



PROGRAM ASSISTANCE LETTER

DOCUMENT NUMBER: 2017-07

DOCUMENT TITLE: Temporary Privileging of Clinical Providers by Federal Tort Claims Act (FTCA) Deemed Health Centers in Response to Certain Declared Emergency Situations

DATE: September 25, 2017

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

I. Purpose

The purpose of this Program Assistance Letter (PAL) is to clarify the credentialing and privileging documentation required to support temporary privileging of clinical providers by health centers in response to certain declared emergency situations for purposes of deemed Public Health Service (PHS) employment with associated Federal Tort Claims Act (FTCA) protections under section 224 of the Public Health Service Act (PHSA).

II. Background

The Federally Supported Health Centers Assistance Acts (FSHCAA) of 1992 and 1995, at section 224(g)-(n) of the PHSA, extended FTCA protections to eligible health centers funded under section 330 of the PHSA and to any of their officers, governing board members, employees, and qualified contractors. Section 9025 of the 21st Century Cures Act of 2016, at section 224(q) of the PHSA, effective October 1, 2017, expanded FTCA protections to certain volunteer health professionals, incorporating, in pertinent part, the FSHCAA standards for credentialing and privileging of providers under section 224(h) of the PHSA for these providers (see PHSA section 224(q)(3)). Specifically, section 224(h) of the PHSA requires health centers to have policies and procedures in place to reduce the risk of malpractice and the risk of lawsuits and “review and verify the professional credentials, references, claims history, fitness,

professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners.”

The Health Center Program Compliance Manual (Compliance Manual), issued on August 28, 2017, also references the section 224(h) statutory requirements in Chapter 21, FTCA Deeming Requirements, and provides additional guidance regarding credentialing and privileging in Chapter 5, Clinical Staffing.

Program Assistance Letter (PAL) 2017-06 requires health centers to provide documentation demonstrating compliance with certain credentialing and privileging requirements as part of the health center’s Calendar Year 2018 Volunteer Health Professional (VHP) deeming application. This PAL provides additional guidance regarding the requirements identified in the Compliance Manual, the FTCA Policy Manual, and in PAL 2017-06 to support temporary credentialing and privileging of health center providers, including volunteers, to respond to declared public health emergencies.

III. Applicability

This PAL applies to all health centers funded under sections 330(e), (g), (h), and (i) of the PHSA (42 U.S.C. 254b) (“section 330”) and deemed as PHS employees for purposes of liability protections for the performance of medical, dental, surgical, and related functions pursuant to the FSHCAA of 1992 (Pub. L. 102-501) and 1995 (Pub. L. 104-73), as amended, and to health centers sponsoring volunteers for deemed PHS employment status under 42 U.S.C. § 233(q). Throughout this PAL, “health center” refers to all of these entities.

IV. Definition of Emergency

For the purposes of this PAL, and consistent with the FTCA Health Center Policy Manual, Section F, 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 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 or other public health threats.

In situations where an emergency has not been officially declared, the Health Resources and Services Administration (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 FTCA coverage during a declared emergency.

V. Temporary Credentialing and Privileging Procedure

For all practitioners responding to declared public health emergencies at impacted FTCA deemed health centers, including volunteers, temporary privileges (also known as expedited credentialing and privileging) may be granted by the CEO or Executive Director of the impacted health center, upon expedited review and verification of the professional credentials, references, claims history, fitness, professional review organization findings, and license status of providers. Such expedited review and verification may take into account signed, written findings of the impacted health center’s applicable clinical department head and/or the Chief Medical Officer, as to the following items:

- **Identity:** This may be done by verifying the individual's government issued ID. This may include state or federal ID (i.e., driver's license, passport).
- **Professional Credentials:** Licensure verification must be done by primary source verification. “Primary Source Verification” is the process of verifying a credential by directly contacting or obtaining documentation from the original source that issued the specific credential to determine the accuracy of a qualification reported by an individual health care practitioner. For example, primary source verification of medical licensure could be obtained by a health center staff member requesting a copy of the provider’s medical license directly from the Board of Medical Licensing of that state. In the event that primary source cannot be obtained, the health center must document its attempts to obtain primary source verification and may accept a secondary source document (i.e., a copy from the provider). These references should also include information related to any negative professional organization findings, if applicable. Please note that during an emergency, all individuals must adhere to all state licensing laws and requirements when performing services in jurisdictions or states.
- **Claims History:** This may be done by obtaining a secondary source copy from the applicant of the most recent National Practitioner Data Bank (NPDB) query. If not possible, the applicant may attest that they have had no claims within the last 12 months, or if such claims exist, the applicant should provide information for each.
- **Fitness/References:** This must be assessed by reviewing privileging forms and/or at least one reference from the current or most recent employer, which demonstrates the individual can perform the duties and services that will be requested. The reference may be provided in the form of an email or other electronic correspondence that clearly states the individual can perform the duties that are requested. If an individual cannot produce privileging forms from a current or recent employer (for example, if the individual is a

recent graduate), the applicant may provide secondary sources such as a statement or other documentation from the degree issuing institution.

Temporary privileges can be granted for no more than 90 days. After the 90-day period, the impacted health center should have completed all the necessary verification for standard credentialing and privileging and granted full privileges based on that information.

VI. CONTACT INFORMATION

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

BPHC Helpline Phone: 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
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Bureau of Primary Health Care