



PROGRAM ASSISTANCE LETTER

DOCUMENT NUMBER: 2018-02

DOCUMENT TITLE: Calendar Year 2019
Requirements for Federal Tort Claims Act
(FTCA) Coverage for Health Center
Volunteer Health Professionals

DATE: March 26, 2018

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

I. PURPOSE

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 calendar year (CY) 2019 and set forth other coverage requirements found in the authorizing statute applicable to VHPs. This PAL supersedes PAL 2017-06, “2017 Health Center Volunteer Health Professional Federal Tort Claims Act (FTCA) Deeming Application Instructions.”

II. BACKGROUND

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 (PHS) Act (42 U.S.C. § 233(q)), extended liability protections for the performance of medical, surgical, dental, and related functions to VHPs of health centers that have also been deemed as employees of the PHS. Through the process established by the Health Resources and Services Administration (HRSA) for this purpose, VHPs of deemed health centers may receive deemed PHS employment status, with associated FTCA coverage.

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 are fact-specific, made by the Department of Justice and the federal district courts for matters in litigation, and 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. For further information regarding the Health Center FTCA Program, see the FTCA Health Center Policy Manual (<https://bphc.hrsa.gov/ftca/>). HRSA views the provisions of 42 CFR Part 6 and the FTCA Health

Center Policy Manual, to the extent that they are consistent with the provisions of the 21st Century Cures Act, as applicable to VHPs in the same manner as they apply to other health center deemed PHS employees.

Health centers must submit to HRSA an annual application for deeming on behalf of their individually named VHPs. Each individual VHP for whom the health center is seeking deemed PHS employee status must be approved by HRSA and deeming status for liability protections to apply during calendar year 2019 is effected through a Notice of Deeming Action. Eligible health professional volunteers of deemed health centers are required to obtain deemed status through approval of an individual deeming application submitted by a sponsoring deemed health center. **Health center health professional volunteers do not receive deemed PHS employee status automatically, nor do they receive it derivatively, through the deeming of the health center, due to distinct statutory requirements applicable to VHPs.**

III. VOLUNTEER HEALTH PROFESSIONAL PROGRAM REQUIREMENTS

Under subsection 224(q)(2) of the PHS Act, in providing a health service to an individual, a health care practitioner shall be considered to be a VHP 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 the sponsoring health center;
- 2) The entity is sponsoring the health care practitioner (as described in section 224(q)(3)(e));
- 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).¹ However, the health care practitioner may receive repayment from the health center for reasonable expenses incurred in providing the service to the patient;²
- 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);³
- 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;⁴ and

¹ Please note that this limitation on receipt of compensation applies only to the volunteer health care practitioner, and not to the health center. For more information on how health centers demonstrate compliance with Health Center Program billing and collections requirements, see [Health Center Program Compliance Manual, Chapter 16, Billing and Collections](#).

² The sponsoring health center may reimburse the VHP for reasonable expenses incurred by the volunteer in providing services on behalf of the health center. Examples of permissible reasonable expenses include travel expenditures to or from the site of services, gas, rental car, public transportation, and lodging costs. Health centers may also reimburse for the costs of equipment or supplies necessary to facilitate services to health center patients (e.g., lab coat, gloves, surgical masks).

³ HRSA encourages VHPs, in addition to meeting the statutory requirement of ensuring the posting of a clear and conspicuous notice of their limited liability at the site where the service is provided, to provide written notice and obtain a signed acknowledgment from patients of their limited liability under this provision. A sample *Patient Acknowledgement of Notice of Limited Liability for FTCA Deemed Health Centers* form can be located [here](#).

⁴ VHPs must be licensed or certified, as required by section 224(q) of the PHS Act, and appropriately credentialed and privileged in accordance with the Health Center Program Compliance Manual, Chapter 5.

- 6) The sponsoring health center maintains all relevant documentation to show that the VHP meets the requirements to be considered a volunteer health professional for purposes of FTCA coverage under section 224(q).⁵

Under 42 CFR § 6.6(a), coverage applies on and after the effective period of the deeming determination. The deeming determination may be made only after an FTCA deeming application submitted by the health center on behalf of the VHP is approved by HRSA.^{6,7}

IV. APPLICATION PROCESS

Every calendar year, sponsoring deemed health centers who wish to apply for deemed PHS employee status for volunteer health care practitioners who provide services at their health center must submit an application for deeming on behalf of their individually named VHPs to HRSA through the Electronic Handbooks (EHB) system. This VHP deeming application may be submitted simultaneous to the health center entity's initial and/or redeeming application. The deemed health center also may apply for deemed status for each new, individually named volunteer health care practitioner by submitting supplemental VHP applications throughout the year, as needed.

If a health center wishes to sponsor VHPs whose deemed status was previously approved in CY 2017 or CY 2018 (prior to the opening of the CY 2019 deeming application process), those individually named VHPs must be included in the health center's CY 2019 redeeming application. The EHB system will automatically indicate and prepopulate the names of these individuals, but the health center should confirm that the names of the individual VHPs for whom deeming is sought are accurately reflected on that list.

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 [Note: The sponsoring health center must **not** include individuals who are not VHPs, such as employees, contractors, governing board members and officers, on this list.];
- 3) Contact information for all VHPs who the health center is sponsoring for deemed employment status – including name, mailing address,⁸ email address, and phone number for each individual;

⁵ Relevant documentation that must be maintained by the deemed sponsoring health center includes: (1) documentation of the VHP's licensing and/or certification; (2) credentialing and privileging files; and (3) 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)). A sample *Volunteer Agreement* form can be located [here](#).

⁶ 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.

⁷ HRSA considers the phrase "offsite programs or events carried out by the [health center]" to include the examples of activities listed in 42 CFR 6.6(3). Accordingly, a particularized determination of coverage is not required for coverage to be extended to care provided to individuals who are not patients of the health center at such venues.

⁸ Addresses provided for individuals must be personal mailing addresses that are different from that of the sponsoring health center.

- 4) Evidence that each VHP is currently licensed or certified and has been credentialed and privileged by the sponsoring health center, including the specific dates such actions were taken;
- 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;
- 8) A general description of the area and work that the individual will be performing for the sponsoring health center; and
- 9) Electronic signature by the Executive Director of the sponsoring health center affirming that all statements and assertions made on the application are true under penalty of perjury.

Notice of Deeming Action (NDA)

When HRSA approves a VHP deeming application or supplemental VHP deeming application(s) submitted throughout calendar year, HRSA will issue a Notice of Deeming Action (NDA) listing each individually deemed VHP. The NDA is effective only for CY 2019. Please note that if an individual's name does **not** appear on a VHP NDA for CY 2019, **that individual has not been approved by HRSA for deeming**. This may occur due to noncompliance with the application requirements, and/or because an application was not received by HRSA on behalf of that individual, or for other reasons.

V. CONTACT INFORMATION

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

Health Center Program Support

Phone: 877-464-4772

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

7:00 a.m. to 8:00 p.m. ET., Monday through Friday (except Federal holidays)

/S/

James Macrae

Associate Administrator

Bureau of Primary Health Care

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)

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

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| CONTACT INFORMATION (Please include an honorific (Ms., Mrs., Mr., Dr., etc.) before 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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| <p>Section I. Sponsoring Health Center Acknowledgments of Deemed Status Requirements</p> <p>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.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>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</p> |
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or otherwise disapproved, none of its listed volunteers will be eligible for FTCA coverage as 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 whether to deem the health center entity as 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. Are there any conditions on the health center's program award in the areas of credentialing and privileging and quality improvement/quality assurance?

(Please note that Health Center Program funding conditions in the areas of credentialing and privileging and or QI/QA may demonstrate noncompliance with FTCA Program requirements and may result in disapproval of deemed status for the volunteer health professionals listed in this application. Please also note that HRSA may independently verify this information through review of agency records.)

Yes No

If Yes , please explain

>> Comment Box [2,000 Characters]

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| Section II. Volunteer Health Professional: Acknowledgment of Required Performance Conditions |
| For each of the individual VHPs listed in Section III below, 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 the 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. Before the service is provided, the sponsoring health center must credential and privilege 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 Sponsored for Deeming

For each Volunteer Health Professional sponsored for deeming, please provide the following information.

(Note 1: Do NOT include individuals who are not VHPs, such as employees, contractors, governing board members and officers on this listing.)

(Note 2: Do NOT include individuals who are students, interns, or residents conducting duties on behalf of a residency program. These individuals are not eligible for the VHP Program.)

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| <p>Add Individual Details*</p> <ul style="list-style-type: none"> • Prefix: • First Name: • Middle Name: • 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: | |

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| <ul style="list-style-type: none"> • Date of Last Privileging: <p>(Please remember that all state licensed or certified health professionals need to be credentialed and privileged in accordance with the Health Center Program Compliance Manual, Chapter 5.)</p> | |
| <p>Licensure and/or Certification</p> <p>This volunteer is required by state or federal law to be licensed, certified, or registered to perform the services that are requested. [Please Note: <u>If the answer is No, this volunteer is not eligible for coverage under the Health Center Volunteer Health Professional Program, and should not be included in this application.</u>]</p> <p>[<input type="checkbox"/> Yes [<input type="checkbox"/> No</p> <p>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"> • Does the sponsored VHP have any history of state board disciplinary actions and/or state or federal court (including any FTCA) malpractice claims within ten (10) years prior to the submission of this FTCA volunteer health professional deeming application? Please include both pending and resolved administrative and civil claims. <p>[<input type="checkbox"/> Yes [<input type="checkbox"/> No</p> <p>If yes, please upload a list of the claims or actions. For each claim or action, include:</p> <ul style="list-style-type: none"> • Area of practice/Specialty | |

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| <ul style="list-style-type: none"> • Date of occurrence • Summary of allegations • Status or outcome of claim or action • Summary of how the sponsoring health center and sponsored individual volunteer have/will implement steps to mitigate the risk of such claims or actions in the future (if FTCA-related, please only submit a summary if the case is closed. If the case has not been resolved do not include the summary). (upload attachment) | |
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| <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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| <p>Section V. Signatures</p> |
| <p>Certification and Signature</p> |
| <p>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</p> |

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.**