

# FTCA Scoping and Deeming Considerations for FSHCAA Facilities

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**Presented by**

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# **Federally Supported Health Centers Assistance Act**

**42 U.S.C. §  
233(g)-(n)**

# What is a “federally supported health center”?

## Federally Supported Health Center, Defined

A health center receiving a grant from HRSA pursuant to section 330 of the Public Health Service Act, which has applied to HHS to be deemed and eligible for FTCA coverage and has received notice of that deemed status from HRSA.

Approved Grant Application lists approved satellite service delivery sites, programs and services.



# Learning Objectives

- How coverage eligibility is determined
- What is the grantee's role?
- What HHS/OGC expects from grantees

# Case Scenario A1

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# Case Scenario A1 Facts

Deemed ABC Community Health Center (“ABC CHC”) contracts with Dr. X, a pediatrician, who works part-time (24 hours a week) at the ABC CHC and is required to provide on-call services at the local hospital to maintain hospital privileges. Dr. X is a pediatrician, who receives direct payment from the ABC CHC to Dr. X, individually. On Monday morning, Mrs. Doe brings in ten-year-old Jane Doe for an annual check-up. Before seeing Dr. X, Nurse Z takes Jane’s vitals and asks Jane to step on the scale, and as Jane is stepping down from the scale she slips and falls. Jane starts to scream and cry. Jane is placed on the examination table by Mrs. Doe, who sits in a chair next to the examining table. Jane is screaming at the top of her lungs and banging at the wall. As Dr. X enters the room, the clock on the wall falls and hits Mrs. Doe on the head. Dr. X with the assistance of Nurses Y and Z checks on Mrs. Doe and Jane. Mrs. Doe insists that she fine and not injured. Jane complains that her right foot is hurting. Dr. X orders an x-ray, which shows Jane’s right ankle has a very slight fracture; Dr. X wraps Jane’s ankle and fits her in a boot. Dr. X instructs Jane to limit use of the right foot for the next four weeks. Dr. X then completes the physical examination on Jane, which is normal.

# Case Scenario A1 Facts (Continued)

Mrs. Doe and Jane exit the building to go outside to the parking lot. As Mrs. Doe approaches her car, she steps in a small puddle of water and slips and falls to the ground. Nurses Y and Z witness Mrs. Doe's fall and rush outside to assist Mrs. Doe, who insists that she is completely fine. A few months later, ABC CHC receives a Notice of Intent to Litigate from the attorney for Mrs. Doe and Jane Doe.

# Case Scenario A1 Question

Are the slip and fall incidents of Jane Doe and Mrs. Doe as well as the clock hitting Mrs. Doe's head eligible for coverage under the FTCA/FSHCAA?

- A. None are eligible for coverage.
- B. Only the slip and fall off the scale is eligible for coverage.**
- C. Only the clock hitting Mrs. Doe is eligible for coverage.
- D. All incidents are eligible for coverage.

*Correct answer is marked in **bold**.*



# FTCA is Exclusive Remedy Under FSHCAA

- For damage, personal injury, or death
- Arising from the performance of:
  - Medical
  - Surgical
  - Dental
  - Related functions

# What are “related functions”?

- Related functions are generally those that are “inextricably interwoven” with the provision of medical care.
- Negligent battery such as amputating the incorrect leg would be eligible for coverage as a related function.

# Who is Eligible for Coverage? (Slide 1 of 4)

- Federally supported health centers
- Their officers, governing board members, and employees

# Who is Eligible for Coverage? (Slide 2 of 4)

- Certain contractors
  - Must perform on average at least 32.5 hours of service for the health center per week or if less than 32.5 hours a week, then
  - Must be licensed in one of the following fields:
    - Family practice
    - General internal medicine
    - General pediatrics
    - Obstetrics/gynecology

# Who is Eligible for Coverage? (Slide 3 of 4)

- Certain volunteers (See 42 U.S.C. § 233(q))
  - Certified or licensed healthcare provider (medical, surgical, dental)
  - Not paid or reimbursed by \*anyone\* (except for reasonable expenses incurred providing service to the patient)
  - Sponsored by a deemed health center
  - Application for **each** volunteer approved by Secretary of HHS
  - Each volunteer must be deemed / annually redeemed an employee of the Public Health Service

# Who is Eligible for Coverage? (Slide 4 of 4)

- Additional limitations:
  - Individuals eligible for coverage must be working within the scope of employment with the health center and within the scope of the health center's Notice of Grant Award in order to be eligible for FTCA coverage
  - **The Department of Justice – not HRSA or HHS – makes the final determination of coverage.**

# Who May NOT be Eligible for Coverage?

- Providers contracted through a corporation, LLC, or third-party
- Volunteers who do not meet § 233(q) criteria

# What May NOT be Eligible for Coverage?

- Intentional Torts
  - Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. (See 28 U.S.C. § 2680(h))
  - **Note:** the health center may still be eligible for coverage for any claims of negligent hiring/supervision



# Case Scenario A2

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# Case Scenario A2 Facts

Later that evening, per his schedule, Dr. X was on-call at the local hospital. Patient P (a 16-year-old girl, who is not a patient of ABC CHC) arrived at the emergency room complaining of severe abdominal pain and discomfort. Shortly after Patient P was admitted, Dr. X diagnosed and discharged Patient P with a urinary tract infection. Dr. X made the diagnosis without an x-ray and without consulting a general surgeon. Less than 12 hours from Patient P's original emergency room visit, she suffered a ruptured appendix, which resulted in an infection of the abdomen. Consequently, Patient P became septic and remained in the hospital for 20 days after the rupture. Patient P filed an administrative tort claim with HHS alleging that Dr. X committed medical malpractice because Dr. X failed to diagnose Patient P's appendicitis.

# Case Scenario A2 Question

Are the actions of Dr. X eligible for coverage under the FTCA/FSHCAA?

**A. Yes**

B. No

*Correct answer is marked in **bold**.*

# What activities are eligible for coverage?

- Must be within the approved **scope of project**;
- Must be within the requirements of the job description, contract for services, and/or duties required by the covered entity (**scope of employment**); and
- Must occur during the provision of services to the deemed entity's patients and in *certain circumstances* to non-health center patients.

If the provider must work in a non-covered hospital in order to maintain admitting privileges, then that work may be eligible for FTCA coverage pursuant to FSHCAA.

# Activities That May NOT Be Eligible for Coverage (1 of 2)

- Activity is OUTSIDE of the scope of project:
  - For example, providing podiatry services but scope of project (Form 5A-Specialty Services) does NOT include podiatry.
- Activity is NOT within the requirement of the job description, contract for services, and/or duties required by the deemed entity:
  - For example, midwife does home delivery (when contract states services must be provided at a specific hospital/location).

# Activities That May NOT Be Eligible for Coverage (2 of 2)

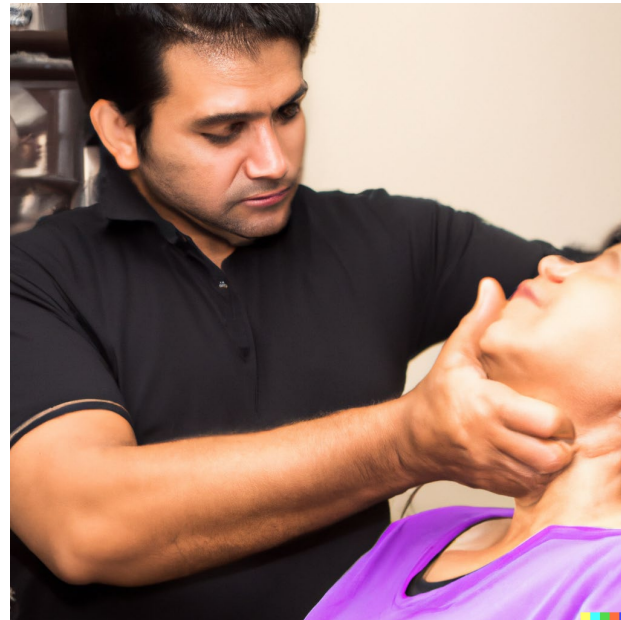
- Activity occurs OUTSIDE the timeframe health center/provider is deemed may NOT be eligible for coverage:
  - For example, provider provides services within the scope of project at a health center or its satellite delivery site, during a three-month gap where the health center or delivery was not deemed; any potential incidents that occurred during the gap period would NOT be eligible for FTCA coverage.

# Specific Requirements for Contractors

- Have a direct, personal contract with the health center.
- The contract **must** be between the deemed health center and the individual provider, **not** between the health center and another corporation (for eponymous corporation, must scrutinize who is being paid).
- A documented contractual relationship (i.e., written contract) between the covered entity and the individual provider.

# Case Scenario B1

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# Case Scenario B1 Facts

ABC Community Health Center (“ABC CHC”), a deemed health center, contracts with chiropractors and orthopedists to provide chiropractic and orthopedic care to its patients. Dr. Q is in his fifth year as a full-time chiropractor. Patient W is a patient of ABC CHC and was seen by Dr. Q to relieve some neck pain. On her second visit, after her visit with Dr. Q, Patient W claims that Dr. Q fondled her breast during the examination and negligently manipulated her neck, which caused her “world to go into a dizzy spin” with nausea and loss of speech. Patient W claims that the neck manipulation Patient W received from Dr. Q permanently paralyzed one of her vocal cords and left her unable to swallow food. Patient W also claims that the sexual assault has caused her to suffer severe insomnia and emotional distress. Patient Q filed an administrative tort claim with HHS requesting damages for her pain and suffering.

# Case Scenario B1 Question

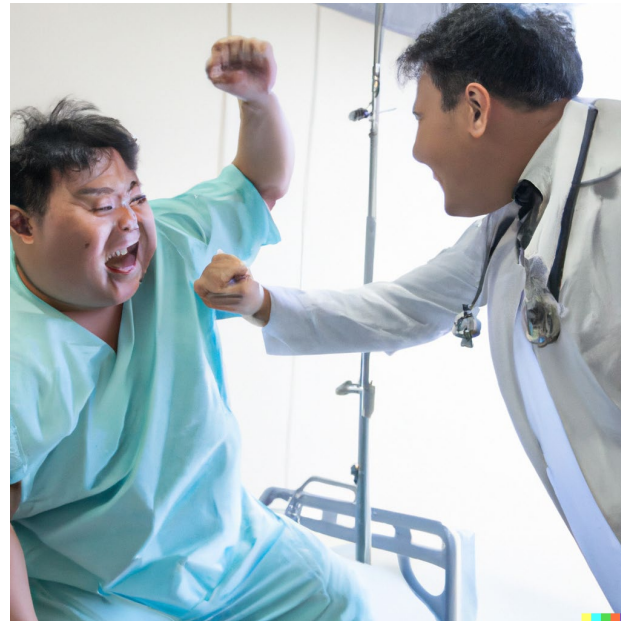
Are the actions of Dr. Q eligible for coverage under the FTCA/FSHCAA?

- A. Yes
- B. No
- C. Both**

*Correct answer is marked in **bold**.*

# Case Scenario B2

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# Case Scenario B2 Facts

Dr. R is a new part-time orthopedist at the ABC CHC; he works 35 hours per week. Dr. R recently signed an employment agreement with ABC CHC (See Employment Contract – ABC Community Health Center). Dr. R is on-call at the local hospital one afternoon, when the ER received non-ABC CHC Patient T, a large man who was ill-appearing, combative, kicking, and unable to be restrained or follow any commands. The ER was understaffed that afternoon, so it requested Dr. R's assistance with Patient T, who had a critically low blood glucose of 29mg/dL, but due to his combativeness hospital staff was unable to obtain an IV access. Dr. R was finally able to give Patient T an intramuscular injection of Glucagon and an intraosseous (IO) line was placed into his right tibia. Subsequently, Patient T developed compartment syndrome in the anterior compartment, which required multiple surgeries. Patient T filed a Notice of Intent to Litigate against Dr. R for causing Patient T to suffer drop-foot nerve injury and permanent disability.

# Case Scenario B2 Question

Is Dr. R eligible for coverage for the actions alleged by Patient T?

- A. No, because they occurred at the hospital.
- B. No, because Dr. R was a part-time employee.
- C. Yes, Dr. R is fully covered.
- D. No, because Dr. R's employment agreement does not meet FSHCAA requirements.**

*Correct answer is marked in **bold**.*

# What HHS expects from you

**OAK LAW OFFICE**  
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oak@oak-law.com

January 18, 2023

ABC COMMUNITY HEALTH CENTER  
141 Cedar Creek St.  
Winchester, VA 22604

Date of Loss: 08/03/2022  
Patient: Jane Doe, by her mother Mrs. Doe, and Mrs. Doe, Individually

**DEMAND LETTER & Letter of Representation**

To ABC Community Health Center,  
This law office, Oak Law, has been retained to represent Jane Doe, by her mother Mrs. Doe, and Mrs. Doe, Individually, for injuries they sustained during their August 3, 2022 visit to the ABC Community Health Center. Mrs. Doe was injured when Dr. K roughly opened the door to the examining room causing a clock in the room to fall and hit her head; she was also injured when she stepped on a puddle of water in the parking lot, which caused her to fall and injure herself. During Jane Doe's exam, she fractured her ankle while stepping off a scale that did not have safety handles and/or non-slip mats around the scale.

ABC Community Health Center was negligent in failing to keep the examination room and its property safe for its patients and visitors. ABC Community Health Center was also negligent in failing to place safety handles and non-slip mats around the scale to prevent patients from injuring themselves when stepping on/off the scale. As a result of the negligence, Mrs. Doe suffered a head wound and injuries to her body Jane Doe has suffered a fractured ankle; both individuals have also suffered emotional stress due to the injuries. Damages at this time are undetermined.

This letter is intended to comply with the requirements of the FTCA.

Please send all future correspondence to [me@oak-law.com](mailto:me@oak-law.com) or Oak Law, 547 Rosemont St. #100, Winchester, VA 22601.

Sincerely,  
*JC Oak*  
Me Oak  
Counsel for Mrs. Doe and Jane Doe

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS	FORM APPROVED
1. Submit to Appropriate Federal Agency		Review use and apply a stamp as indicated on the instructions on the form. Use additional sheets if necessary. See reverse side for the instructions.	OMB NO. 1545-0046
2. US Department of Health & Human Services US General Law Offices (ATTN: CLAIMS) 330 C Street, SW, Swoyer Building, Suite 2100 Washington, DC 20007		3. Have address of claimant and claimant's representative (if any) typed in all caps. Do not use abbreviations. Do not use PO boxes.	
4. TYPE OF CLAIM	5. DATE AND TIME OF OCCURRENCE	6. DATE AND TIME OF RECEIPT	
<input type="checkbox"/> Multiple <input checked="" type="checkbox"/> Single Date of Loss: 07/20/2022 Social Account/Medical Record #: Dr. K handled Patient's breast while performing a chiropractic exam; Dr. K did neck manipulation on Patient W.	08/17/2022	N/A	
7. NAME AND ADDRESS OF CLAIMANT		8. NAME AND ADDRESS OF REPRESENTATIVE (if any)	
Mrs. Doe 141 Cedar Creek St. Winchester, VA 22604		Dr. K ABC Community Health Center 141 Cedar Creek St. Winchester, VA 22604	
9. PROPERTY DAMAGE		10. PERSONAL INJURY/PROPERTY DAMAGE	
N/A		N/A	
11. PROPERTY DAMAGE: THE PROPERTY'S NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY WAS INSPECTED			
N/A			
12. PERSONAL INJURY/PROPERTY DAMAGE: THE NATURE AND EXTENT OF THE INJURY OR DAMAGE AND THE LOCATION OF WHERE THE PROPERTY WAS INSPECTED			
As a result of Dr. K's actions, Patient W's ear fell into a debris bin due to roughness and loss of speech. Patient W has permanent damage to her vocal cords and is unable to swallow her food. Patient W also suffered severe unconscious and permanent loss due to Dr. K's social account. Medical expenses.			
13. NAME AND ADDRESS OF AGENT		14. NAME AND ADDRESS OF AGENT	
Dr. K ABC Community Health Center 141 Cedar Creek St. Winchester, VA 22604		1661 Cedar Creek St. Winchester, VA 22604	
15. AMOUNT OF CLAIM		16. TOTAL PAYMENT TO DATE	
#750,000		#750,000	
17. CLAIM CLASSIFICATION		18. DATE OF RECEIPT	
N/A		12/19/22	
19. CLAIM NUMBER		20. CLAIM NUMBER	
21624-7504		1719122	
21. SIGNATURE OF AGENT		22. SIGNATURE OF AGENT	
<i>JC Oak</i>		<i>JC Oak</i>	

# The first thing you should do?



Let us know!

# Eligibility for FTCA Coverage (Slide 1 of 7)

## Documents needed:

1. Copies of the Health Center's deeming letters for the year(s) of the date of the alleged negligence.
2. A letter identifying which individual(s) named in the complaint is/are employees of the health center.
3. A typed narrative statement regarding the facts of the alleged incident, signed by the named practitioner, the medical director, or someone familiar with the events.



# Eligibility for FTCA Coverage (Slide 2 of 7)

4. Copies of the W-2 forms for each individual involved in the incident, who was working for the health center at the time of the alleged negligence. If the individual was a contractor, the health center should provide the 1099 form and a valid signed employment contract covering the period of the alleged negligence.
5. Where applicable, the provider(s) named in the complaint need to submit a letter identifying the name and address of any **other** health center's facility or private facility where he/she was employed, other than the grantee, during the time alleged in the complaint.

# Eligibility for FTCA Coverage (Slide 3 of 7)

6. Signed copies of the provider's declaration on the health center's letterhead.
  - a. Signed by each practitioner named and/or involved in the alleged negligence.
  - b. If the practitioner is not available to sign the declaration, then the Chief Executive Officer (CEO) may sign the declaration stating that to the best of his/her knowledge, the practitioner was not billing privately and that all reasonable attempts have been made to obtain the statement from the practitioner and documentation of these attempts is included with the CEO's declaration.

# Eligibility for FTCA Coverage (Slide 4 of 7)

7. Copies of the professional liability or "wrap around" (tail coverage/gap coverage) insurance policy that provides coverage to the health center and the involved individual(s).
  - a. Policies must cover the dates of the alleged negligence.
  - b. If neither the health center nor the individual(s) involved in the alleged negligence has medical malpractice coverage other than that provided under the FTCA, then the health center must submit a letter to that effect.

# Eligibility for FTCA Coverage (Slide 5 of 7)

8. Copies of all the patient's medical records from the health center and any private facility that might be involved.
9. A copy of the health center's entire **approved grant application** in effect during the time of the alleged negligence/medical treatment rendered/provided (i.e., the year of the date of the alleged negligence), which should include:
  - a. Required Services Provided (Form A);
  - b. Additional Services Provided (Form 5a),
  - c. Service Sites (Form B) And
  - d. Other Activities/Locations (Form C)

# Eligibility for FTCA Coverage (Slide 6 of 7)

10. A copy of HRSA's **Notice of Grant Award Authorization** in effect during the time of the alleged negligence/medical treatment rendered/provided.
11. The name and address of the health center or delivery site(s) where the patient received medical services.
12. A copy of the health center's billing statement (for the year of the date of the alleged negligence) for the medical/delivery services rendered to patient.

# Eligibility for FTCA Coverage (Slide 7 of 7)

13. In the event the claim arises from acts or omissions that occurred outside the health center's facility, then the health center must provide the name and address of the outside facility, professional agreements, memorandum of understanding, and information as to the nature of the affiliation between the outside facility, health center, and its personnel.

# Recommendations

- Gap or wrap around insurance
- Contracts
- Legal counsel

# Other Legal Issues

- HHS OGC cannot provide legal advice regarding National Practitioner Data Bank (NPDB), HHS Medical Claims Review Panel (MCRP), provider credentialing, or state licensing board issues.
- Any requests for assistance with these issues must be referred to [HealthCenterSupport@hrsa.gov](mailto:HealthCenterSupport@hrsa.gov).



# Other Legal Issues (Continued)

- **General Advice** on issues unrelated to existing FTCA cases or tort claims, e.g., requests for credentialing, claims histories, insurance verification for medical providers should be sent **directly to HRSA BPHC**, not HHS OGC. For assistance, please call the BPHC helpline for general questions at **1-877-464-4772 (select Option 1)** or send an email message to: [HealthCenterSupport@hrsa.gov](mailto:HealthCenterSupport@hrsa.gov)
- Please do not send these types of requests to the HHS OGC FTCA mailbox address; OGC **does not** handle credentialing, claims history requests, or insurance verification for medical providers.
- Also refer to the FTCA Health Center Policy Manual found at: <https://bphc.hrsa.gov/sites/default/files/bphc/ftca/pdf/ftcahcpolicymanualpdf.pdf>

# Questions



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