FTCA Deeming Process and Risk Management for Health Center Oral Health Programs
Deeming

- 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.
2014 Requirements for Federal Tort Claims Act (FTCA) Medical Malpractice Coverage for Health Centers

- Health Center Program grantees and qualifying entities receiving section 330 funds), in order to receive deemed status under FSHCAA, must demonstrate compliance with all applicable FTCA Program requirements (including implementation of applicable policies and procedures).

- As a condition of deeming, to determine that the entity has implemented “appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity.”
2014 Requirements for Federal Tort Claims Act (FTCA) Medical Malpractice Coverage for Health Centers

- HHS must determine that the entity has reviewed and verified “the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners ....”

- determine that an entity that has a history of any FTCA claims “either has taken, or will take, any necessary corrective steps to assure against such claims in the future.”
2014 Requirements for Federal Tort Claims Act (FTCA) Medical Malpractice Coverage for Health Centers

- Eligible subrecipients for purposes of FTCA coverage are those entities receiving funds from a covered section 330 grantee under a grant or contract to provide a full range of services on behalf of the covered entity.
- Subrecipient entities are eligible for coverage only if they provide a full range of health care services on behalf of an eligible grantee and only for those services carried out under the grant-funded project.
- All subrecipient entities seeking FTCA deeming must be identified on the grantee of record’s current Scope of Services (i.e., their approved Form 5B).
Application Requirements

- Quality Improvement/Quality Assurance (QI/QA) Plan, with clear documentation that the Board reviewed and approved the plan within 3 years of the date of submission to HRSA (i.e., on or after April 5, 2010 for a renewal application).
- Minutes from any six QI/QA committee meetings that took place between April 5, 2012 and the submission date of the application.
- Any health center committee reports that further evidence QI/QA activities.
Application Requirements

• Minutes from any six Board meetings evidencing oversight of QI/QA activities that took place between April 5, 2012 and the submission date of the application.

• Credentialing and privileging policies and procedures. The health center’s credentialing and privileging policies and procedures must include those elements outlined in Policy Information Notice (PIN) 2002-22 (http://bphc.hrsa.gov/policiesregulations/policies/pin1102.pdf)

• Also, please note available related credentialing resources at http://bphc.hrsa.gov/ftca/riskmanagement
Application Requirements

• A list of all licensed and certified staff members providing services at all health center sites and their current credentialing/privileging status.

• The list must include employed or contracted practitioners, volunteers, and locum tenens with evidence of credentialing and privileging within the last two years (i.e., all credentialing must have been documented to have taken place on or after April 5, 2011).
Credentialing Information

• the credentialing list must include the following for all licensed and certified staff members
  • Name and Professional Designation (e.g., MD/DO, RN, CNM, DDS, LPN, PA, MA, NP, etc.);
  • Title/Position;
  • Specialty;
  • Employment Status (full-time employee, part-time employee, contractor or volunteer);
  • Hire Date;
  • Current Credentialing Date (must be within past 2 years); and
  • Next Expected Credentialing Date.
Application Requirements

Health center policies and procedures for the following:

- Referral tracking
- Hospitalization tracking
- Diagnostic tracking
Application Requirements

• Statement verifying whether or not there were any medical malpractice claims or allegations presented during the past 5 years, that any such claims or allegations were internally analyzed, and that appropriate actions were implemented as needed in response to such claims or allegations.
Application Requirements

- The statement should include the following for each allegation/claim:
  - Name of provider(s) involved
  - Area of practice/specialty
  - Date of occurrence
  - Summary of allegations
  - Status and outcome of claim
  - Summary of health center internal analysis and steps taken to prevent future occurrences.
Application Requirements

• 10. Electronic signature of the Executive Director certifying the contents of the application. If the FTCA application is not signed by the Executive Director, the application will be returned to the grantee as described in Section VI: Initial FTCA Applications and Section VII: FTCA Renewal Applications.
11. Deeming applications for any subrecipient(s) that appear on the health center’s most recent Form 5B, who are requesting FTCA coverage. The subrecipient(s) deeming application is considered part of the deeming application of the grantee of record.
IX. SITE VISITS

• HRSA may conduct a site visit at any point during the application review process and/or as part of its oversight responsibilities relative to the FTCA program to ensure that risk management, QI/QA policies and procedures, and credentialing have been appropriately implemented. HRSA may also conduct a random site visit to any initial applicant or deemed grantee to ensure implementation.

• If a site visit results in a finding of a lack of implementation of the FTCA program requirements, this may be grounds for a negative deeming determination.
X. ADDITIONAL USEFUL RESOURCES: RISK MANAGEMENT RESOURCES

• Ongoing risk management is essential to the provision of quality health care services. HRSA is committed to ensuring that health centers have access to risk management resources. On the HRSA/FTCA website, http://bphc.hrsa.gov/ftca/riskmanagement, you will find useful risk management webinars, tool kits, and risk management related articles.

• Operations Manual For Health Center Oral Health Programs Chapter Four: Risk Management
What is Risk Management?

- Risk management is the technique of determining, minimizing and preventing accidental loss in a clinical program.
- Complete risk management includes taking appropriate safety measures, acting in a professional manner, and having appropriate coverage.
- 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.
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.
• 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.
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.
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 Coverage

- 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 attending staff and preceptors as well as for the students/trainees.
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.
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
For More Information…

- http://www.nnoha.org/practicemanagement/webinars.html
- Attend other Practice Management Sessions at the Conference!
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