITLE: Federal Tort Claims Act (FTCA) Coverage for Health Center Program Grantees Responding to Emergencies

TO: Health Center Program Grantees
Primary Care Associations
Primary Care Offices
National Cooperative Agreements

The purpose of this Policy Information Notice (PIN) is to clarify the circumstances under which Federal Tort Claims Act (FTCA)-deemed Health Center Program grantees (section 330(e), (g), (h) and (i) grantees) are covered under the FTCA as they respond to emergencies and to address frequently asked FTCA questions. PIN 2005-19, "Federal Tort Claims Act Coverage for Deemed Health Center Program Grantees Responding to Hurricane Katrina," applied only to the emergency response after Hurricanes Katrina and Rita. This PIN describes a broader, prospective policy that applies to future emergencies.

If you have questions regarding this PIN, please contact the Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC), Office of Policy and Program Development at (301) 594-4300. If you have questions regarding the FTCA Program, please contact BPHC's Office of Quality and Data at 301-594-0818.



James Macrae
Associate Administrator

Attachment

Federal Tort Claims Act (FTCA) Coverage for Health Center Program Grantees Responding to Emergencies

I. PURPOSE

The purpose of this Policy Information Notice (PIN) is to clarify the scope of Federal Tort Claims Act (FTCA) coverage for FTCA-deemed Health Center Program grantees during an emergency. This PIN does not address a health center's scope of project for purposes of Medicaid/Medicare reimbursement during an emergency or eligibility for the 340B Drug Pricing Program during an emergency. PIN 2002-07, "Scope of Project Policy," and PIN 2007-14, "Technical Revisions to PIN 2002-07," provide general guidance on these subjects.

II. OVERVIEW

A. Legislative Background

FTCA coverage for eligible Health Resources and Services Administration (HRSA) grantees was initially legislated through the Federally Supported Health Centers Assistance Act of 1992 (FSHCAA) (Public Law 102-501) by amending section 224 of the Public Health Service (PHS) Act. The eligible entities are Health Center Program grantees (section 330(e), (g), (h) and (i) of the PHS Act). The FSHCAA of 1995, signed into law on December 26, 1995, clarified the 1992 Act and eliminated its sunset provision, making the program permanent.

The intent of FSHCAA is to increase the availability of funds for the provision of primary health care services by reducing the expenditure of Health Center Program funds for medical malpractice insurance premiums. The FSHCAA accomplishes this by making deemed health centers (and their officers, directors, employees, and certain contractors) Federal employees for the purpose of medical malpractice protection. As Federal employees, these organizations and individuals are immune from medical malpractice suits for actions within the scope of their project and health center employment. In the event that a medical malpractice lawsuit is filed against a deemed entity or covered provider acting within the scope of his/her employment in grant-related activities, the United States is substituted for the deemed entity and the covered employee. The health center and the covered employee will be dismissed from the case, with the case continuing against the United States as the sole defendant.

B. Applicability

This PIN applies to all health centers funded under the Health Center Program authorized in section 330 of the PHS Act (42 U.S.C. 254b), as amended, specifically:

- Community Health Center (CHC) Programs, funded under section 330(e);
- Migrant Health Center (MHC) Programs, funded under section 330(g);
- Health Care for the Homeless (HCH) Programs, funded under section 330(h); and
- Public Housing Primary Care (PHPC) Programs, funded under section 330(i).

For the purposes of this document, the term “health center” refers to the diverse types of health centers (i.e., CHC, MHC, HCH, and PHPC) that are supported under section 330 of the PHS Act and that have been deemed to be employees of the Public Health Service pursuant to section 224(g) of the PHS Act.

III. WHAT IS AN “EMERGENCY”?

For the purposes of this PIN, an “emergency” or “disaster” is defined as an event affecting the overall health center target population and/or the health center’s community at large, which precipitates the declaration of a state of emergency at a local, State, regional, or national level by an authorized public official such as a governor, the Secretary of the U.S. Department of Health and Human Services, or the President of the United States. Examples include, but are not limited to: hurricanes, floods, earthquakes, tornadoes, widespread fires, and other natural/environmental disasters; civil disturbances; terrorist attacks, collapses of significant structures within the community (e.g., buildings, bridges); and infectious disease outbreaks and other public health threats.

In situations where an emergency has not been officially declared, HRSA will evaluate on a case-by-case basis whether extraordinary circumstances justify a determination that the situation faced by the health center constitutes an “emergency” for purposes of extending FTCA coverage to services provided at temporary locations.

IV. SCOPE OF PROJECT AND FTCA COVERAGE

Health center employees and certain contractors are eligible for FTCA coverage only while providing services within the approved section 330-grant supported scope of project. This PIN describes the two mechanisms by which, during an emergency, FTCA-deemed health centers may include the provision of FQHC services at a temporary location within the scope of project. The choice of which mechanism to use depends on whether the proposed activity is located (1) inside the health center’s service area and within areas adjacent to the health center’s service area (i.e., neighboring counties, parishes, or other political subdivisions) or (2) outside the health center’s service area and beyond neighboring counties, parishes, or other political subdivisions. If a health center needs to continue operating the temporary site beyond 90 days from the onset of the emergency, the health center must submit a change in scope request through the HRSA Electronic Handbooks. The request must be consistent with the requirements described in PIN 2002-07 and PIN 2007-14.

A. FTCA Coverage within the Service Area

The scope of project is a description of the health center’s project, categorized by five core elements (sites, services, providers, target population, and service area) for which grant funds have been approved. The FTCA statute and regulations do not permit FTCA coverage to follow health center providers providing care outside of the health center’s approved scope of project, which includes a defined target population and service area, nor outside of the scope of their employment.

HRSA recognizes that, during an emergency, FTCA-deemed health centers are likely to participate in an organized State or local response and may be called upon to provide primary health care services at temporary locations. Temporary locations include any place that provides shelter to evacuees and victims of an emergency. It also includes those locations where mass immunizations or medical care is provided as part of a coordinated effort to provide temporary medical infrastructure where it is most needed. These temporary locations will be considered part of a health center's scope of project if all of the following conditions are met:

1. Services are provided on a temporary basis.
2. Temporary locations are within the health center's service area or neighboring counties, parishes, or other political subdivisions adjacent to the health center's service area.
3. Services provided by health center staff¹ are within the approved scope of project.
4. All activities of health center staff are conducted on behalf of the health center. (Health center providers who volunteer in their individual capacity to respond will not be protected under the health center's FTCA coverage.)

To assure that the emergency response at temporary locations is considered part of the health center's scope of project and that it will be covered by the FTCA, the health center must provide the following information to its HRSA Project Officer by phone, e-mail, or fax: (1) health center name; (2) the name of a health center representative and that person's contact information; and (3) a brief description of the emergency response activities. Health centers must submit this information as soon as practicable but no later than 15 days after initiating emergency response activities. HRSA will determine on a case-by-case basis whether extraordinary circumstances justify an exception to this 15-day requirement. If the HRSA Project Officer is not available, the health center should contact (1) the Bureau of Primary Health Care's main phone line at: 301-594-4110 or (2) the FTCA Hotline at: 1-866-FTCA-Help (382-2435).

For purposes of FTCA coverage, patients served by FTCA-deemed providers at temporary locations included in the scope of project (following the process above) will be considered health center patients. As such, the health center and its providers will be covered by the FTCA for these services.

As stated above, if a health center needs to continue operating the temporary site beyond 90 days from the onset of the emergency, the health center must submit a change in scope request as described in PIN 2002-07 and PIN 2007-14. The request must be submitted through the HRSA Electronic Handbooks.

¹ Including contractors eligible under section 224(g)(5) of the PHS Act.

B. FTCA Coverage Outside the Service Area

In rare cases, an emergency may impact an entire region or State, causing widespread devastation and evacuation of the population served by the health center to another area of the State or region. In those unique situations, a health center may be called upon to fulfill its requirements under the Health Center Program by continuing to provide care to its target population, which has been displaced by the emergency to a distant part of the State or region. In these instances, if the site of a deemed health center in the impacted area is destroyed or unable to operate, the health center may submit a request for prior approval to temporarily change its scope of project to include operation of a temporary site within the health center's general geographic region, in an area outside the health center's regular service area and beyond areas adjacent to the health center's service area. The purpose of this scope change should be to provide medical care primarily to the health center's target population and to other medically underserved populations that may have been displaced by the disaster. The following conditions must be met in order for the temporary site outside of the service area and in an area that is not in a neighboring county, parish, or political subdivision to be eligible for inclusion within the scope of project:

1. The health center must demonstrate that the purpose of the temporary site is to provide services primarily to its original health center target population (as defined in the most recent application for section 330 grant support), which has been displaced by the emergency, and to other medically underserved populations that may have been displaced by the disaster.
2. Services provided are on a temporary basis.
3. Services are provided by health center staff² and are within the approved scope of project.
4. All activities of health center staff are conducted on behalf of the health center. (Health center providers who volunteer in their individual capacity to respond will not be protected under the health center's FTCA coverage.)

Please note that State licensure requirements apply in all instances.

To ensure that the temporary site is considered part of the center's scope of project and that FTCA coverage will apply, grantees must contact their HRSA Project Officer by telephone, e-mail or fax and submit a request for prior approval to add the new site. The request must include a summary of the requested change in scope of project, including verification that the four conditions above will be met. HRSA will expedite the review of these requests with the goal of notifying the grantee of HRSA's decision (i.e., approval or disapproval) by telephone or via e-mail within 48 hours of receipt of the request. Again, if a health center needs to continue operating an approved temporary

² Including contractors eligible under section 224(g)(5) of the PHS Act.

site beyond 90 days from the onset of the emergency, the health center must submit, through the HRSA Electronic Handbooks, a change in scope request as described in PIN 2002-07 and PIN 2007-14.

C. FTCA Coverage for Non-Impacted Health Centers

In emergency situations, health centers that are not impacted by the emergency may (1) assist at temporary sites within the same service area and within neighboring counties, parishes, or political subdivisions or (2) operate temporary sites within the service area and within neighboring counties, parishes, or political subdivisions by including the temporary locations within the scope of project using the process described in Section IV.A., above. The processes described in this PIN are not applicable to situations where employees of non-impacted health centers seek FTCA coverage to provide care during emergencies outside their service area and beyond neighboring counties, parishes, or political subdivisions.

V. VOLUNTEERS ARE NOT ELIGIBLE FOR FTCA COVERAGE UNDER THE HEALTH CENTER FTCA PROGRAM

The law that authorizes the Health Center FTCA Program does not extend FTCA coverage to volunteers at health centers. The current statute specifically limits FTCA coverage to health center employees, governing board members, officers, and certain contractors.³ While it can be anticipated that health centers will receive numerous offers of and requests for volunteer assistance during emergencies, those volunteers will not be covered by the FTCA under the Health Center FTCA Program.

However, it is possible that the volunteer would qualify for immunity or limited liability under State or Federal charitable immunity/limited liability statutes (such as the Federal Volunteer Protection Act of 1997⁴) or under Federal provisions related to the National Disaster Medical System (section 2811 of the PHS Act).⁵

VI. FREQUENTLY ASKED QUESTIONS

1. Is the FTCA Katrina PIN (2005-19) policy applicable to future emergencies?

A: No. PIN 2005-19, "Federal Tort Claims Act Coverage for Deemed Consolidated Health Center Program Grantees Responding to Hurricane Katrina," applied only to the emergency response after Hurricanes Katrina and Rita. This PIN (PIN 2007-16) describes a broader, prospective policy that applies to future emergencies.

³ PHS section 224(g)(1)(A).

⁴ Public Law 105-19.

⁵ For more information on the National Disaster Medical System, see: <http://www.hhs.gov/aspr/opeo/ndms/join/index.html>

2. Does FTCA coverage apply if a health center provider crosses State lines?

- A: The key question is not whether the provider has crossed State lines, but whether the provider is providing services within the approved scope of project. If the health center's clinicians are providing care outside of the approved scope of project, the center and clinicians will NOT be covered by the FTCA.

In certain border area cases, the health center's service area or neighboring counties may cross State lines. In this instance, if the health center's clinicians are providing care within the health center's approved scope of project, the health center and clinicians will be covered by the FTCA. In situations of regional emergencies, it may be possible for a health center to request prior approval to temporarily change its scope of project to include operation of a temporary site outside the State, as described in Section IV.B. of this PIN. Please note that State licensure requirements apply in all instances.

3. When should a health center submit a formal change in scope of project request?

- A: Health centers expecting to operate at a temporary location beyond 90 days from the onset of the emergency must submit a formal change in scope of project request. Health centers are encouraged to submit the formal request well in advance of the 90-day limitation for a temporary site to allow for processing time and to ensure FTCA coverage beyond the 90 days.

4. Do health centers have to submit a formal change in scope of project request to provide services at temporary sites during an emergency?

- A: No. HRSA will consider these temporary sites part of the center's scope of project if the criteria described in Section IV.A. or IV.B. are met and the health center follows the process described in the applicable section. Note that prior approval is necessary for changes in scope described in Section IV.B. Health centers expecting to operate at a temporary location beyond 90 days from the onset of the emergency must submit a formal change in scope of project request.

5. As the result of an emergency, a deemed health center provides services at a site within its scope of project to evacuees who have traveled from another service area where medical facilities have been destroyed. Are the health center and its providers covered by the FTCA for services to evacuees?

- A: For purposes of FTCA coverage, anyone seeking care at a deemed facility, including at temporary sites within the scope of project, is a "health center patient." It does not matter whether the person is a permanent resident of the community or is there temporarily. Therefore, in the example above, FTCA coverage applies to the health center and its providers who provide services to the evacuees at its regular facility and at temporary sites.

6. A deemed health center is destroyed as a result of a disaster. In order to continue providing services, the destroyed health center sets up and operates a temporary site

within the service area or within neighboring counties, parishes, or political subdivisions. Are medical services provided by the health center's staff at this temporary site covered under the FTCA?

A: Yes, HRSA will consider a temporary site part of the center's scope of project if the criteria described in Section IV.A. are met and the health center follows the process prescribed in that section. If a health center needs to continue operating a temporary site beyond 90 days from the onset of the emergency, the health center must submit a change in scope request as described in PIN 2002-07 and PIN 2007-14.

7. A deemed health center is destroyed as a result of a disaster. In order to continue providing services, the destroyed health center sets up and operates a temporary site OUTSIDE the service area, in an area that is NOT in a neighboring county, parish, or political subdivision. Are medical services provided by the health center's staff at this temporary site covered under the FTCA?

A: In this situation, the process described in section IV.A. is not applicable because the health center is providing services outside its service area and beyond neighboring counties, parishes, or political subdivisions. Instead, the health center should follow the process described in section IV.B. of the PIN, which applies to requests to temporarily change the scope of project to include operation of a temporary site outside the service area and beyond neighboring counties, parishes, or political subdivisions.

8. In order to assist with the medical response after an emergency, staff from a deemed health center go to work at a temporary location such as a shelter for evacuees within its service area or within neighboring counties, parishes or other political subdivisions adjacent to its service area. Are medical services provided by the health center's staff at this temporary location covered under the FTCA?

A: If temporary locations are included within the approved scope of project following the prescribed process in Section IV.A., the evacuees treated by those clinicians are considered health center patients. Therefore, the health center staff would be covered under the FTCA for medical services provided to the evacuees.

9. A health center employee is providing care at a local hospital as part of a community-wide emergency response. Are these services covered under FTCA?

A: Yes, as long as the employee is providing services within the health center's approved scope of project, at the direction of the health center (not volunteering on his/her own), and the health center has followed the process described in Section IV.A.

10. If grantees use volunteers to provide services during an emergency, are these volunteers eligible for coverage under the Health Center FTCA program?

A: No. The relevant statute does not allow for FTCA coverage of health center volunteers. It is possible that the volunteer, if he/she has been deployed by the Federal Government

as an intermittent Federal employee under a Federal Emergency Mission Act (FEMA) Mission Assignment, would be covered under another FTCA authority. It is also possible that the volunteer would qualify for immunity or limited liability under State or Federal charitable immunity/limited liability statutes (such as the Federal Volunteer Protection Act of 1997) or under Federal provisions related to the National Disaster Medical System (section 2811 of the PHS Act).