



Program Assistance Letter

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DOCUMENT TITLE: Calendar Year 2012
Federal Tort Claims Act (FTCA) Deeming
Application for Free Clinics

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

I. PURPOSE

This Program Assistance Letter (PAL) supplements Program Information Notice (PIN) 2011-02, "Free Clinics Federal Tort Claims Act (FTCA) Program Policy Guide" (<http://bphc.hrsa.gov/ftca/freeclinics/>) and provides guidance on the Calendar Year (CY) 2012 deeming application process for medical malpractice liability coverage under the provisions of section 224(o) of the PHS Act and the Federal Tort Claims Act (FTCA). This PAL contains instructions for free clinics on how to apply to HRSA for medical malpractice coverage under the FTCA for CY 2012 on behalf of their volunteer free clinic health care professionals, board members, officers, employees, and/or contractors. Redeeming applications for CY 2012 coverage are due no later than **September 16, 2011**.

Medical malpractice coverage under the FTCA is provided to certain qualified free clinic volunteer health care professionals, board members, officers, employees, and/or contractors (covered individuals) under section 224(o) of the Public Health Service (PHS) Act, as amended (42 U.S.C. 233(o)). PIN 2011-02 details the process through which the United States Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA) may deem a volunteer free clinic health care professional to be a PHS employee for the purposes of FTCA coverage for medical malpractice claims if the free clinic volunteer health care professional or other eligible individual meets certain statutory and program requirements.

Free clinics must submit an annual FTCA deeming application on behalf of their eligible individuals to HRSA, which administers the Free Clinics FTCA Program. With the amendment of PHS Act section 224(o) by the Affordable Care Act, free clinic board members, officers, employees, and/or individual contractors, as well as volunteer health care professionals, whose deeming applications are approved by HRSA, may be deemed as PHS employees for purposes of FTCA medical malpractice coverage. FTCA coverage for free clinic volunteer health care professionals, board members, officers, employees, and individual contractors extends only to medical malpractice coverage for negligent acts and omissions that arise from the performance of medical, surgical, dental or related functions within the scope of the covered individual's employment (i.e., work on behalf of the sponsoring free clinic). Section 224(o) does not provide coverage beyond medical malpractice liability protection. **Free clinic coverage does not extend to free clinic entities and therefore these entities are not eligible for coverage under PHS Act section 224(o).**

II. APPLICATION PROCEDURES

Medical malpractice coverage under the Free Clinics FTCA Program does not occur automatically. FTCA coverage requires that HRSA approve a deeming application submitted by a sponsoring free clinic on behalf of eligible individuals. Deeming applications can be downloaded from <http://bphc.hrsa.gov/ftca/freeclinics/>. The applications are currently in Microsoft Excel format. Completed applications must be submitted in this format (as an .xls file). This PAL sets forth the process by which such deeming applications must be submitted.

A. INITIAL APPLICATIONS

Free clinics must complete a deeming application in order to sponsor volunteer health professionals, board members, officers, employees, and/or contractors for FTCA coverage. Applications require that the appropriate free clinic representatives affix their signatures to the signature page attached to this PAL, attach documentation of the sponsoring free clinic's nonprofit status, attach its quality improvement/quality assurance (QI/QA) plan, and include an explanation of any medical malpractice claims or any disciplinary actions taken against an eligible individual during the past ten (10) years. The required information must be submitted as attachment files with the application form.

The original deeming application form requires a free clinic to provide information as evidence that it has fulfilled statutory and programmatic requirements, including:

- 1) Contact information for the sponsoring free clinic;
- 2) Location and manager(s) of free clinic sites;
- 3) Confirmation that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 4) Description of the free clinic's credentialing and privileging systems;
- 5) Description of the free clinic's risk management systems;
- 6) List of all individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring

- for deemed employment status;
- 7) Evidence that each licensed or certified individual was credentialed and privileged by the sponsoring free clinic within the last two years, including the specific dates such actions were taken; and
- 8) Requested effective date of FTCA coverage (which may not be less than 30 days following submission of a complete application).

In addition to a complete application form, as noted above, an application will be considered complete with all the following attachments:

- a. Documentation of non-profit status;
- b. Quality Improvement /Quality Assurance plan (QI/QA) with either a signature of an authorized board representative indicating date of board approval or a copy of board minutes documenting approval;
- c. Description of any and all disciplinary actions and malpractice claims alleged against the free clinic and/or its sponsored eligible individuals within **ten (10) years prior** to the submission of this FTCA application (including pending claims), and a brief explanation of risk management activities the free clinic has taken in response to allegations; and
- d. Affirmation signatures by the Chief Executive Officer and Medical Director of the sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

HRSA will accept initial deeming applications at any time a free clinic and its eligible individuals wish to pursue FTCA medical malpractice coverage. The application form can be found at <http://bphc.hrsa.gov/ftca/freeclinics/> entitled "Free Clinic Deeming Application."

B. REDEEMING APPLICATIONS

Free clinics that currently sponsor deemed individuals must reapply annually for continued FTCA coverage. The annual redeeming application form is the same application used for original applicants. This application form can be found at <http://bphc.hrsa.gov/ftca/freeclinics/> and is entitled "Deeming Application."

The re-deeming application form requires a free clinic to provide information to demonstrate that it has fulfilled statutory and program requirements, including:

- 1) Contact information for the sponsoring free clinic;
- 2) Location and manager(s) of free clinic sites;
- 3) Confirmation that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 4) Description of the free clinic's credentialing and privileging systems;
- 5) Description of the free clinic's risk management systems;
- 6) List of all individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring for deemed employment status;
- 7) Evidence that each licensed or certified individual was credentialed and privileged by

- the sponsoring free clinic within the last two years, including the specific dates such actions were taken; and
- 8) Requested effective date of FTCA coverage (which may not be less than 30 days following submission of a complete application).

In addition to a complete application form, an application will not be considered complete without the following attachments:

- a. Quality Improvement /Quality Assurance plan (QI/QA) with either a signature of an authorized board representative **and date indicating date of board approval or a copy of board minutes documenting approval (either method of submission must evidence that approval was undertaken within the last three (3) years);**
- b. Description of any and all disciplinary actions and medical malpractice claims alleged against the eligible individuals within **five (5) years prior** to the submission of this FTCA application (including pending claims), and a brief explanation of risk management activities the free clinic has taken in response to allegations; and
- c. Affirmation signatures by the Chief Executive Officer and Medical Director of the sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

Redeeming applications for CY 2012 coverage are due no later than **September 16, 2011.**

C. SUPPLEMENTAL APPLICATIONS

During the course of the year, sponsoring free clinics may wish to add additional eligible individuals for FTCA coverage. In order to supplement the free clinic's list of covered individuals, a supplemental application must be completed and submitted. This application form can be found at <http://bphc.hrsa.gov/ftca/freeclinics/> and is entitled "Supplemental Deeming Application."

A supplemental application form requires:

- 1) Contact information for the sponsoring free clinic;
- 2) Location and managers of any new free clinic sites that have been added since the free clinic's last FTCA application submission;
- 3) Confirmation that the sponsoring free clinic and individuals for whom deeming is sought meet the statutory eligibility criteria;
- 4) Certification that the free clinic has maintained its credentialing, privileging, and risk management systems, or a description as to how the system(s) has been modified;
- 5) List of all additional individuals (i.e., volunteer health care professionals, board members, officers, employees and individual contractors) whom the free clinic is sponsoring for deemed employment status;
- 6) Requested effective date of FTCA coverage (which may be not less than 30 days following submission of a complete application); and
- 7) Affirmation signatures by the Chief Executive Officer and Medical Director of the

sponsoring free clinic that all statements and assertions made by the application are true under penalty of perjury.

In addition to a complete supplemental application form, an overall supplemental application will not be considered complete without the following:

- a. A copy of the new QI/QA plan **only** if it has changed since the most recent original or redeeming deeming application;
- b. Description of any and all disciplinary actions and malpractice claims alleged against any new sponsored eligible individuals within **ten (10) years prior** to the submission of this FTCA application (including pending claims), and a brief explanation of risk management activities the free clinic has taken in response to allegations; and
- c. Affirmation signatures of the Chief Executive Officer and Medical Officer of the sponsoring free clinic.

III. GENERAL APPLICATION SUBMISSION INSTRUCTIONS

To streamline FTCA deeming application submission and processing, free clinics should submit an electronic copy of their deeming application, signature page, and any applicable attachments to freeclinicsFTCA@hrsa.gov. Each application should be sent in one (1) email. **The email subject line should include the heading “FTCA Deeming Application” and the free clinic’s FTCA number (FC # XXXX).** If the email containing an application does not indicate the identifying free clinic number, as well as all required information, the application will not be considered to have been properly submitted. If this is a deeming application for a new organization, include the words “Original Application” in lieu of the free clinic number.

The application form is to be submitted as an Excel file. Please do not submit a printed and scanned version of the application form. In order to provide an efficient review, all individuals should be listed within the application form without hidden fields. Supplemental applications should only contain new names of individuals requested to be added to a sponsoring free clinic.

All Initial, Redeeming, and Supplemental applications require an attachment explaining any and all disciplinary actions and medical malpractice claims alleged against the eligible individuals applying for deeming. This information is required for the past ten (10) years for new applicants and five (5) years for renewal applicants. Please do not attach a report from the National Practitioner Data Bank (NPDB). These reports do not describe the actions taken by the sponsoring free clinic or the applicant in response to the claims. Additionally, an NPDB report may disclose information exceeding the time frame requested.

Should review of the application reveal that the required application information supplied by the sponsoring free clinic is incomplete, the CEO and FTCA Contact listed on the application will both be contacted, typically via email. The sponsoring free clinic will have ten (10) business days from the date of notification to submit the requested information to complete its application. Only one reminder email will be sent after the 10 days have elapsed. *If the*

requested information is not received within the given time period, individuals sponsored by the free clinic may not be deemed by December 31, 2011, and may experience a gap in coverage.

If the electronic submission process is not feasible, please submit a request for a waiver of the electronic submission process request to freeclinicsFTCA@hrsa.gov. This waiver request to file the application by mail must be approved **prior** to the paper submission.

IV. CONTACT INFORMATION

For more information on the free clinic deeming application requirements and related questions, please email freeclinicsFTCA@hrsa.gov or call the BPHC Help Line at 877-974-2742.

James Macrae
Associate Administrator for Primary Care

**APPENDIX A
FREE CLINIC FTCA PROGRAM APPLICATION CHECKLIST**

APPLICATION CHECKLIST	<p>– Free Clinic Health Deeming Application for Volunteer Health Care Professionals, Board Members, Officers, Employees, and/or Individual Contractors</p> <p>– Deeming Application – Original or Annual Renewal</p>
<p>ITEMS TO BE ATTACHED:</p> <ol style="list-style-type: none"> 1) Copy of nonprofit documentation (Initial Application Only) 2) Copy of clinic’s Quality Improvement / Quality Assurance (QI/QA) plan 3) Descriptions of all medical malpractice claims occurring within 10 years prior to the submission of this deeming application for initial applications or 5 years prior for renewal applications. 4) Signature Page (Appendix B) 	

APPLICATION NOTES BY SECTION

Section I – Sponsoring Free Clinic

- Send state documentation indicating legal name change if legal name change occurred since last deeming application.

Section II –Free Clinic Sites

- All free clinic sites must be listed. Each site must be appropriately identified as the main site or as an additional site.

Section III- Sponsoring Free Clinic Eligibility

- Provide an explanation of any “No” answers in the box below the question.
- Attach IRS nonprofit documentation to application (if Initial Application).

Section IV –Credentialing and Privileging Systems

- Provide an explanation of any “No” answers in the box below the question.

Section V–Risk Management Systems

- Provide an explanation of any “No” answers in the box below the question.
- Attach a copy of the free clinic’s QI/QA plan, including an explanation of the clinic’s risk management policies. QI/QA plans must be signed and approved by an authorized board member within three (3) years of the date of the application.

Section VI – Free Clinic Volunteer Health Care Professionals, Board Members, Officers, Employees, and Individual Contractors

- Provide a list of ALL free clinic volunteer health professionals, board members, officers, employees, and individual contractors on whose behalf the free clinic is submitting an application for FTCA deemed status.
- Specify the person’s role in the free clinic for any individual the free clinic is sponsoring for FTCA deemed status.
- Disclose if the individual has had any past medical malpractice claims or disciplinary actions for the past 10 years if submitting an original application or for the past 5 years for renewal applicants.
- Attach an explanation of each medical malpractice claim or disciplinary action including explanations of the suit, allegation, medical specialty involved, and a description of whether any action was taken by the clinic to address the claims and prevent further claims from occurring in the future.

**APPENDIX B
SIGNATURE PAGE**

To be considered complete, your application must include a scanned version of this signed page, emailed to the Bureau of Primary Health Care at freeclinicsFTCA@hrsa.gov.

SECTION VII – SIGNATURES	
<p>REQUESTED EFFECTIVE DATE OF FTCA COVERAGE _____</p> <p>(The effective date of FTCA coverage will be no sooner than 30 days following the date of application submission. Renewal coverage will begin the first day of the calendar year immediately following the date of application submission.)</p> <p>We, the undersigned, declare under the penalty of perjury that all statements contained in this application and any accompanying documents are true and correct, with full knowledge that all statements made in this application are subject to investigation and that any false or dishonest answer to any question may be grounds for denial or subsequent revocation of coverage.</p> <p>CHIEF EXECUTIVE OFFICER Name (Print or type): _____</p>	
<p>Signature</p> <p>FREE CLINIC MEDICAL DIRECTOR Name (Print or type): _____</p>	<p>Date</p> <p>Date</p>