

### **Street Medicine Programs - Professional Liability Considerations**

Does the Street Medicine Program have professional/general liability insurance that covers volunteers?

- A. Programs Run by Hospitals/Health Care Systems
  - 1. Need to review policies carefully.
  - 2. Typically, policies do provide for coverage for “authorized volunteers” or volunteers “acting in association with named insured.”
  - 3. Improve chances of coverage under any insurance policy by delineating roles and responsibilities for volunteers as part of a written policy and organizational structure.
  - 4. Note: many organizations carry “volunteer insurance” which provides some coverage for injuries suffered by the volunteers themselves while engaged in the volunteer activity.
  
- B. Health Resources & Services Administration (HRSA) Free Clinics
  - 1. The Federal Tort Claims Act enacted in 1946 provides the legal mechanism for compensating people who suffer personal injury due to the alleged negligent or wrongful action of employees of the United States Government.
  - 2. Free clinics rely on volunteers and other health professionals to provide medical, dental, pharmacy, vision and/or behavioral health services to poor and underserved people. Practitioners, board members, officers, employees and qualified individual contractors affiliated with free clinics may be sponsored by a free clinic in applying for Federal Tort Claims Act (“FTCA”) malpractice protection.
  - 3. FTCA deemed providers include a broad range of health professionals. Some are licensed and/or certified, such as physicians, dentists and nurses. Other are not, such as medical receptionists or board members.
  - 4. Free clinics must sponsor each individual and apply to HRSA to “deem” the individual. Health centers, by contrast, are “deemed” as entities and receive automatic FTCA coverage for all qualified employees when the health center is “deemed”.
  - 5. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) extended the eligibility for FTCA protection to volunteer health professionals at qualifying free clinics. Funds to support the program were appropriated in 2004, and the first free clinic volunteers were “deemed” in 2005.
  - 6. The Affordable Care Act further expanded eligibility for “deeming” to employees, officers, board members and contractors of qualifying free clinics.
  
- C. Considerations for obtaining your own professional liability insurance.
  - 1. Type of insurance or FTCA malpractice coverage available to you.
  - 2. Type of activities you will be undertaking.
  - 3. Own sense of “risk tolerance”.
  - 4. Availability of reasonably priced coverage available.
  - 5. Downside of making yourself a “target” by carrying coverage.

## Volunteer Considerations Regarding Street Medicine

- I. Can an employee of a private, non-profit perform volunteer services for the employer?
  - A. For the services to qualify as “volunteer” services under the federal Fair Labor Standards Week (FLSA), they must be:
    1. Performed for civic, charitable, or humanitarian reasons, without the promise, expectation, or receipt of compensation for services rendered;
    2. Offered freely and without direct or implied pressure or coercion from the employer; and
    3. Not be of the “same type of services” performed by the employee in his/her regular employment for the employer. 29 U.S.C. § 203(e)(4)(A); 29 C.F.R. §§ 553.101-553.103
      - a. The FLSA regulations define the “same type of services” as “similar or identical services.” 29 C.F.R. § 553.103(a).
      - b. Determining whether an employee’s volunteer services are the “same type” as those he/she is employed to perform is a fact and context-specific inquiry. 29 C.F.R. § 553.103(a).
  - B. If all prongs of this test are not satisfied, employees who are not exempt under the FLSA (e.g., nurses) must be paid for their time performing such services (i.e., “hours worked”).
    1. If “hours worked” exceed forty (40) in a given workweek, non-exempt employees would be owed overtime pay for hours exceeding forty (40) in the workweek.
- II. Can students or other non-employees perform volunteer services for a non-profit?
  - A. So long as the services are performed for civic, charitable, or humanitarian reasons and without the promise, expectation, or receipt of compensation for services rendered, there are no concerns under wage-and-hour laws.
  - B. Different organizations may implement their own requirements, such as:
    1. Limiting volunteering to employees of the organization, those who register through a formal volunteer office, or are credentialed with/by the organization.
    2. Limiting the roles or responsibilities of students who are not participating as part of a rotation or curriculum.
  - C. No matter who is providing the services, the same level of care (including follow-up) must be provided.
- III. Are volunteers covered by workers’ compensation insurance?
  - A. Because they are not “employees,” non-employee volunteers are generally not covered by an organization’s workers’ compensation insurance policy.
    1. For workers’ compensation purposes, an organization may want to have employee-volunteers sign a form in which they agree that they are not acting in their capacity as an employee when volunteering.
  - B. Organizations may carry some sort of “volunteer insurance” which provides some coverage for injuries suffered by volunteers while engaging in volunteer services.
  - C. Please note that this analysis is limited to Pennsylvania law and may differ under other states’ workers’ compensation laws.
- IV. What are the rules and regulations pertaining to dispensing medication on the street?
  - A. The dispensing of medications is regulated on the state level by the state’s pharmacy or medical board.
  - B. Laws and regulations vary by state as to which practitioners can dispense medication and the types of medications that can be dispensed.

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