

Federal Tort Claims Act and Health Care for the Homeless Projects

Policy Recommendations

1. **Pass the Family Health Care Accessibility Act of 2009 (or similar legislation)**, extending the full malpractice protections of the FTCA to volunteer physicians and clinical psychologists at community health centers and Health Care for the Homeless projects.
2. **Provide FTCA malpractice protections to volunteer nurses, mid-level practitioners, and contractors**, enabling health centers and HCH projects to expand their workforce to meet the needs of their patients and the goals of the Administration to lower access barriers to health care and to promote volunteerism.

Without providers to deliver services, there is no access to health care. The recruitment and retention of medical staff is a consistent challenge for Health Care for the Homeless projects. The prohibitive cost of malpractice insurance and the inability to get volunteers included in FTCA often limits the ability of nonprofit health care organizations to recruit volunteer medical providers.

Volunteers remain susceptible to lawsuits. Congress sought to address this problem in 1997 when it passed the Volunteer Protection Act (VPA), which was enacted to protect volunteer physicians at health centers against claims of “ordinary negligence.” Despite its intentions, however, the legislation broadened the scope of coverage to free clinics but failed to fully protect FQHC volunteers; a legal loophole still leaves these doctors vulnerable to “gross negligence” claims and punitive damages.¹ During the recent health reform legislation, the House version of the bill contained a provision to extend FTCA coverage to physician volunteers at health centers but this item was not included in the final law to pass out of the Senate.

The Federal Tort Claims Act expands liability coverage. Federal employees receive medical malpractice coverage from the Federal Tort Claims Act. The FTCA holds the United States legally responsible for the acts of its employees (acting within the scope of their job).² In 1992, FTCA coverage was given to paid employees at community health centers. Malpractice insurance under the FTCA covers ordinary negligence, gross negligence, and punitive damages, whereas the Volunteer Protection Act only deals with the first of the three. If extended to include community health center volunteers, the FTCA would fill the gap left by the VPA.^{3,4} Since the inception of FTCA for paid providers, health centers have saved about \$88 million a year in malpractice

¹ Carpenter, Mark. “Protect Volunteer Physicians at Community Health Centers.” *US Congressman Tim Murphy, Working for the 18th District of Pennsylvania*. Feb 2005.

² Center for Risk Management. “Federal Tort Claims Act and Health Centers.” *Bureau of Primary Health Care*. Apr 2005.

³ Carpenter.

⁴ Post P, Martin L. Clinical Volunteers in Homeless Health Care. National Health Care for the Homeless Council, 2005. <http://www.nhchc.org/Publications/ClinicalVolunteersinHomelessHealthCare.pdf>

insurance costs through no-cost coverage provided under the Federal Torts Claims Act. To help cover judgments, \$5 million is routed each year from health center appropriations into the FTCA judgment fund.

As health centers grow, so must their workforce. Congress has strongly supported the Administration's initiative to expand the reach of the nation's health centers to address the unmet needs of vulnerable communities. Continued expansion of CHCs/HCHs increases the demand for volunteer health care providers. To implement fully the Administration's initiative, all impediments to volunteerism, including lack of medical malpractice coverage, must be removed.

Federal Tort Reform Act Policy Recommendations in Detail

1. Pass the Family Health Care Accessibility Act of 2009 (or similar legislation).

H.R. 1745, the Family Health Care Accessibility Act of 2009, is currently assigned to the House Committee on Energy and Commerce. It aims to amend the Public Health Service Act by extending liability protection for volunteer practitioners to ensure that volunteers at health centers are protected. Its passage would extend the thorough malpractice protections of the FTCA to physicians and licensed clinical psychologists.

2. Extend to health center volunteers (physicians, nurses, and mid-level practitioners) and all health center contractors the same FTCA malpractice protections granted to paid health center employees.

Many health centers (particularly HCH projects) rely heavily on the work of nurses, nurse practitioners, physician assistants, clinical nurse specialists, and contract employees. Extending the coverage of the FTCA to include these providers expands access to health care services, recognizes the value of volunteer clinicians, provides incentives to continue working at a community health center, improves the health of the medically underserved by strengthening health centers and HCH projects, and further promotes the spirit of volunteerism.