

Medical Liability Reform – Free Clinics and Medical Liability Immunity

The Patient Protection and Affordable Care Act (ACA) extends medical liability protections under the Federal Tort Claims Act (FTCA) to officers, governing board members, employees and contractors of free clinics. It became effective on March 23, 2010, when the ACA was signed into law and “appl[ies] to any act or omission which occurs on or after that date.”

On March 24, 2011, the Health Resources and Services Administration (HRSA) – an agency at the Department of Health and Human Services (HHS) – issued Policy Information Notice (PIN) 2011-02, Free Clinics Federal Tort Claims Act (FTCA) Program Policy Guide (found at: <http://bphc.hrsa.gov/policiesregulations/policies/pin1102.pdf>) which explains and outlines the Free Clinics FTCA Program.

Background:

The Health Insurance Portability and Accountability Act (HIPPA) granted medical malpractice coverage through the FTCA to volunteer free clinic health care professionals. The ACA extended this coverage to board members, officers, employees, and individual contractors. Free clinic volunteers, board members, employees, or contractors who meet all the requirements may be sponsored by the free clinic and are considered a federal employee by HRSA for the purpose of FTCA medical malpractice coverage after submission of a qualifying application and the federal government acts as their primary insurer. The purpose of the program is to expand access to health care services to low-income individuals who lack access to primary care by encouraging individuals to volunteer or work at free clinics. Individuals who may have refrained from volunteering or working because of the fear of malpractice liability might be more likely to volunteer their services with FTCA coverage.

How does the FTCA program benefit volunteer health care professionals in Free Clinics?

FTCA deemed status provides the volunteer health care professional, board member, officer, employee, or contractor with immunity from medical malpractice lawsuits resulting from his/her subsequent performance of clinical medical, dental or related functions within the scope of his/her work at the free clinic. It does not provide blanket immunity from acts of medical malpractice. The functions which are eligible for medical malpractice coverage for health care service acts or omissions include those that:

- Arise from services required or authorized to be provided under Title XIX of the Social Security Act (i.e., Medicaid Program) regardless of whether the service is included in the State Medicaid plan in effect for the volunteer free clinic health care professional’s work site(s);
- Arise from the provision of medical, surgical, dental or related services at a free clinic site or through offsite programs or events carried out by the free clinic; and
- Occur on or after the effective date that the Department of Health and Human Services (HHS) Secretary approves the FTCA deeming application submitted by the free clinic on behalf of its volunteer free clinic health care professionals.

What is the application process?

Eligible free clinics must submit an original deeming application and annual renewal deeming applications on behalf of their volunteer health care professionals to the Bureau of Primary Health Care (BPHC) at HRSA.

More information can be found at: <http://bphc.hrsa.gov/ftca/freeclinics/>.

How are claims processed?

Claimants alleging acts of medical malpractice by a FTCA deemed volunteer free clinic health care professional, board member, officer, employee, or individual contractor must file their claims against the United States according to FTCA requirements. FTCA requires that the alleged injured party file an administrative claim with HHS prior to instituting any court action. Upon receipt of the claim, HHS will determine whether FTCA medical malpractice coverage applies to the particular claim by considering if the alleged act or omission giving rise to the claim:

- Involved a volunteer free clinic health care professional with deemed FTCA status pursuant to the Public Health Services Act;
- Involved a health care service qualifying for FTCA coverage; and
- Occurred at a free clinic or a covered offsite program or event carried out by the free clinic.

If HHS denies the claim or HHS action is pending after 6 months, the claimant can file suit against the United States. FTCA medical malpractice cases are heard in Federal district court without a jury and are defended by the Department of Justice with the assistance of the Office of General Counsel, Department of Health and Human Services. HRSA pays for all settlements and judgments from a separate Health Center FTCA Judgment Fund. No punitive damages are allowed.

Does this provision have a direct impact on ACP members and/or their patients?

If the member is a volunteer free clinic health care professional, officer, governing board member, employee and contractor of free clinics, then s/he is given medical liability protection under the Federal Tort Claims Act.

What other trusted sources are available to help better understand the impact of this provision on practices?

- *Health Center Program, FTCA, from HRSA.*

<http://bphc.hrsa.gov/FTCA/>

- *HRSA has issued one Program Information Notice (PIN) related to the Free Clinic FTCA Program, PIN 2011-02: Free Clinics Federal Tort Claims Act (FTCA) Program Policy Guide.*

<http://bphc.hrsa.gov/policiesregulations/policies/pin1102.pdf>

- *HRSA's Bureau of Primary Health Care's BPHC Helpline: 877-974-BPHC (877-974-2742) – 8:30 AM to 5:00 PM (ET).*
- *HRSA's Bureau of Primary Health Care's FTCA e-mail address: FreeclinicsFTCA@hrsa.gov. (Please always include your free clinic FTCA # (FC XXXX) in the subject line of these emails or other communications with the Free Clinics FTCA Program.)*
- *Federal Torts Claims Act Program; Office of Quality and Data; Bureau of Primary Health Care; Health Resources and Services Administration; 5600 Fishers Lane, Rockville, MD 20857; Phone: 301-594-0818; Fax: 301-594-5224.*