



PROGRAM ASSISTANCE LETTER

DOCUMENT NUMBER: 2018-04

DOCUMENT TITLE: Free Clinics Federal Tort Claims Act (FTCA) Program Policy Highlight on Eligibility of Volunteer Health Professionals

DATE: July 17, 2018

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

I. Purpose

The purpose of this Program Assistance Letter (PAL) is to highlight the program requirement that volunteer health care professionals must be licensed or certified health practitioners of the free clinic in order to be eligible for deemed Public Health Service (PHS) employment with associated Federal Tort Claims Act (FTCA) protections, as set forth in subsection 224(o) of the Public Health Service (PHS) Act, and as implemented in PIN 2011-02, the Free Clinics FTCA Program Policy Guide.

II. Background

Congress afforded liability protections under the FTCA, 28 U.S.C. §§ 1346(b), 2401(b), 2671-80, to free clinic volunteer health care professionals through enactment of Section 194 of HIPAA (Public Law 104-191), which added subsection (o) to Section 224 of the Public Health Service

(PHS) Act (42 U.S.C. § 233(o)). Subsection 224(o)(2) of the PHSA describes a “free clinic health professional,” in pertinent part, as a “health care practitioner” who, “[a]t the time the service is provided, ... is licensed or certified in accordance with applicable law regarding the provision of the service.” Section 224(o) does not apply this standard to governing board members, employees, and individual contractors of the free clinic.

Guidance documents issued by the United States Department of Health and Human Services’ (HHS) Health Resources and Services Administration (HRSA) reflect program policies related to FTCA coverage for claims alleging negligent acts or omissions by covered individuals related to the performance of medical, surgical, dental, and related functions within the scope of deemed employment.

This PAL reaffirms the policy set forth in PIN 2011-02, footnote 3:

For purposes of the Free Clinics FTCA program, a licensed or certified health care practitioner is an individual required to be licensed, registered, or certified, as applicable, to practice or provide health services by the State, Commonwealth, or territory in which the free clinic is located and services are being provided. These individuals may include, but are not limited to, physicians, dentists, registered nurses, and others required to be licensed, registered, or certified (e.g., laboratory technicians, social workers, medical assistants, licensed practical nurses, dental hygienists, and nutritionists).

III. Applicability

This PAL applies to all free clinics wishing to sponsor eligible free clinic volunteer health professionals under section 224(o) of the PHS Act, as amended (42 U.S.C. 233(o)), for FTCA coverage through a supplemental deeming application for the remainder of Calendar Year 2018 and/or through a deeming/redeeming application for Calendar Year 2019 and thereafter. It has prospective applicability and therefore does not affect previously issued Notice of Deeming Actions (NDA) letters on behalf of sponsored individuals for coverage years preceding 2018, including those previously awarded for Calendar Year 2018.

IV. Volunteer Health Care Professional Required License or Certification

Under section 224(o) of the PHSA, only free clinic volunteer health care professionals who are licensed or certified health care practitioners are eligible for FTCA deemed status. This includes licensed independent practitioners (LIP) (i.e., a physician, dentist, nurse practitioner, nurse midwife, or any other individual permitted by law and the organization to provide health care services without direction or supervision) and other licensed or certified health care practitioners (OLCP) (i.e., an individual who is licensed, registered, or certified but is not permitted by law to

provide health care services without direction or supervision, such as a licensed/certified laboratory technician, medical assistant, licensed practical nurse, or dental hygienist).

Other volunteer staff members at free clinics are not eligible for FTCA deemed status. This includes volunteer administrative staff, volunteer janitorial staff, volunteers performing non-health care related functions at the free clinic, and other volunteers who are neither licensed nor certified health care practitioners.

Accordingly, when submitting an application to sponsor a volunteer health care professional, the sponsoring free clinic would need to demonstrate that the volunteer for whom deeming is sought is a health care practitioner who holds a current, unrestricted license or certification, as provided for under applicable law, to provide health professional services.

Without the required information, HRSA will be unable to approve deemed status. Thus, if your application to sponsor a volunteer health care professional does not demonstrate that the individuals meet all requirements, including licensure or certification in accordance with applicable law, the application will be denied or returned for additional information, as appropriate. If you resubmit your application without the required information, your application will be denied.

V. Contact Information

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

By Email – FreeclinicsFTCA@hrsa.gov or

By Phone – BPHC Helpline: 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)

James Macrae
Associate Administrator
Bureau of Primary Health Care