



# PROGRAM ASSISTANCE LETTER

**DOCUMENT NUMBER: 2020-03**

**DOCUMENT NAME:** Calendar Year 2021  
Volunteer Health Professional Federal Tort Claims  
Act (FTCA) Deeming Sponsorship Application  
Instructions

**DATE: March 5, 2020**

**TO:** Health Center Program Award Recipients  
National Cooperative Agreements  
Primary Care Associations  
Primary Care Offices

## I. PURPOSE

The purpose of this PAL is to provide information and instructions for applications for deemed Public Health Service (PHS) employment for Volunteer Health Professionals (VHPs) sponsored by deemed health centers (or deemed health center subrecipients) for calendar year (CY) 2021. This PAL also sets forth certain statutory requirements in section 224(q), relating to liability protections for VHPs. This PAL supersedes PAL 2019-03, "2020 Health Center Volunteer Health Professional Federal Tort Claims Act (FTCA) Deeming Application Instructions."

## II. BACKGROUND

Section 9025 of the 21st Century Cures Act (Pub. L. 114-255) added subsection 224(q) to the PHS Act (42 U.S.C. § 233(q)), extending eligibility for liability protections for the performance of medical, surgical, dental, and related functions to certain sponsored VHPs of health centers (and health center subrecipients) 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 sponsored by deemed health centers may receive deemed PHS employment status, with associated FTCA coverage.

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 deemed health center facilities or through offsite programs or events carried out by the sponsoring health center;
- 2) The deemed 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).<sup>1</sup> However, the health care practitioner may receive repayment from the sponsoring health center for reasonable expenses incurred in providing the service to the patient;<sup>2</sup>
- 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);<sup>3</sup>
- 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;<sup>4</sup> and
- 6) The sponsoring health center also must maintain 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).<sup>5</sup>

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 that are determined or certified to be within the scope of their deemed employment. FTCA scope of employment determinations are fact-specific, made by the Department of Justice and the federal district courts for matters in litigation and by Departmental claims officials for administrative tort claims, and, among other items, generally 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 Health Center FTCA Program website (<https://bphc.hrsa.gov/ftca/>).

### III. DISCUSSION

Health centers must submit to HRSA an annual deeming sponsorship application on behalf of their individually named VHPs. Each deeming sponsorship application for an individual VHP

<sup>1</sup> 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](#).

<sup>2</sup> 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).

<sup>3</sup> While not required, health centers utilizing 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, may wish 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](#).

<sup>4</sup> VHPs must be licensed or certified, as required by section 224(q)(2) of the PHS Act, and appropriately credentialed and privileged in accordance with the [Health Center Program Compliance Manual, Chapter 5, Clinical Staffing](#).

<sup>5</sup> Relevant documentation that must be maintained by the deemed sponsoring health center includes documentation of the VHP's status at the health center, to include: (1) documentation of the VHP's licensing and/or certification; and (2) a written, signed agreement that clearly states that the health professional is a volunteer of the health center and 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](#).

submitted by the health center must be approved by HRSA in order for coverage to become effective for the time period specified in the Notice of Deeming Action (NDA). **Health center VHPs 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 health center VHPs, as contrasted with the requirements applicable to “covered individuals” who are not health center VHPs.**

FTCA coverage applies during the effective period of the deeming determination. The deeming determination may be made only after an FTCA deeming application submitted by the sponsoring health center on behalf of the VHP is approved by HRSA.<sup>6</sup>

Please note that section 224(q) contains language that is specific to VHPs, rather than including VHPs in the listing of other covered individuals of a deemed health center. As an example, section 224(q)(2) (emphasis added) reads:

2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

*(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through offsite programs or events carried out by the entity.*

Section 224(q)(2)(A) makes FTCA coverage available to eligible VHPs for services “at the facilities of” a deemed entity “or through offsite programs and events carried out by the entity.” Activities, including the provision of services, that are beyond the scope of the statutory description are not eligible for FTCA coverage. Health centers should carefully review the language of section 224(q) in determining how they intend to utilize volunteer services and their potential need for private malpractice insurance for activities beyond the scope of the statutory description.

#### **IV. VOLUNTEER HEALTH PROFESSIONAL FTCA PROGRAM DEEMING SPONSORSHIP APPLICATION REQUIREMENTS**

Every calendar year, sponsoring deemed health centers that wish to apply for deemed PHS employee status for volunteer health care practitioners who provide services at their health center and/or through offsite programs or events carried out by the entity must submit an application for deeming on behalf of their individually named VHPs to HRSA through the Electronic Handbooks (EHBs) system. The VHP deeming sponsorship application may be submitted simultaneously with the health center entity’s initial deeming and/or redeeming application. The sponsoring deemed health center also may apply for deemed status for each new, individually named volunteer health care practitioner by submitting VHP supplemental deeming sponsorship applications throughout the year, as appropriate.

If a health center wishes to sponsor a VHP whose deemed status was previously approved in CY 2019 or CY 2020 (prior to the opening of the CY 2021 deeming application process), those individually-named VHPs must be included in the health center’s CY 2021 VHP redeeming application. The EHBs will automatically indicate and prepopulate the names of these individuals, but the health center should confirm that the names and other requested information of the

<sup>6</sup>All services provided by volunteers must be consistent with section 224(q) and within the health center’s approved scope of project.

individual VHPs for whom deeming is sought are accurately reflected on that list.

Please note that, because subrecipients are eligible for deeming based on their receipt of funding from the award recipient to carry out a portion of the grant-supported project, only the award recipient (the entity named on the Notice of Award) can transmit a request to HRSA for deeming of subrecipient VHPs, with resultant FTCA coverage, through HRSA's Electronic Handbooks (EHBs). Health centers requesting FTCA coverage on behalf of a subrecipient's VHPs must submit a deeming sponsorship application on behalf of each individually named volunteer health practitioner on the subrecipient's behalf. Subrecipient VHP deeming applications are subject to the same requirements as those applicable to award recipients.

VHP deeming sponsorship application forms require:

- 1) Contact information for the sponsoring health center;
- 2) A list of the names and required information for all VHPs the sponsoring deemed health center is submitting 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 whom the health center is sponsoring for deemed employment status – including name, mailing address, email address, and phone number for each individual;<sup>7</sup>
- 4) Evidence that each VHP presented for approval 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 the FTCA VHP deeming application (including pending claims);
- 6) Assurance that the health center will ensure that all individuals for whom deeming is sought will continue to meet the statutory eligibility criteria throughout the period of the calendar year deeming period;
- 7) Assurance that the health center has maintained its credentialing, privileging, and risk management systems in compliance with applicable Health Center Program requirements (including a description of any planned changes to the existing systems and explanation of how compliance will be maintained);
- 8) A description of the practice area and work that the individual will be performing for the sponsoring health center; and
- 9) Electronic signature by the Executive Director/Chief Executive Officer of the sponsoring health center affirming that all statements and assertions made on the deeming application are true under penalty of perjury.

## **V. NOTICE OF DEEMING ACTION**

When HRSA approves a VHP deeming sponsorship application or VHP supplemental deeming sponsorship application(s) submitted throughout the calendar year, HRSA will issue a Notice of Deeming Action (NDA) listing each individually deemed VHP. The NDA is effective only for the dates specified in the NDA. If an individual's name appears on a VHP NDA as disapproved

<sup>7</sup> Addresses and phone numbers provided for individuals must be personal mailing addresses that are different from that of the sponsoring health center.

or is not listed on the NDA, **that individual has not been approved by HRSA for deeming, and FTCA protections will not apply.** If a deeming sponsorship application is not approved, HRSA will notify the health center and provide an explanation of the reasons for disapproval.

## VI. CONTACT INFORMATION

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

Health Center Program Support

Phone: 1-877-464-4772, Option 1

Web form:

[https://bphccommunications.secure.force.com/ContactBPHC/BPHC\\_Contact\\_Form](https://bphccommunications.secure.force.com/ContactBPHC/BPHC_Contact_Form)

8:00 a.m. to 5:30 p.m. ET, Monday through Friday (except Federal holidays)

/James Macrae/

James Macrae

Associate Administrator

Bureau of Primary Health Care

**Application for Deemed Health Center Program Award Recipients to Sponsor Volunteer Health Professionals (VHPs) for Deemed PHS Employee Status under the Federal Tort Claims Act**

(This application is illustrative and the actual application may appear differently in HRSA's Electronic Handbooks (EHBs) System)

<b>Department of Health and Human Services Health Resources and Services Administration</b>		
<b>OMB#</b>	<b>Award Recipient Name</b>	<b>Grant Number</b>
<b>Contact Information</b>		
<b>CONTACT INFORMATION (Include a title (Ms., Mrs., Mr., Dr., etc.) before the name) All fields marked with an * are required.</b>		
<b>EXECUTIVE DIRECTOR (Must electronically sign and certify the volunteer health professional sponsorship application prior to submission)</b> * Name: * Email: * Direct Phone: Fax:		

<b>Section I. Sponsoring Health Center Acknowledgments of Deemed Status Requirements</b>
<p><b>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.</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>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 or otherwise disapproved, none of its sponsored volunteers will be eligible for FTCA coverage as deemed PHS employees under section 224(q) of the PHS Act.</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

**Section I. Sponsoring Health Center Acknowledgments of Deemed Status Requirements**

- 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 and the entity's Notice of Deeming Action will be utilized by HRSA in determining that the entity is eligible to sponsor health center volunteers for deemed PHS employee status.**

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, 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?**

**(Note that unresolved 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 VHP(s) listed in this application. Also note that HRSA may independently verify this information through review of agency records.)**

Yes  No

**If Yes, explain.**

**>> Comment Box [2,000 Characters]**

<b>Section II. Volunteer Health Professional: Acknowledgment of Required Performance Conditions (Responses Required)</b>
<b>For each of the individual VHP listed in Section III below, the sponsoring health center acknowledges its understanding that, for a volunteer to be considered a VHP, the following requirements must be met:</b>
<b>1. The services provided by the VHP occur at the sponsoring deemed health center's facilities (i.e., at its approved service sites) or through offsite programs or events carried out by the sponsoring deemed health center (section 224(q)(2)(A)).</b>
<input type="checkbox"/> Yes
<b>2. The VHP does not receive any compensation for the service from the individual, the sponsoring health center, or any third-party payer (including reimbursement under any insurance policy, health plan, or federal or state health benefits program); except that 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, which may include travel expenses to or from the site of services (section 224(q)(2)(C)).</b>
<input type="checkbox"/> Yes
<b>3. Before the service is provided, the VHP or the sponsoring deemed health center 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 the Public Health Service Act (section 224(q)(2)(D)).</b>
<input type="checkbox"/> Yes
<b>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)(2)(E)).</b>
<input type="checkbox"/> Yes
<b>5. The sponsoring health center maintains all relevant documentation certifying that the volunteer meets the requirements to be considered a VHP (section 224(q)(2)(F)).</b>
<input type="checkbox"/> Yes
<b>The sponsoring health center acknowledges its understanding that for each VHP the following is required:</b>
<b>6. Before the service is provided, the sponsoring health center must credential and privilege the VHP(s) in accordance with all current Health Center Program and FTCA Program credentialing and privileging requirements and maintain this information in a file for each VHP (section 224(q)(3)).</b>
<input type="checkbox"/> Yes

**Section III. Volunteers Sponsored for Deeming**

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

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

**(Note 2: Do NOT include on this listing individuals who are trainees (i.e., students, interns, or residents) conducting duties as part of a residency program. These individuals are not eligible for deemed PHS employment through the VHP Program.)**

<b>Add Individual Details*</b> <ul style="list-style-type: none"><li>• Prefix:</li><li>• First Name:</li><li>• Middle Name:</li><li>• Last Name:</li><li>• Professional Designation (e.g., MD, RN, etc.):</li></ul>	
<b>Contact Information</b> <ul style="list-style-type: none"><li>• Work Email Address:</li><li>• Work Phone Number:</li><li>• Work Fax Number:</li><li>• Work Mailing Address:</li><li>• Personal Email Address:</li><li>• Personal Phone Number:</li><li>• Personal Fax Number (if any):</li><li>• Personal Mailing Address:</li></ul>	
<b>Roles and Specialty</b> <ul style="list-style-type: none"><li>• Role(s) in Health Center:</li><li>• Specialty:</li><li>• Others:</li></ul> <p><b>[Upload a signed volunteer agreement for each individually named volunteer that clearly states that the sponsored health professional is a volunteer of the health center, outlines the terms and conditions of the services that the volunteer will provide, acknowledges that the health professional will not receive any compensation including reimbursement from any third party payor, and documents each off-site program or event where the health professional will provide services.]</b></p>	

**Section III. Volunteers Sponsored for Deeming**

<p><b>Credentialing and Privileging</b></p> <ul style="list-style-type: none"> <li>• Date of Last Credentialing:</li> <li>• Date of Last Privileging:</li> </ul> <p>(Each sponsored VHP must be credentialed and privileged by the health center in accordance with the Health Center Program Compliance Manual, Chapter 5.)</p>	
<p><b>Licensure and/or Certification</b></p> <p>Each sponsored VHP is required to be licensed or certified in accordance with applicable Federal and State laws to perform the services that are requested. [Note: 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.]</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><b>[Upload primary source verification of current licensure and/or certification. (upload attachment)]</b></p>	
<p><b>Medical Malpractice History</b></p> <ul style="list-style-type: none"> <li>• 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? Include both pending and resolved administrative and civil claims.</li> </ul> <p><input type="checkbox"/> Yes        <input type="checkbox"/> No</p> <p><b>If yes, provide a list of the claims or actions. For each claim or action, include:</b></p> <ul style="list-style-type: none"> <li>• <b>Area of practice/specialty</b></li> <li>• <b>Date of occurrence</b></li> <li>• <b>Summary of allegations</b></li> <li>• <b>Status or outcome of claim or action</b></li> <li>• <b>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, only submit a summary if the case is closed. If the case has not been resolved, indicate this and do not include the summary). (upload attachment)</b></li> </ul>	

**Section III. Volunteers Sponsored for Deeming**

**\*Notes:**

- Within the EHBs, the sponsoring health center is required to submit the information outlined above for each individual volunteer for whom it is seeking FTCA coverage.
- The sponsoring health center must provide both work and personal contact information for each health center VHP the health center is sponsoring for FTCA deemed status.

**Section IV. Signatures**

**Certification and Signature**

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 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 in Section I. Contact Information.**