



PROGRAM ASSISTANCE LETTER

DOCUMENT NUMBER: 2017-06

DOCUMENT TITLE: 2017 Health Center Volunteer Health Professional Federal Tort Claims Act (FTCA) Deeming Application Instructions

DATE: August 16, 2017

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

I. PURPOSE AND OVERVIEW

The purpose of this Program Assistance Letter (PAL) is to describe the deeming process and requirements for deemed health center volunteer health professionals (VHPs) for a deeming period extending from not earlier than October 1, 2017 through December 31, 2017, and for calendar year (CY) 2018. This PAL also details other requirements found in the authorizing statute applicable to VHPs. Congress, through enactment of Section 9025 of the 21st Century Cures Act (Pub. L. 114-255), which added subsection 224(q) to the Public Health Service Act (42 U.S.C. § 233(q)), extended liability protections for the performance of medical, surgical, dental, and related functions to VHPs at health centers that have also been deemed as employees of the Public Health Service (PHS). Through this process, VHPs of deemed health centers may receive deemed Public Health Service employment status, with associated Federal Tort Claims Act (FTCA) coverage, for the indicated time periods.

II. BACKGROUND

If a health center VHP meets all applicable requirements, under section 224(q)(3)(B)(ii), the Secretary may “deem” the individual to be a PHS employee (i.e., a “covered individual”). Deemed PHS employee status provides the covered individual with immunity from lawsuits and related civil actions resulting from the performance of medical, surgical, dental, and related functions within the scope of deemed employment. Scope of employment determinations take into account such matters as the scope of project of the health center and the scope of the provider’s work on behalf of the health center. In accordance with the FTCA, persons alleging

negligent acts or omissions by covered individuals within the scope of their deemed employment must present administrative claims to the United States, and federal district courts have exclusive jurisdiction over FTCA claims in litigation. For further information regarding the Health Center FTCA Program, see the FTCA Policy Manual (<https://bphc.hrsa.gov/ftca/>). Further, the Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA), views the provisions of 42 CFR Part 6 and the FTCA Health Center Policy Manual as applicable to VHPs to the same extent as they apply to other deemed employees of the Public Health Service.

Eligible health center VHPs do not receive deemed PHS employee status automatically, nor do they receive it derivatively, through the deeming of the health center. Instead, health centers must submit an annual application for deeming on behalf of their individually named VHPs to HRSA, which administers the Health Center FTCA Program. Each year, HRSA specifies the form of the application, which must be approved by HRSA and effected through a documented deeming determination for liability protections to apply during the subsequent calendar year.

III. Sponsoring Deemed Health Centers and Volunteer Requirements

In order for a health center volunteer to become a deemed PHS employee (i.e., a covered individual), and therefore a VHP, the sponsoring health center and the individual to be covered by the deeming must meet certain requirements, as further described below.

Sponsoring Deemed Health Center

Only a deemed health center entity may sponsor a VHP. Only an entity receiving funds under Section 330 as a Health Center Program grantee (i.e., a covered entity) or a subrecipient (defined for this purpose as an entity which receives a grant or a contract from a covered entity to provide a full range of health services on behalf of the covered entity)¹ may be deemed as a PHS employee. If the health center is not currently deemed, it must obtain deemed status by submitting an FTCA application that is approved by HRSA before it is eligible to sponsor VHPs. Please see the FTCA Health Center Policy Manual and the CY 2018 Deeming PAL for additional details regarding the Health Center FTCA application and other FTCA program requirements.² Grantees eligible to be deemed are:

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

Volunteer Health Professional: Required Conditions

Under subsection 224(q) of the PHS Act, in providing a health service to an individual, a health care practitioner who has been deemed to be a volunteer health professional for purposes of

¹ 42 CFR 6.3(b).

² See FTCA Health Center Policy Manual at <https://bphc.hrsa.gov/policiesregulations/policies/ftcahccpolicymanualpdf.pdf>.

liability protections under this section shall, be considered to be a health professional volunteer at a deemed health center if the following conditions are met:

- 1) The service is provided to patients at the sponsoring health center facilities or through offsite programs or events carried out by a sponsoring health center;
- 2) The entity is sponsoring the health care practitioner;
- 3) The health care practitioner does not receive any compensation for the service from the patient, the sponsoring health center, or any third-party payer (including reimbursement under any insurance policy, health plan, or federal or state health benefits program). However, the health care practitioner may receive repayment from the health center for reasonable expenses incurred in providing the service to the patient;³
- 4) Before the service is provided, the health care practitioner or the deemed entity posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to subsection 224(q);⁴
- 5) At the time service is provided, the VHP is licensed or certified in accordance with applicable federal and state laws regarding the provision of the service;⁵ and
- 6) The sponsoring health center must maintain all relevant documentation certifying that the VHP meets the requirements to be considered a volunteer.⁶

Covered Activities

Deemed PHS employees, for purposes of the Health Center FTCA Program, are eligible for FTCA coverage for negligent acts or omissions that:

- 1) Arise from the provision of medical, surgical, dental, or related functions at a health center site or through offsite programs or events carried out by the health center;
- 2) Occur during the effective deeming period after a FTCA deeming application is submitted by the health center on behalf of the VHP; and

³ Please note that this limitation on receipt of compensation applies only to the volunteer health care practitioner, and not to the health center, as to which the requirements under section 330 of the Public Health Service Act relating to sliding fee scale and billing of third party payers remain applicable.

⁴ HRSA encourages volunteer health professionals, in addition to ensuring the posting of a clear and conspicuous note at the site, to provide written notice and obtain a signed acknowledgment from patients of their limited liability under this provision. *Cf.* 42 U.S.C. 233(o)(2)(E).

⁵ Like employees, contractors, governing board members and officers, volunteers must be appropriately credentialed and privileged in accordance with PIN 2002-22 and other applicable Health Center Program policy guidance related to credentialing and privileging.

⁶ Relevant documentation includes: (1) all credentialing and privileging files; (2) a written, signed agreement that clearly states that the health professional is a volunteer of the health center, outlines the terms and conditions of the services that the volunteer will provide (which reflects the requirements of section 224(q)); (3) a letter signed by the volunteer and sponsoring health center acknowledging that the volunteer will not receive any compensation including reimbursement from any third party payor; and (4) signed documentation of each off-site activity for the provider.

- 3) Arise from services provided at a health center facility or through offsite programs or events.^{7,8}

IV. Application Process

Supplemental and Initial VHP Deeming Applications

On October 1, 2017, the HRSA Electronic Handbook (EHB) system will begin accepting applications from sponsoring health centers applying for deemed PHS employee status for volunteers currently providing services at the health center. As additional volunteers are onboarded by the covered entity throughout the calendar year, the health center may seek deemed status for those volunteers by submitting a supplemental VHP application.⁹ In order to request coverage for a volunteer, a deeming application, initial or supplemental, must be completed, submitted and approved by HRSA. The initial and supplemental VHP deeming application must be submitted through the EHB.

Both the initial and supplemental VHP deeming application forms require:

- 1) Contact information for the sponsoring health center;
- 2) A list of all VHPs the health center is sponsoring for deemed status. The sponsoring health center must **not** include other individuals, such as employees, contractors, governing board members and officers on this listing.
- 3) A list of contact information for all VHPs who the health center is sponsoring for deemed employment status – including name; mailing address¹⁰; email address; and phone number for each individual;
- 4) Evidence that each licensed or certified VHP was credentialed and privileged by the sponsoring health center within the last two years, including the specific dates such actions were taken; and
- 5) Description of any and all (1) state board disciplinary actions and (2) filed state or federal court (including any FTCA) malpractice claims against the sponsored eligible individuals within ten (10) years prior to the submission of this FTCA VHP deeming application (including pending claims).
- 6) Assurance that the individuals for whom deeming is sought will continue to meet the statutory eligibility criteria, as reflected in the entity's calendar year deeming application;
- 7) Assurance that the health center has maintained its credentialing, privileging, and risk management systems, or a description as to how the system(s) has been modified;

⁷ All services provided by volunteers must be within the health center's approved scope of project for coverage to be applicable. This includes activities listed under section C of the FTCA Health Center Policy Manual.

⁸ HRSA considers offsite programs and/or events to include health fairs or similar events where the sponsoring health center provides routine health screenings and educational activities. More specifically, the activities listed in section C.4 and C.5 of the FTCA Health Center Policy Manual constitute such offsite programs and/or events. Any other offsite programs and/or events must be approved via the Particularized Determination process, which is outlined in section C.4 of the FTCA policy manual and can be submitted to ftcapd@hrsa.gov.

⁹ Due to coding reasons in EHB, initial VHP applications will be labeled "supplemental," but it should be noted that the supplemental and the initial applications contain the same information.

¹⁰ Addresses provided for individuals must be personal mailing addresses that are different from that of the sponsoring health center.

- 8) A general description of the area and work that the individual will be performing for the sponsoring health center; and
- 9) Affirmation signatures (entered as an electronic signature) by the Executive Director of the sponsoring health center that all statements and assertions made on the application are true under penalty of perjury.

Approved initial and supplemental applications submitted during CY 2017 will provide deeming from an effective date not earlier than October 1, 2017 through December 31, 2017 and during Calendar Year 2018, respectively. Separate written deeming determinations will be made for 2017 and 2018.

V. CONTACT INFORMATION

For programmatic support regarding the FTCA Program, application requirements, and technical/EHB support, please contact:

BPHC Helpline

Phone: 1-877-974-2742, Option 2

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

8:00 am to 5:30 pm ET, Monday through Friday (except Federal holidays)

/S/

James Macrae
Associate Administrator
Bureau of Primary Health Care

**Supplemental Application for Deemed Health Center Program Grantees to Sponsor
Volunteer Health Professionals for Medical Malpractice under the
Federal Tort Claims Act**

(This application is illustrative and the actual application may appear differently in
the HRSA Electronic Handbook (EHB) System)

| | | |
|---|---------------------|---------------------|
| Department of Health and Human Services Health Resources and Services Administration | | |
| OMB # | Grantee Name | Grant Number |
| | | |
| Contact Information | | |

| | |
|--|--|
| CONTACT INFORMATION (Please include salutation next to the name) All the fields marked with * are required. | |
| EXECUTIVE DIRECTOR (Must electronically sign and certify the volunteer health professional application prior to submission) * Name: * Email: * Direct Phone: Fax: | |

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| Section I. Sponsoring Health Center Acknowledgments of Deemed Status Requirements 1. The sponsoring health center acknowledges its understanding that, under section 224(q)(3)(B) of the Public Health Service (PHS) Act, only a health center entity receiving funds under section 330 of the PHS Act (the Health Center Program) and deemed as a PHS employee under the Federally Supported Health Centers Assistance Acts (FSHCAA) of 1992 (Pub. L. 102-501) and 1995 (Pub. L. 104-73), as amended, may sponsor a volunteer health professional (VHP) to become a deemed PHS employee under section 224(q) of the PHS Act. <input type="checkbox"/> Yes <input type="checkbox"/> No |
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2. The sponsoring health center also acknowledges its understanding that, if its entity FTCA deeming or redeeming application for the applicable calendar year is denied or otherwise disapproved, none of its listed volunteers will be eligible to become deemed PHS employees under section 224(q) of the PHS Act.

Yes No

3. Further, the health center acknowledges its understanding that, by signing this VHP application the materials submitted as part of its initial entity FTCA deeming or redeeming application will be utilized by HRSA in reaching its determination as to whether the health center entity is a deemed PHS employee, as required to sponsor health center volunteers for deemed PHS employment.

Yes No

Additional Questions:

1. Since the approval of the sponsoring health center's most recently submitted and approved FTCA deeming or redeeming application, have any changes been made to the health center's risk management and/or claims management processes?

Yes No

If Yes, please describe these changes and attach supporting documentation, if applicable.

>> **Comment Box (7,000 Characters)**

>> **Attachment Section (Optional)**

2. Is the health center currently in compliance with credentialing and privileging and quality improvement/quality assurance (QI/QA) FTCA deeming application requirements such that there are no conditions in those areas upon its Health Center Program award?

(Please note that if certain conditions exists in the areas of credentialing and privileging and or QI/QA this is grounds for disapproval of the volunteer health professionals listed in this applications.)

Yes No

If No, please explain

>> **Comment Box [2,000 Characters]**

| Section II. Volunteer Health Professional: Acknowledgment of Required Performance Conditions | |
|---|--|
| The applicant health center acknowledges its understanding that, for a volunteer to be considered a volunteer health professional (VHP) of a sponsoring deemed health center, the following requirements must be met: | |
| 1. The service(s) provided by the VHP(s) to patients at the sponsoring health center’s facilities (including its approved service sites) or through offsite programs or events is carried out by a sponsoring health center (section 224(q)(1)(A)). | |
| <input type="checkbox"/> Yes | |
| 2. The VHP(s) does not receive any compensation for the service(s) from the patient, the sponsoring deemed health center, or any third-party payer (including reimbursement under any insurance policy, health plan, or federal or state health benefits program); however, the VHP may receive repayment from the sponsoring health center for reasonable expenses incurred by the VHP in the provision of the service to the individual, including travel expenses to or from the site of services (section 224(q)(1)(C)). | |
| <input type="checkbox"/> Yes | |
| 3. Before the service(s) is provided, the VHP(s) or the sponsoring deemed health center will post a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to the Public Health Service Act (section 224(q)(1)(D)). | |
| <input type="checkbox"/> Yes | |
| 4. At the time service(s) is provided, the VHP(s) is licensed or certified in accordance with applicable federal and state laws regarding the provision of the service(s) (section 224(q)(1)(E)). | |
| <input type="checkbox"/> Yes | |
| 5. The sponsoring health center maintains all relevant documentation certifying that the volunteer health professional meets the requirements to be considered a volunteer (section 224(q)(1)(F)). | |
| <input type="checkbox"/> Yes | |
| The applicant health center acknowledges its understanding that for each volunteer health professional (VHP) the following is required: | |
| 6. The sponsoring health center must credentialed and privileged the volunteer health professional in accordance with all current Health Center Program and FTCA Program credentialing and privileging requirements and maintains this information in a file for each volunteer health professional (section 224(q)(3)). | |
| <input type="checkbox"/> Yes | |

| Section III. Volunteers for Whom Deeming is Sought | |
|---|--|
| (The sponsoring health center must NOT include other individuals, such as employees, contractors, governing board members and officers on this listing.) | |
| Add Individual Details* | |
| <ul style="list-style-type: none"> • Prefix: • First Name: • Middle Name: | |

| | |
|--|--|
| <ul style="list-style-type: none"> • Last Name: • Professional Designation: | |
| <p>Contact Information</p> <ul style="list-style-type: none"> • Work Email Address: • Work Phone Number: • Work Fax Number: • Work Mailing Address: • Personal Email Address: • Personal Phone Number: • Personal Fax Number (if any): • Personal Mailing Address: | |
| <p>Roles and Specialty</p> <ul style="list-style-type: none"> • Role(s) in Health Center: • Specialty: • Others: <p>[Please upload a signed volunteer agreement for each individually named volunteer which clearly states that the named volunteer is a volunteer of the health center, outlines the terms and conditions of the services that the volunteer will provide, acknowledges that the volunteer will not receive any compensation including reimbursement from any third party payor, and documents each off-site activity for the provider.]</p> | |
| <p>Credentialing and Privileging</p> <ul style="list-style-type: none"> • Date of Last Credentialing: • Date of Last Privileging: <p>(Please remember that all state licensed or certified health professionals need to be credentialed and privileged at least every two years.)</p> <p>Please indicate whether the individual volunteer is required to be licensed or certified in accordance with applicable state and federal law(s).</p> | |

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| <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, please explain.</p> <p>If yes, please upload primary source verification of current licensure and/or certification. (upload attachment)</p> | |
| <p>Medical Malpractice History</p> <ul style="list-style-type: none"> • Please describe any and all (1) state board disciplinary actions and (2) state or federal court (including any FTCA) malpractice claims against the sponsored eligible individuals within ten (10) years prior to the submission of this FTCA volunteer health professional deeming application (including administrative and litigation claims, including pending claims). | |
| <p>*Notes:</p> <ul style="list-style-type: none"> • Please note that within the EHB System, the sponsoring health center is required to submit the information outlined above in section II for each individual volunteer for whom it is seeking FTCA coverage. • Provide contact information for <u>all/each</u> health center volunteer health professionals the health center is sponsoring for FTCA deemed status. Both work and personal addresses are requested. • If the health center does not or cannot answer “yes” to the questions in section I: questions 1 & 2, and section II: questions 1-5, then the application will be marked “VOID” as nonresponsive and not acted upon by HRSA. | |

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| <p>Section IV. Offsite Events and Particularized Determinations</p> <p>The sponsoring health center acknowledges its understanding that all services provided by volunteer health professionals must be within the sponsoring health center’s approved scope of project for deeming/FTCA coverage to be applicable.. HRSA considers such offsite programs and/or events to include health fairs or similar events where the sponsoring health center provides routine health screenings and educational activities, as well as the activities listed in section C.4 and C.5 of the FTCA Health Center Policy Manual. Any other offsite programs and/or events must be approved via the Particularized Determination process, which is outlined in section C.4 of the FTCA Policy Manual and can be submitted to ftcapd@hrsa.gov.)</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> |
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Section V. Signatures

Certification and Signature

I, _____ (Executive Director)*, certify that, to the best of my knowledge and belief, (1) this sponsoring health center meets the statutory eligibility criteria for deemed status/FTCA coverage, as reflected in its current calendar year deeming application; (2) this sponsoring health center has maintained its credentialing, privileging, and risk management systems in accordance with Health Center Program and Health Center FTCA Program requirements; and (3) the information in this application and the related attachments is complete and accurate.

***The application must be signed by the Executive Director, as indicated Section I.**

Contact Information.