

# Program Assistance Letter

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**DOCUMENT TITLE:** Calendar Year 2017  
Federal Tort Claims Act (FTCA) Deeming  
Application for Free Clinics

**TO:** Free Clinics  
Free Clinic Associations  
Primary Care Associations  
Primary Care Offices  
National Cooperative Agreements

## I. PURPOSE

This Program Assistance Letter (PAL) supersedes PAL 2015-04, and provides guidance on the Calendar Year (CY) 2017 deeming application process for liability coverage under the provisions of section 224(o) of the PHS Act and the Federal Tort Claims Act (FTCA). This PAL contains instructions for free clinics on how to apply to HRSA for deemed Public Health Service (PHS) employee status for purposes of coverage under the FTCA for CY 2017 on behalf of their volunteer free clinic health care professionals, board members, officers, employees, and/or individual contractors. **The Electronic Handbook (EHB) system will be available to begin receiving CY 2017 applications on August 8, 2016. Redeeming applications for CY 2017 coverage are due no later than September 12, 2016.**

FTCA coverage is provided to certain eligible free clinic volunteer health care professionals, board members, officers, employees, and/or individual contractors under section 224(o) of the Public Health Service (PHS) Act, as amended (42 U.S.C. 233(o)). PIN 2011-02 details the process through which the United States Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA) may deem such individuals to be a PHS employee for the purposes of FTCA liability coverage for claims related to the performance of medical, surgical, dental, and related functions if the eligible individual meets certain statutory and program requirements. For their eligible individuals to be deemed as PHS employees for purposes of FTCA coverage, sponsoring free clinics must comply with the requirements of section 224(o) of the PHS Act.<sup>1</sup>

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<sup>1</sup> Section 224(o)(3) provides, "For purposes of this subsection, the term "free clinic" means a health care facility operated by a nonprofit private entity meeting the following requirements:

Free clinics must submit an annual FTCA deeming application on behalf of their eligible individuals to HRSA, which administers the Free Clinics FTCA Program. Under PHS Act section 224(o), free clinic board members, officers, employees, and/or individual contractors, as well as volunteer health care professionals, who have been sponsored by a qualified free clinic and approved by HRSA, may be deemed as PHS employees for purposes of FTCA liability coverage. FTCA coverage for these individuals extends only to coverage for negligent acts and omissions that arise from the performance of medical, surgical, dental or related functions within the scope of the covered individual's employment (generally speaking, work on behalf of the sponsoring free clinic). Section 224(o) does not provide coverage beyond this form of liability protection. **FTCA coverage also does not extend to the acts or omissions of the free clinic entities, as these entities are not eligible for coverage under PHS Act section 224(o).**

Under section 224(o)(5)(e) (42 U.S.C. 233(o)(5)(e)), FTCA coverage applies to claims against eligible individuals related to the provision of services only to the extent that certain conditions specified in section 224(o)(2) (42 U.S.C. 233(o)(2)) are met.<sup>2</sup> Other requirements under section 224(o) also pertain.

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(i) The entity does not, in providing health services through the facility, accept reimbursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.”

<sup>2</sup> Section 224(o)(2) requires, in providing health services to an individual, that certain conditions be present. These include the following:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(C).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

## II. APPLICATION PROCEDURES AND THE FREE CLINIC ELECTRONIC HANDBOOK SYSTEM

Coverage under the Free Clinics FTCA Program does not occur automatically. FTCA coverage is effective for a specifically named eligible individual and for a specified time period only after HRSA approves a deeming application submitted by a sponsoring free clinic on behalf of such individuals. (See 42 U.S.C. 233(o); PIN 2011-02.) It is important to note that **HRSA requires that all free clinic deeming applications be submitted using HRSA's web based Electronic Handbook (EHB) system.**

Free clinics must complete a deeming application in order to sponsor eligible individuals for FTCA coverage. (See 42 U.S.C. 233(o); PIN 2011-02.) Applications require that the appropriate free clinic representative(s) electronically sign by typing his or her name in the appropriate field, upload documentation of the sponsoring free clinic's nonprofit status (where applicable), upload the free clinic's quality improvement/quality assurance (QI/QA) plan, and include an explanation of any medical malpractice claims or any disciplinary actions taken against an eligible individual during the past ten (10) years for initial and supplemental applications and five (5) years for redeeming applications. The required information must be uploaded as attachment files within the online EHB application form. Free Clinic FTCA Program uses three types of deeming applications: initial, redeeming (renewal), and supplemental to extend coverage to eligible individuals. Please see the sections below for a detailed description of each type.

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Paragraphs (o)(4) and (5)(C), respectively, read as follows:

(4) For purposes of this subsection, the term "qualifying health service" means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) of this section (other than paragraphs (3) through (5)) and subsections (h), (i), and (l) of this section apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4) of this section, subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A) of this section.

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D) of this section; and

(ii) the Secretary, pursuant to subsection (g)(1)(E) of this section, determines that the health care practitioner is deemed to be an employee of the Public Health Service.

Free Clinics that experience technical difficulties preventing them from submitting an application using the EHB system may request a waiver to submit their application using the Microsoft Excel application. Waiver requests must be submitted before September 12, 2016, the Redeeming Cycle deadline and should be sent to [freeclinicsFTCA@hrsa.gov](mailto:freeclinicsFTCA@hrsa.gov). HRSA will review all requests for waiver, and if approved, will provide the free clinic with an alternate application and instructions for submission.<sup>3</sup>

### **Initial Applications**

Effective January 1, 2016, free clinics that apply *for the first time* to the FTCA Free Clinic Program will be required to have a DUNS number<sup>4</sup> and be registered within the System for Award Management (SAM), in order to create an account and submit an initial application via the Electronic Handbook (EHB). If your free clinic does not have a DUNS number, you may apply for a DUNS number online at <https://fedgov.dnb.com/webform>. There are no fees associated with obtaining a DUNS number. Free clinic applicants will also need to be registered on SAM.gov. There are no fees associated with the SAM.gov registration process.

If technical assistance is required when registering on:

- SAM.gov, please contact: 866-606-8220;
- Dun & Bradstreet, please contact: 800-234-3867.

HRSA will accept initial deeming applications at any time a free clinic and its eligible individuals wish to seek FTCA liability coverage. The initial deeming application must be submitted through the EHB at: <https://grants.hrsa.gov/webExternal/>.

The initial deeming application requires a free clinic to provide information as evidence that it has fulfilled all statutory and programmatic requirements, including:

- 1) Contact information for the sponsoring free clinic;
- 2) Location and manager(s) of free clinic sites;
- 3) Assurance that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 4) Description of the free clinic's credentialing and privileging systems;
- 5) Description of the free clinic's risk management systems;
- 6) List of all individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring for deemed employment status;
- 7) Evidence that each licensed or certified individual was credentialed and privileged by the sponsoring free clinic within the last two years, including the specific dates such actions were taken.

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<sup>3</sup> Explanations that may be considered permissible include, but are not limited to, natural disasters or a serious emergency at the free clinic that makes it impossible for the free clinic to submit its application in the EHB system.

<sup>4</sup> A DUNS number is a unique nine-digit identification number for each physical location of your business. DUNS Number assignment is free for all businesses required to register with the federal government for contracts or grants.

In addition to addressing the requirements noted above, an initial deeming application must include the following attachments:

- a. Documentation of non-profit status;
- b. Quality Improvement/Quality Assurance plan (QI/QA) with either a signature of an authorized board representative that notes the date of board approval or a dated copy of board minutes, with appropriate signature(s), documenting approval (either method of submission must evidence that approval was undertaken within the last three (3) years);
- c. Description of any and all (1) state board disciplinary actions and (2) filed state or federal court (and including any FTCA) malpractice claims against the free clinic and/or its sponsored eligible individuals within ten (10) years prior to the submission of this FTCA application (including pending claims), and a brief statement of whether the clinic implemented risk management activities as needed in response to allegations, and to prevent further claims from occurring in the future;
- d. Affirmation signature (entered as an electronic signatures) by the Executive Director of the sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

### **Redeeming Applications**

Free clinics that currently sponsor deemed individuals must reapply annually for continued FTCA coverage. The annual redeeming application must be submitted through the EHB at <https://grants.hrsa.gov/webExternal/>.

The redeeming application requires a free clinic to provide the same core information as required in the initial deeming application in order to demonstrate that it has fulfilled all statutory and program requirements, including:

- 1) Contact information for the sponsoring free clinic;
- 2) Location and manager(s) of free clinic sites;
- 3) Assurance that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 4) Description of the free clinic's credentialing and privileging systems;
- 5) Description of the free clinic's risk management systems;
- 6) List of all individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring for deemed employment status;
- 7) Evidence that each licensed or certified individual was credentialed and privileged by the sponsoring free clinic within the last two years, including the specific dates such actions were taken.

In addition to addressing the requirements noted above, a redeeming application must include the following attachments:

- a. Quality Improvement/Quality Assurance plan (QI/QA) with either a signature of an authorized board representative that notes the date of board approval or a dated copy of board minutes, with appropriate signature(s), documenting approval (either method of

- submission must evidence that approval was undertaken within the last three (3) years);
- b. Description of any and all (1) state board disciplinary actions and (2) filed state or federal court (and including any FTCA) malpractice claims against the free clinic and/or its sponsored eligible individuals within five (5) years prior to the submission of this FTCA application (including pending claims), and a brief statement of whether the clinic implemented risk management activities as needed in response to allegations, and to prevent further claims from occurring in the future;
  - c. Affirmation signature (entered as an electronic signature) by the Executive Director of the sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

Redeeming applications for CY 2017 coverage are due on or by September 12, 2016.

**Failure to meet the deadline for submission of a redeeming application will result in a requirement to submit an initial deeming application.**

### **Supplemental Applications**

During the course of the calendar year, sponsoring free clinics may wish to add additional eligible individuals as deemed PHS employees for FTCA coverage. In order to request coverage for eligible individuals, a supplemental deeming application must be completed, submitted and approved by HRSA. The supplemental deeming application must be submitted through the EHB at: <https://grants.hrsa.gov/webExternal/>.

A supplemental deeming application form requires:

- 1) Contact information for the sponsoring free clinic;
- 2) Assurance that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 3) Assurance that the free clinic has maintained its credentialing, privileging, and risk management systems, or a description as to how the system(s) has been modified;
- 4) List of all additional individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring for deemed employment status.

In addition to addressing the requirements noted above, a supplemental deeming application must include the following:

- a. An uploaded copy of the new QI/QA plan (**only** if it has changed since the most recent original or redeeming deeming application);
- b. Description of any and all (1) state board disciplinary actions and (2) filed state or federal court (and including any FTCA) malpractice claims against the new sponsored eligible individuals within ten (10) years prior to the submission of this FTCA application (including pending claims), and a brief statement of whether the clinic implemented risk management activities as needed in response to allegations, and to prevent further claims from occurring in the future;
- c. Affirmation signatures (entered as an electronic signature) by the Executive Director of the sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

### **III. CALENDAR YEAR DATA COLLECTION**

FTCA Free Clinics are required to submit their annual data report as part of their annual redeeming application within the EHB online system. Redeeming applications will not be considered complete if the annual data report section is not completed. As in previous years, Free Clinics are required to report the total number of free clinic-sponsored deemed individuals (including practitioners, board members, and officers) in the recently closed calendar year; total number of deemed providers in the recently closed calendar year; and total number of “FTCA-covered” patient visits conducted by deemed providers in the recently closed calendar year. Patient visits must be those that were conducted by deemed providers. Patient visits, solely for purposes of reporting under this section, are defined as follows:

- 1) face-to-face contacts between a patient and a deemed provider who exercises independent professional judgment<sup>5</sup> in the provision of services to the patient<sup>6</sup>;
- 2) documented in a medical record maintained by the free clinic; and
- 3) compliant with all applicable Free Clinics FTCA Program requirements.

FTCA deemed providers are defined as licensed or certified healthcare practitioner clinicians that have been deemed as Public Health Service employees for FTCA coverage purposes. The annual data report is due by the end of the application cycle following the close of that calendar year. For example, the annual data report on the number of FTCA patient visits by deemed individuals in CY 2015 is due on or before September 12, 2016.

### **IV. GENERAL APPLICATION SUBMISSION INSTRUCTIONS**

To streamline the FTCA deeming application submission and processing, free clinics must submit the deeming application within the EHB online system. Please do not submit a printed and scanned version of the application form. Supplemental deeming applications must contain names of new individuals requested to be added to the listing of deemed individuals by a sponsoring free clinic and not identify currently deemed individuals.

All Initial, Redeeming, and Supplemental applications require an uploaded attachment explaining disciplinary actions and medical malpractice claims alleged against the eligible individuals applying for deeming and a brief statement of whether the clinic implemented appropriate risk management activities in response. Documentation related to a disciplinary action must include: nature and reason for the disciplinary action; timeframe (where applicable); documentation from the appropriate professional board that states the individual

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<sup>5</sup> To meet the criterion for "independent professional judgment," the provider must be acting on his/her own when serving the patient and not assisting another provider. For example, a nurse assisting a physician during a physical examination by taking vital signs, taking a history or drawing a blood sample is not credited with a separate visit for reporting purposes. [Since this is not a grant program, there is no “approved scope of project.”]

<sup>6</sup> This does not mean that a specific encounter or activity, while not constituting a “patient visit” for reporting purposes under this section, is not eligible for FTCA coverage. [Since this is not a grant program, there is no “approved scope of project.”]

is in good standing and/or a description of any practice restrictions on the licensee. This information is required for the past ten (10) years for initial and supplemental applicants and five (5) years for redeeming applicants. Do not upload a report from the National Practitioner Data Bank (NPDB), as these reports do not describe the actions taken by the sponsoring free clinic or the applicant in response to the claims and may disclose information exceeding the time frame requested.

Should review of the application reveal that the required application information supplied by the sponsoring free clinic is incomplete or additional verification is required, the CEO and FTCA Contact listed on the application will both be contacted via email. The sponsoring free clinic will have ten (10) business days from the date of notification to submit the requested information to complete its application. If the requested information is not received within the 10 day time period, individuals sponsored by the free clinic may not be deemed by January 1, 2017, and may experience a gap in coverage.

## **V. CONTACT INFORMATION**

For more information on the free clinic deeming application requirements and related questions, please call the Office of Quality and Improvement at (301) 594-0818, email [freeclinicsFTCA@hrsa.gov](mailto:freeclinicsFTCA@hrsa.gov) or call the BPHC Help Line at 877-974-2742.

/S/

Tonya Bowers  
Associate Administrator for Primary Health Care

**APPENDIX A  
FREE CLINIC FTCA PROGRAM APPLICATION CHECKLIST**

<b>APPLICATION CHECKLIST</b>	<ul style="list-style-type: none"> <li>– <b>Free Clinic Deeming Application for Volunteer Health Care Professionals, Board Members, Officers, Employees, and/or Individual Contractors</b></li> <li>– <b>Deeming Application – Initial and/or Annual Redeeming, and/or Supplemental</b></li> </ul>
<p>ITEMS TO BE UPLOADED in the EHB:</p> <ol style="list-style-type: none"> <li>1) Copy of nonprofit documentation (Initial Application Only)</li> <li>2) Copy of clinic’s Quality Improvement / Quality Assurance (QI/QA) plan</li> <li>3) Descriptions of all medical malpractice claims and state board disciplinary actions occurring within 10 years prior to the submission of an initial and supplemental deeming applications or 5 years prior for redeeming applications.</li> </ol>	

**APPLICATION NOTES BY SECTION**

**Section I – Contact Information**

- Send state documentation indicating legal name change if legal name change occurred since last deeming application.

**Section II – Free Clinic Sites**

- All free clinic sites must be listed. Each site must be appropriately identified as the main site or as an additional site.

**Section III – Sponsoring Free Clinic Eligibility**

- Provide an explanation of any “No” answers in the box below the question.
- Attach nonprofit documentation to application (For initial applications only).

**\*Section IV – Credentialing and Privileging Systems**

- Provide an explanation of any “No” answers in the box below the question.

**\*Section V– Risk Management Systems**

- Provide an explanation of any “No” answers in the box below the question.
- Attach a copy of the free clinic’s QI/QA plan, including an explanation of the clinic’s risk management policies. QI/QA plans must be signed and approved by an authorized board member within three (3) years of the date of the application.

**Section VI – Free Clinic Volunteer Health Care Professionals, Board Members, Officers, Employees, and Individual Contractors**

- Provide a list of ALL free clinic volunteer health professionals, board members, officers, employees, and individual contractors on whose behalf the free clinic is submitting an application for FTCA deemed status.
- Provide a physical address for ALL free clinic volunteer health professionals, board members, officers, employees, and individual contractors on whose behalf the free clinic is submitting an application for FTCA deemed status. Addresses and phone numbers provided for individuals must be personal mailing addresses that are

different than that of the clinic.

- Specify the person's role in the free clinic for any individual the free clinic is sponsoring for FTCA deemed status. Disclose if the individual has had any past medical malpractice claims or disciplinary actions for the past ten (10) years if submitting an initial or supplemental application or for the past five (5) years for redeeming applicants.
- Attach an explanation of each medical malpractice claim or disciplinary action (to include probationary actions) including explanations of the suit, allegation, medical specialty involved, and a brief statement of whether the clinic implemented appropriate risk management actions as needed in response to allegations to reduce the risk of future malpractice and future such claims. Documentation related to a disciplinary action must include: nature and reason for the disciplinary action; timeframe (where applicable); documentation from the appropriate professional board that states the individual is in good standing and/or a description of any practice restrictions on the licensee.