

Federal Tort Claims Act

Summary of Recommendations

- **Reintroduce and pass the Community Health Center Volunteer Physician Protection Act**, extending the full malpractice protections of the FTCA to volunteer medical providers at community health centers and Health Care for the Homeless projects.
- **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.

Volunteers remain susceptible to lawsuits. The recruitment and retention of medical staff is a consistent challenge for Health Care for the Homeless projects. The prohibitive cost of malpractice insurance often limits the ability of nonprofit health care organizations to recruit volunteer medical providers. 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 failed to fully protect volunteers; a legal loophole still leaves these doctors vulnerable to “gross negligence” claims and punitive damages.^{1,2}

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 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.

Recommendations

1. **Reintroduce and pass the Community Health Center Volunteer Physician Protection Act in the 111th Congress.** This legislation was introduced in the 109th Congress in both chambers of Congress; however, it has not been reintroduced since. It aims to close the loophole in the Volunteer Protection Act of 1997 through which volunteers at health centers are still susceptible to claims of “gross negligence.” Its passage would extend the thorough malpractice protections of the FTCA to these physicians.
2. **Extend to health center volunteers (physicians, nurses, and mid-level practitioners) and all health center contractors the same FTCA malpractice protections granted to 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 would show appreciation for their contributions, further promote the spirit of volunteerism, and improve the health of the medically underserved by strengthening health centers and HCH projects.

¹ Carpenter, Mark. “Protect Volunteer Physicians at Community Health Centers.” US Congressman Tim Murphy, Working for the 18th District of Pennsylvania. Feb 2005. http://murphy.house.gov/UploadedFiles/HealthCareFYI_6.pdf

² National Health Care for the Homeless Council. Volunteer use in Homeless and Migrant health centers. *Reaching the Underserved* newsletter, Jun 2007. <http://www.nhchc.org/newsletters/June2007newsletter.doc>

³ Carpenter, op. cit.

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>