

PROGRAM INFORMATION NOTICE

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DOCUMENT TITLE: Federal Tort Claims Act Coverage for Deemed Consolidated Health Center Program Grantees Responding to Hurricane Katrina

TO: Consolidated Health Center Program Grantees
Primary Care Associations
Primary Care Offices

As a consequence of Hurricane Katrina, U.S. Department of Health and Human Services Secretary Michael O. Leavitt determined that a public health emergency exists in the States of Alabama, Florida, Louisiana and Mississippi. This determination was made on August 31, 2005 pursuant to the Secretary's authority under Section 319 of the Public Health Service Act.

This Program Information Notice (PIN) provides information regarding Federal Tort Claims Act (FTCA) coverage for FTCA-deemed Consolidated Health Center Program grantees (section 330(e), (g), (h) and (i) grantees) responding to Hurricane Katrina. The purpose of this PIN is to clarify the circumstances under which deemed grantees are covered under FTCA as they respond to the hurricane.

Please contact Aida Stark, in HRSA's Bureau of Primary Health Care at 301-594-4442 for any questions regarding this PIN.

/s/
A. Michelle Snyder
Associate Administrator for Primary Health Care

Attachment

I. PURPOSE

The purpose of this PIN is to convey and clarify statutory and regulatory requirements regarding FTCA coverage for deemed Consolidated Health Center Program grantees (section 330(e), (g), (h) and (i) grantees) during the response to the public health emergency caused by Hurricane Katrina. HRSA's intent is to assist and work with health centers as they respond to this natural disaster.

II. OVERVIEW

A. Legislative Background

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

The intent of the law is to increase the availability of funds for the provision of primary health care services by reducing the expenditure of health center funds for 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 employment.

B. Applicability

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

- Community Health Center (CHC) Programs, funded under section 330(e)¹;
- Migrant Health Center (MHC) Programs, funded under section 330(g);
- Migrant Health Programs (also known as Migrant Voucher 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).

¹ Please note that in previous documents, application guidances and other materials, HRSA has made reference to the School-Based Health Center (SBHC) Program. Section 330 of the PHS Act does not include authorization for a SBHC Program. Therefore, HRSA will no longer identify SBHCs as a separate Health Center Program or category/type of health center; however, there will continue to be recognition of school-aged children as an underserved population served by health centers. All organizations receiving section 330 funding specifically to support a SBHC must comply with the applicable requirements of section 330 of the PHS Act.

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.

III. FTCA COVERAGE FOR DEEMED CONSOLIDATED HEALTH CENTER PROGRAM GRANTEES RESPONDING TO HURRICANE KATRINA

Health centers are expected to be a part of the organized state or local response to natural disasters or man-made emergencies. (See Program Assistance Letter 2002-02 for further information.) HRSA clearly recognizes the value of federally funded health centers to their communities’ emergency response. During an emergency, FTCA deemed health centers are often asked to participate in the provision of primary care services at temporary locations as determined by local/state/federal disaster response officials, providing services to non-health center patients. Pursuant to Section 224(g)(1)(C) of the PHS Act (42 U.S.C. 233(g)(1)(C)), emergency response activities, including services to non-health center patients and services at temporary locations, will be considered part of a health center’s scope of project under the following circumstances:

- Services provided at non-health center sites are on a temporary basis and will cease with the end of the emergency.
- Services provided by health center staff are within the approved scope of project.
- All activities of health center staff are conducted on behalf of the health center. (Individual health center providers who volunteer on their own behalf to respond will not be protected under the health center’s auspices by the FTCA.)

Health centers are required to communicate with HRSA through their Project Officer when responding to an emergency to ensure FTCA coverage. For purposes of FTCA coverage for health centers responding to Hurricane Katrina, contact with the Project Officer should occur as soon as practicable after beginning emergency response activities. HRSA’s intent is to assist and work with health centers as they respond. To assure that the emergency response to Hurricane Katrina is considered through the FTCA-deeming process as part of the center’s scope of project, health centers should contact HRSA when beginning emergency response activities, and within 15 days (or as soon as practicable thereafter if written communication is impossible) submit to their Project Officer, in writing, the following information: (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 new emergency response activities. This written submission may be sent via e-mail, fax, or U.S. mail. Please note that the process for submitting a change in scope request in situations other than this public health emergency is described in Policy Information Notice (PIN) 2002-07.

Neither section 224(g) of the PHS Act nor this PIN extends FTCA coverage to volunteers at health centers.

Due to the nature of this emergency, health centers may wish to continue operating a temporary site on a permanent basis, beyond the end of the emergency. In these cases, health centers are required to submit a change in scope request as outlined in PIN 2002-07.

Nothing in this Notice should be viewed as an alteration of any other procedures or requirements applicable to health centers under the statute, regulations, or program guidance. For example,

centers and their health professionals should not operate across state lines unless clearly permitted to do so.