HRSA FTCA Program and Risk Management

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NNOHA’s developing Practice Management Resources Through the HRSA Cooperative Agreement

Current chapters in development for the Operations Manual for Health Center Oral Health Programs include:

- Health Center Fundamentals – Published
- Leadership - Published
- Financials
- Risk Management
NNOHA’s developing Practice Management Resources Through the HRSA Cooperative Agreement

- Quality
- Integrating Specialty Care Services
- Workforce and Staffing
- Understanding Reimbursements
Main Sections

- What is Risk Management?
- Federal Tort Claims Act (FTCA)
- FTCA FAQs
- Ethics
- Top Potential Risk Areas for Health Center Oral Health Programs
Learning Objectives

✓ Understand and identify common risks involved in oral health and how to prevent them.
✓ Be familiar with the system of the Federal Tort Claims Act (FTCA).
✓ Understand how to respond to and address claims.
✓ Consider how ethics and risk management work together
What is Risk Management?

- Risk management is the technique of determining, minimizing and preventing accidental loss in a business. Complete risk management includes taking appropriate safety measures, acting in a professional manner, and having appropriate coverage.
What is Risk Management?

- Risk management is important for a Health Center patient’s health, for their best treatment, and for the soundness of a Health Center oral health program.
FTCA

- The **Federal Tort Claims Act (FTCA)** is the federal legislation that allows parties claiming to have been injured by negligent actions of employees of the United States to file claims against the federal government for the harm they suffered.
- The FTCA also provides authority for the federal government to defend against such claims.
FTCA (Cont’d)

• Amendments to the Public Health Service Act in 1992 and 1995 provide that employees at deemed Health Centers are to be treated as employees of the United States for purposes of medical malpractice. These "employees" include board members, officers, employees and certain contractors of deemed Health Centers.

• "Employees" are given malpractice protection for actions within their scope of employment, and within the scope of project of a deemed Health Center.
Deeming is an application process that an eligible Health Center must undertake in order to activate and maintain its FTCA malpractice protection. The law allows only organizations funded through section 330 of the Public Health Service Act, to be deemed.

The deeming process has some basic requirements. Health Centers that wish to participate must assure the Bureau of Primary Health Care that they conduct complete and thorough credentialing of their providers including a query of the National Practitioner Data Bank.
FTCA (Cont’d)

- Participating Health Centers must maintain clinical protocols, tracking systems, complete and accurate medical record reviews, and active quality assurance programs.
- Participating health centers must reapply annually via HRSA/BPHC Electronic Handbook.
FTCA FAQs

• How is FTCA different from my individual malpractice policy?
  • Under FTCA you do not have an individual malpractice policy.
  • If you have FTCA protection, you have financial protection from a malpractice lawsuit.
  • The United States government would be substituted as the defendant in any malpractice claim for your activities, which are within your scope of employment and within the scope of project of a deemed Health Center.
FTCA FAQs (Cont’d)

• I am a dentist/dental hygienist. Does FTCA cover my profession?
  • Yes. FTCA malpractice protection applies to you and all other employees (and certain contractors) of appropriately deemed Health Centers.
  • Dentists who are contractors (receive a 1099 from the deemed Health Center) must be full time, that is, they must work over 32 and ½ hours per week for the deemed health center. Dentists who are employees (receive a w-2 from the deemed health center) can be full or part time and receive FTCA coverage.
  • Malpractice protection is not available for Health Center volunteers.
FTCA FAQs (Cont’d)

• I am a dentist. Does FTCA cover my profession? (cont’d)
  • Malpractice protection is not available for students or residents training in a Health Center. Malpractice protection for these individuals should be provided through a means other than FTCA.
  • Heath Center dental programs participating in Residencies and other training programs must have clear contracts with the residency defining malpractice coverage for attendings and preceptors as well as for the students/trainees.
FTCA FAQs (Cont’d)

• **What is my coverage limit?**
  - There is no monetary limit.
  - If you come under FTCA malpractice protection, the Federal Government is the defendant for claims made against your Health Center-related actions or omissions.
  - FTCA settlements and judgments are the responsibility of the United States government.
  - As a provider, your and your organization are responsible for the clinical outcomes related for the claim.
Ethics

- ADA principles of ethics
  - patient autonomy (self-governance)
  - nonmaleficence (do no harm)
  - beneficence (do good)
  - justice (fairness)
  - veracity (truthfulness)

[http://www.ada.org/sections/about/pdfs/ada_code.pdf](http://www.ada.org/sections/about/pdfs/ada_code.pdf)

- “Churning”
  - Churning can be defined as the systematic practice of maximizing the number of visits/encounters while at the same time minimizing the amount of treatment delivered per visit in order to maximize revenues. Churning is counterproductive and against the best services for your patients.
Top Potential Risk Areas for Health Center Oral Health Programs

1. Lack of Informed Consent
2. Fee Disputes
3. Failure to Diagnose
4. Lack of a Thorough Exam
5. Failure to Follow-Up On Emergencies
6. Treatment of The Wrong Tooth
7. Surgical Complications
8. Unsatisfactory Dentures
9. Lack of / Inadequate Treatment Plan
10. Inappropriate Procedures
11. Incomplete Treatment
Top 11 Risk Areas (Cont’d)

1. Lack of Informed Consent

2. Charge Disputes
Top Ten Risk Areas (Cont’d)

3. Failure to Diagnose

4. Lack of a Thorough Exam
Top Ten Risk Areas (Cont’d)

5. Failure to Follow-Up On Emergencies

6. Treatment of The Wrong Tooth
Top Ten Risk Areas (Cont’d)

7. Surgical Complications

8. Unsatisfactory Dentures
Top Ten Risk Areas (Cont’d)

9. Lack of / Inadequate Treatment Plan

10. Incomplete Treatment

11. Inappropriate Procedures
For More Information…

- Attend other Practice Management Sessions at the Conference!
What to Do if Mistakes are Made

- The professional puts the patient first and everything else second.
- Providers should:
  - seek immediate assistance from their colleagues or help from an appropriate, evidence-based source.
  - admit what is clear and document everything in the chart.
  - acknowledge the error, take care of the patient personally or through referral, and strive to be a better dentist by learning from that process.
- Do not:
  - Blame the patient
  - Alter the record
If a patient files a claim under the FTCA...

- The complaint filed with HRSA
- A review of the complaint by experts
- A decision is made by HHS Office of General Counsel regarding the claim (pay, deny, attempt to settle).
- If no payment or settlement of claim, a potential suit against the United States the patient may file claim in Federal Court
- The claim is litigated in Federal Court
- Settled claims are reviewed in HHS by the Medical Claims Review Panel to determine whether the clinical standards of care have been met by providers involved
If a patient files a claim under the FTCA…

• Providers can call the FTCA Hotline at 1-866-FTCA-Help (382-2435) with questions or concerns.
QUESTIONS?
THANK YOU

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