

Risk Management Policies: Off-Site Care

Note: these are general risk management guidelines. Health Centers should seek the advice of an attorney to adopt specific risk management policies and procedures that address their unique needs.

BACKGROUND: In order to meet the needs of special populations such as migrant farmworkers, Health Centers often use non-traditional delivery methods to provide health care. For example, services may be provided at locations other than their own bricks-and-mortar location that are more convenient for patients. Health Centers can reduce their liability for lawsuits from incidents arising while their employees are working off-site by ensuring they are eligible for coverage by the Federal Tort Claims Act (FTCA), which offers protection akin to medical malpractice insurance to federally-funded Migrant and Community Health Centers.

CONSIDERATIONS:

- The Health Center must reapply yearly for “deemed” status under the Federally Supported Health Centers Assistance Act (FSHCAA) of 1992 and the FSHCAA of 1995, which extend FTCA coverage to eligible Health Centers.
- To qualify for FTCA coverage, an activity must be approved in the annual grant application (i.e., the activity must be within the Health Center’s federally–approved “scope of project”).
- A service site is defined by Health and Human Services (HHS) as any location where the Health Center, either directly or through a contract or other formal arrangement, provides primary health care services to a defined service area or target population, and where all of the following conditions are met:
 - health center encounters are generated by documenting in the patients' records face-to-face contacts between patients and providers;
 - providers exercise independent judgment in the provision of services to the patient;
 - services are provided directly by or on behalf of the grantee, whose governing board retains control and authority over the provision of the services at the location; and
 - services are provided on a regularly scheduled basis (e.g., daily, weekly, first Thursday of every month).
- Due to the seasonality of agricultural employment, and the mobility of patients served, Migrant Health Centers may operate some service sites on a seasonal basis or for only part of the year. Seasonal sites meet HHS’s definition of a service site even though they operate at a fixed location for less than 12 months during the year. Health Centers should list the name and address of each seasonal site on **Form 5 – Part B: Service Sites** in their annual application for Federal support and should indicate the approximate number of months that the site is open during the year.
- Health Centers often provide activities at locations that do not meet HHS’s definition of a service site. These “off-site” activities may include, for example: (1) health fairs; (2) occasionally making home visits to health center patients; and (3) services delivered that do

not generate encounters (*i.e.*, filling prescriptions, taking X-rays, conducting street outreach from time-to-time to seek out persons eligible for the center’s services, or providing health education, etc.).

- Health Centers can include these off-site activities within the Center’s scope of the project, and thus extend FTCA protection to them, by listing the activities, their locations, estimated frequency and a brief description of each activity on **Form 5 – Part C: Other Activities** in the annual application for Federal support. In addition, these off-site activities should be described in the grant application. For items listed on Form 5-Part C, grantees should ensure that adequate and appropriate documentation has been secured to support and enable performance of these activities.
- Compiling an exhaustive list of all off-site activities and locations is impractical. But, it is sufficient for Health Centers to list general categories of activities at various locations as part of the approved scope of project on **Form 5 – Part C**. Some examples include:
 - Immunizations at labor camps: Grantees should list the activity as “immunizations,” the location as “labor camps” and the frequency as appropriate (e.g., four times per year during the growing season).
 - Following patients to the hospital (admitting privileges): Grantees should list the activity as “admitting,” the location as “hospital” and the frequency as appropriate (e.g., as required for on call arrangement, three times per week) and indicate in the description the specific hospital(s) with which the health center has such arrangements and whether health center providers see non-health center patients as part of his/her admitting privileges.
 - Home visits: Grantees should list the activity as “home visits,” the location as “patients' homes” and the frequency as appropriate (e.g., as required for patient care, five times per month)
 - Health fairs: Grantees should list the activity as “health fairs,” the location as appropriate (e.g., various schools, community service centers) and the frequency as appropriate (e.g., three times per year).
 - Outreach that does not involve clinical services: Grantees should list the activity as “non-clinical outreach,” the location as appropriate (e.g., community neighborhoods, schools, community service centers) and the frequency as appropriate (e.g., weekly).
 - Mobile medical or dental care units: Grantees should list the activity as “portable clinical care,” the types of locations as appropriate (e.g., labor camps) and the frequency as appropriate (e.g., weekly).
- If a location is not listed under **Form 5 – Part C: Other Activities**, then the off-site activities provided there will not be within the Center’s scope of project and therefore will not be covered under the FTCA. Health Centers should provide as extensive a list of off-site activities as possible on their grant application to ensure the broadest possible FTCA coverage.
- If the Health Center is prohibited by state Medicaid rules from billing the patients for the off-site service or if they find it financially impractical or disadvantageous to bill directly for off-

site services, and the patient, instead of the Center, is billed for the off-site services, then the service provider will be covered by the FTCA only if:

- The provider reports the billings to the Health Center;
- The provider, within a reasonable period of time, turns over to the Center any and all payments he/she received for the specific billing; and
- The provider's employment contract authorizes the billing arrangement (that is, the contract explicitly provides for direct billing by the provider and requires the provider to turn the funds over to the Center).

Note on Additional / Specialty Care

- The same deeming and scope requirements apply. But, before the Center can list any off-site additional/specialty service activities on **Form 5 – Part C: Other Activities**, they must first get approval from a Grants Management Officer to expand the Center's approved scope of project to provide the service directly or through a formal arrangement.
 - Furthermore, any specialty service added to the Federal scope of project must be described in the health center's next funding application (Service Area Competition or Budget Period Renewal).
- To get FTCA coverage for off-site additional/specialty care activities within the Center's approved scope of project, the Center must list the activities, their locations, estimated frequency and a brief description of each activity on **Form 5 – Part C: Other Activities** in the annual application for Federal support.
- If a specialty service is provided off-site, the Center must document the manner by which the referral will be made and managed and the process for facilitating appropriate follow-up care at the health center.
- If the specialty care is provided on the Center's site, then HHS's definition of "service site" would be met. If the specialty care is given at the provider's own facility, that facility can qualify as a service site if it is listed on **Form 5 – Part B: Service Sites** in the Center's annual application for Federal support, and under the contract or arrangement the provider furnishes all services "on behalf of the health center (i.e., the health center would be the provider of record for the services rendered under the arrangement)."
- On the other hand, having the provider act on behalf of the Center may open the Center to liability for the provider's actions. See NACHC Information Bulletin, Risk Management Series #13, How to Minimize Liabilities Associated with After-Hours Coverage (http://www.nachc.com/client/documents/publications-resources/rm_13_05.pdf). To minimize liability for care given at the provider's facility, the Center should include a disclaimer in their contract or agreement stating: "The [specialty care] provider does not and is not authorized to act on behalf of the health center."