

## **SJR 35: Study of Health Care**

### ***Federal Tort Claims Act and Community Health Centers***

Prepared for the Children, Families, Health, and Human Services Interim Committee

April 2010

#### Background

In 1946, Congress approved the Federal Tort Claims Act (FTCA), which allowed citizens to sue the federal government under certain circumstances for alleged injury caused by the acts or omissions of a federal employee. In those instances, the federal government — rather than the employee — defends the claim and pays any settlement or court award.

Federally qualified Community Health Centers (CHCs) have been eligible for medical malpractice coverage through the FTCA since 1993. Congress originally passed a three-year demonstration project to see if the coverage would lower a health center's medical malpractice costs and thus leave more money for providing services.<sup>1</sup>

Subsequent reviews of the costs savings concluded that the health centers benefited from the protections offered by the Tort Claims Act, and Congress eventually approved a permanent extension of the coverage.

The Health Resources and Services Administration describes the benefits of FTCA coverage in this way: "By providing medical malpractice protection to health centers that meet annual program requirements, the Health Center FTCA Program saves health center grantees millions of dollars yearly that they can invest to increase health care services and fund quality improvement activities."<sup>2</sup>

#### How the FTCA Applies to CHCs

To qualify for FTCA coverage, a health center must apply and demonstrate that it has:

- established policies and procedures to reduce the risk of malpractice;
- reviewed and verified the credentials, references, and malpractice claims history of the medical providers it employs;
- established clearly defined job descriptions that spell out each provider's duties; and
- collected demographic information about its patients.

If deemed eligible for coverage, a CHC is immune from suit for any medical, surgical, dental, or related activities performed within the approved scope of the center's

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<sup>1</sup> "Cost to the Government for Providing Medical Malpractice Coverage to Community and Migrant Health Centers," Office of the Inspector General, *Department of Health and Human Services*, March 25, 1996, P. 3.

<sup>2</sup> "The Health Center Program: Federal Tort Claims Act," *Health Resources and Services Administration* [online], available from <http://bphc.hrsa.gov/FTCA>, accessed Jan. 28, 2010.

activities. A patient who alleges that a health center or one of its providers has committed malpractice cannot file suit against the CHC or provider. Instead, the patient files a claim against the United States.

Any settlement offered by the government or judgment ordered by a court is paid by the federal government from a separate pool of funds appropriated for CHCs.

#### The FTCA and Libby Providers

When two family physicians who delivered babies in Libby received the bill for their malpractice insurance in 2005, the increased costs made them consider dropping the obstetrical services they offered. That could have forced Libby residents to drive 89 miles to Kalispell, 168 miles to Spokane, or 190 miles to Missoula — on mountainous, two-lane roads — to obtain that care.

So the director of Libby's Northwest Community Health Center, Maria Clemons, proposed an alternative to the doctors: working under contract with the health center to provide obstetrical care. The contract arrangement would allow them to benefit from the center's FTCA coverage. The doctors agreed.

Although they are working under contract with the health center, the doctors are still able to provide pre-natal care in their own offices and to deliver babies at St. John's Lutheran Hospital in Libby.

In addition, all of their obstetrical patients become CHC patients and are eligible for all the health care services the center provides, including dental care. The patients pay for those services on a sliding scale based on income.

However, the contract arrangement does require the doctors to meet the same requirements as on-staff providers. They must:

- provide verification of their credentials;
- follow the CHC's risk management procedures;
- collect demographic information about the patients they serve; and
- take their turns in the on-call rotation for the health center.