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Community Health Centers

### **Important Content Note:**

This technical assistance resource was developed prior to the August 2017 release of the Health Center Compliance Manual by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). The BPHC Compliance Manual, issued August 2017, indicates where PINS, PALs and other program guidance are now superseded or subsumed by the BPHC Compliance Manual.

See: <https://bphc.hrsa.gov/programrequirements/pdf/healthcentercompliancemanual.pdf>

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## Information Bulletin #7

Updated January 2016

### Note that in all Information Bulletins:

The term “**health center**” refers to public or private nonprofit entities that: (1) receive grants under Section 330 of the Public Health Service Act (Section 330), including Sections 330(e), 330(f), 330(g) and 330(h) (collectively “Health Center Program Grantees”); and (2) entities that have been determined by the Department of Health and Human Services (DHHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant (“health center look-alikes”).

The term “**Section 330-Related Requirements**” refers to requirements set forth in:

- Health Center Program Statute: [Section 330 of the Public Health Service Act \(42 U.S.C. §254b\)](#),
- Program Regulations: [42 CFR Part 51c](#) and [42 CFR Parts 56.201-56.604](#)
- Health Center Program Requirements: <http://www.bphc.hrsa.gov/programrequirements/index.html>

The term “**Grant Requirements**” refers to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: 2 CFR Part 200, as adopted by DHHS at 45 CFR Part 75.

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# Considerations for Health Centers Participating in Emergency Management Partnerships

The Federal Emergency Management Agency (“FEMA”) defines an emergency as any unplanned event that can cause death or significant injury to employees, customers, or the public; or that can shut down your business, disrupt operations, cause physical or environmental damage, or threaten the facility’s financial standing or public image.<sup>1</sup> Emergencies include natural disasters, such as fire, floods, hurricanes, tornados, winter storms, and earthquakes. Others include man-made hazards, such as communication failure and other technological emergencies, radiological accident, hazardous material incidents, civil disturbance, loss of key suppliers or customers, explosions, bomb threats, transportation crashes, or utility failures.<sup>2</sup>

Emergency management (“EM”) is the process by which an organization prepares for, responds to, and recovers from emergencies. In an emergency, health centers often function as the first line of defense within their respective communities and given their long history of collaborating with other community organizations, health centers are often asked to work with other health care providers to cast as wide a net of care as possible over a community in crisis. When planning for such collaborative arrangements (here after referred to as *partnership agreements*), health centers should consider certain Section 330-Related Requirements that

1 See “Emergency Management Guide for Business and Industry,” published by the Federal Emergency Management Agency, at page 5 (hereinafter the “FEMA Guide”), (last updated Sept. 26, 2013, accessed March 6, 2015, at <https://www.fema.gov/media-library/assets/documents/3412>).

2 The FEMA Guide includes specific “tips” on how to plan, respond and recovery from some of the most common hazards, including fire, floods, hurricanes, earthquakes, tornados, winter storms, technological emergencies, and hazardous material incidents.

may affect its ability to comply with federal health center statutory, regulatory, and policy requirements. This information bulletin:

- ◆ Describes Section 330 Health Center Program policies and requirements related to emergency preparedness and management
- ◆ Identifies legal considerations that must be assessed as health centers enter partnership agreements for responding to emergencies
- ◆ Describes the procedures with which health centers must be familiar when adjusting scope of project and adding temporary locations in an emergency as a result of a partnership agreement.

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## SECTION 330-RELATED REQUIREMENTS ON EMERGENCY PREPAREDNESS AND MANAGEMENT

Health centers may wonder what is required of them when it comes to emergency preparedness and management. While there are a number of guidance documents issued by HRSA providing guidance to health centers, such documents do not explicitly state that health centers are *required* to participate in emergency preparedness or management activities. Accordingly, health centers should become very familiar with the HRSA emergency management guidance to ensure that they comply with Section 330 scope of project requirements in the event of an emergency.

### Policy Information Notice

The health center's role in emergency management is first discussed at length in Policy Information Notice (PIN) #2007-15, *Health Center Emergency Management Program Expectations*.<sup>3</sup> PIN #2007-15 offers

expectations of how health centers should participate in emergency preparedness and management activities, including various types of partnership agreements. The PIN includes the following statements:

- ◆ Health centers may also want to explore developing mutual aid agreements with other community health care providers such as other health centers, hospitals and rural health clinics for resources such as personnel, equipment and supplies.<sup>4</sup>
- ◆ Health centers should integrate with the emergency management system at the state, local and community levels. Health centers should collaborate with state and local emergency management agencies, professional volunteer registries housed in the state's departments of health, emergency medical services systems, public health departments, hospitals, mental health agencies, national organizations, PCAs and Primary Care Organizations (PCO). Health centers should also be prepared to work with organizations that may not be part of their usual primary care delivery network. These may include local businesses, law enforcement, fire services, local military installations, school, and faith-based organizations.<sup>5</sup>

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3 See PIN #2007-15, *Health Center Emergency Management Program Expectations* at <http://bphc.hrsa.gov> under Health Center Program Requirements – PINs/PALs. PIN #2007-15 is "intended to be an extension of PIN 98-23, *Health Center Program Expectations*." While PIN #98-23 has been repealed, PIN #2007-15 is still in effect; however, some of the references to FTCA coverage are now included in the HRSA Federal Tort Claims Act: Health Center Policy Manual.

4 PIN #2007-15, page 6.

5 PIN #2007-15, page 8.

- ◆ Health centers are encouraged to be proactive in engaging community leaders, identifying key partner organizations, and developing ongoing relationships.<sup>6</sup>

## Grant Application Guidance

HRSA also addresses health center participation in emergency preparedness and management through its grant application guidance. Pursuant to the FY 2015 *Service Area Competition (SAC) Additional Areas Application* instructions, health centers are required, as part of their program narrative, to “[D]escribe the status of emergency preparedness planning and development of emergency managed plan(s), including efforts to participate in state and local emergency planning.” Health centers are also required to complete *Form 10, Annual Emergency Preparedness Report*, which includes questions such as:

- ◆ Is your emergency preparedness and management plan integrated into your local/ regional emergency plan?
- ◆ If No, has your organization attempted to participate in local/regional emergency planners?
- ◆ Will your organization be required to deploy staff to non-health center sites/locations according to the emergency preparedness plan for the local community?
- ◆ Does your organization coordinate with other systems of care to provide an integrated emergency response?

## LEGAL CONSIDERATIONS TO ENSURE COMPLIANCE WITH HEALTH CENTER PROGRAM REQUIREMENTS AND RELATED BENEFITS

When health centers consider forming partnerships with other health care providers to render care during or after an emergency, they should be familiar with the following considerations to assure compliance with health center statutory, regulatory and policy requirements.

### Consideration: Definition of an Emergency

“Emergency” is defined by PIN #2007-15 as an “event affecting the overall target population and/or the community at large, which precipitates the declaration of a state of emergency at a local, state, regional, or national level by an authorized public official such as governor, the Secretary of the Department of Health and Human Services or the President of the United States.” The inclusion of this specific definition indicates that, according to PIN #2007-15, health centers cannot use grant funds to respond to anything that is not declared an emergency by a governmental body. Pursuant to PIN #2008-01, *Defining Scope of Project and Policy for Requesting Changes*, however, “[I]n situations where an emergency has not been officially declared, but the health center is unable to operate, HRSA will evaluate on a case-by-case basis whether extraordinary circumstances justify a determination that the situation faced by the health center constitutes an emergency.”<sup>7</sup>

<sup>6</sup> PIN #2007-15, page 11.

<sup>7</sup> See PIN #2008-01-16, page 23, *Defining Scope of Project and Policy for Requesting Changes* at <http://bphc.hrsa.gov> under Health Center Program Requirements – PINs/PALs.

Of course, as many health centers are aware, it is not uncommon for emergencies to occur that do not meet the definition provided in PIN #2007-15. From a burst pipe and flood to a lightning strike and fire, many emergencies that incapacitate health centers and their communities, and for which assistance could be required, would be excluded by the definition in PIN #2007-15. As such, under PIN #2008-01, the health center must contact HRSA to determine if a valid emergency exists and wait for a response.

**Implication on a partnership agreement** – Because the health center’s participation in a partnership agreement is controlled by the declaration of an emergency by a governmental body or obtaining prior approval by HRSA, some community partners might have to work with the health center to respond to emergencies that do not meet the HRSA definition by using resources outside of their grant funds.

## Consideration: Health Center Scope of Project Requirements

PIN #2007-15, *Health Center Emergency Management Program Expectations*, requires health centers to utilize grant funds to provide services “consistent with their approved scope of project and the terms of their grant award.” This statement implies that any emergency response in which the health center is involved, including participation under any partnerships, must be in compliance with the health center’s existing scope of project. Pursuant to PIN #2008-01, *Defining Scope of Project and Policy for Requesting Changes* the scope of project has five components:

1. Service sites
2. Services
3. Providers
4. Service area
5. Target population.<sup>8</sup>

If any activity or action does not fall within these five components, then the activity or action is outside of the health center’s scope of project, meaning grant funds cannot be utilized to support activities and the activities are not covered under the Federal Tort Claims Act (FTCA) program that provides medical malpractice coverage to deemed health centers.

Health centers do have an option to assure that the emergency response at temporary locations is considered part of the center’s scope of project. Within 15 calendar days after initiating emergency response activities, a health center must contact its HRSA project officer to provide information – the health center’s name, the name and contact information of a health center representative, and a brief description of the emergency response activities. If the HRSA Project Officer is not available, the health center should contact the BPHC’s main phone line at 301-594-4110.

**Implication on a partnership agreement** – In collaboration with the state or local health department or other emergency responders, health centers may provide care at temporary locations such as a site that provides shelter to evacuees and victims of an emergency or at a location where mass immunizations or medical care is provided as part of a coordinated effort to deliver critical services and assisting in the local community response.

As explained in PIN 2008-01, health centers can make a request to HRSA to include temporary locations as part of its scope of project. A temporary location will be considered if it meets all of the following conditions:

1. Services are provided on a temporary basis;

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<sup>8</sup> PIN #2008-01, page 4.

2. Temporary locations are within the health center's service area or neighboring counties, parishes, or other political subdivisions adjacent to the health center's service area;
3. Services provided by health center staff are within the approved scope of project; and
4. All activities of health center staff are conducted on behalf of the health center.<sup>9</sup>

## Consideration: Federal Tort Claims Act Coverage (FTCA)

As mentioned above, the Federal Tort Claims Act (FTCA) program provides medical malpractice coverage to deemed health centers. As discussed above, under normal circumstances, there is no FTCA coverage for clinical providers in sites that are not in their scope of project (with limited defined exceptions, e.g., care to a hospitalized health center patient).

In a declared emergency, health center staff may, by way of a partnership agreement, provide services at non-health center locations that are not in the health center's scope of project. For example, the health center may be required to provide services at another health center, public health department, shelter, community center, or hospital that is not otherwise in the health center's scope of project. Depending on the geographic location of the temporary location (among other factors), the health center may be able to bring the temporary location into the scope of project and thus secure FTCA coverage for the services provided.<sup>10</sup>

**Implication on partnership agreement** – While Health Center Program FTCA policy does not prohibit the sharing of personnel in response to implementation of a partnership agreement, the policy may create challenges to maintaining FTCA coverage in specific situations.

- ◆ **Health center staff assigned to temporary locations must be aware of the limitations of their coverage and not engage in activities that may put the health center's FTCA protection at risk.** The FTCA program is governed by a complex set of statutes, regulations and policies. Considerable effort must be taken to ensure that individuals stay within the limitations of coverage when on assignment at temporary locations.
- ◆ **During emergency response, health center staff may, as a result of a partnership agreement, provide services directly in patient homes.** As discussed in the scope section above, it is unclear if the homes can be classified as temporary locations and added to the health centers scope of project. FTCA coverage might not be available in these situations.

*...under normal circumstances, there is no FTCA coverage for clinical providers in sites that are not in their scope of project... In a declared emergency, health center staff may, by way of a partnership agreement, provide services at non-health center locations...*

<sup>9</sup> PIN #2008-01, page 24.

<sup>10</sup> See PIN #2007-16, *Federal Tort Claims Act (FTCA) Coverage for Health Center Program Grantees Responding to Emergencies* at <http://bphc.hrsa.gov> under Health Center Program Requirements – PINs/PALs.

- ◆ **The FTCA program is administered by HRSA but defense of lawsuits arising under FTCA is a responsibility of the Department of Justice (DOJ).** There have been cases where HRSA has determined that an activity is within the scope of project and covered by FTCA, yet DOJ has refused to certify the case, claiming that they do not agree with the HRSA decision. DOJ's position that HRSA's decision on FTCA coverage is not final and binding can create great uncertainty in any question of FTCA coverage, including those that arise as a result of a health center partnership.
- ◆ **The FTCA does not provide protection for claims made under an indemnification clause** (the part of a legal agreement that provides for one party to bear the monetary costs, either directly or by reimbursement, for losses incurred by a second party).
- ◆ **FTCA coverage is limited to the provision of services within the scope of project of the health center providing the staff.** A partnership agreement, however, may anticipate that shared clinicians provide services in any specialty for which they are qualified. Any services provided under a partnership agreement that are outside the health center's scope of project will not receive FTCA coverage regardless of the qualifications of the individual health center provider.
- ◆ **FTCA coverage is limited to the performance of medical, surgical, dental, or related activities.** There is no FTCA coverage for other activities that health center staff may engage in as a result of a partnership agreement, such as the distribution of food, water, supplies, or other necessities.

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## PROCEDURES FOR HEALTH CENTERS TO ADDRESS LEGAL CONSIDERATIONS OF PARTNERSHIP AGREEMENTS

### Changing the Scope for Emergency Response, in a Nutshell

Scope of project requirements may prevent a health center from having the flexibility necessary to respond to emergencies that it cannot yet contemplate and to provide the full scope of services to all impacted individuals that may be necessary under the circumstances. This may pose problems when developing provisions in a partnership agreement because the health center is limited in what it can prospectively agree to do within the confines of its scope of project.

In a hypothetical emergency situation, the course of events is as follows:

1. An emergency occurs (from burst pipe to hurricane) and the health center decides to respond to the emergency.
2. Within 15 calendar days after initiating emergency response activities, the health center submits an official change in scope request as explained in Program Assistance Letter (PAL) 2014-05, *Updated Process for Requesting a Change in Scope to Add Temporary Sites in Response to Emergency Events*.
3. The health center indicates what the emergency is and whether an emergency has been officially declared by an authorized public official. If not declared by an authorized public official, then in step (4) the health center explains and requests that HRSA declare an emergency for the situation.

4. The health center explains the emergency response activities and the change in scope request.
5. Depending on the manner of emergency response, if HRSA approves the change in scope request, the health center may provide emergency response per the scope of project, as amended. If it acts within the scope, then the health center and its employees receive FTCA coverage, if already deemed.

## Adding Temporary Locations

HRSA issued an updated *Notification Process* for requesting a change in scope of project to add temporary service sites in response to an emergency event when it issued Program Assistance Letter (PAL) #2014-05, *Updated Process for Requesting a Change in Scope to Add Temporary Sites in Response to Emergency Events*.<sup>11</sup> PAL 2014-05 lists information health centers must provide to HRSA, how soon information must be submitted after initiating emergency response activities, and to whom the information should be sent. The PAL includes an attachment that describes criteria for:

- ◆ adding temporary sites within or adjacent to the health center's service area
- ◆ adding temporary sites outside the health center's service area
- ◆ changing scope of non-impacted health centers to assist at temporary sites

## FTCA Requirements Regardless of the Temporary Location

In every case where a temporary location is within the scope of project, either a location within the service area or adjacent areas, or beyond the service area and its adjacent areas, HRSA's approval is limited to 90 days. Should a health center need to provide services at the temporary location beyond 90 days, the health center must submit a formal change of scope request via HRSA's Electronic Handbook. Health centers must note that HRSA has provided no time frame for a response under these circumstances and therefore, the partnership participants must recognize that there is no guarantee that HRSA will approve any extension beyond the original 90 days. If HRSA does approve the change in scope, the health center would need to file another change in scope to remove the temporary location once the emergency is over.

*In every case where a temporary location is within the scope of project, either a location within the service area or adjacent areas, or beyond the service area and its adjacent areas, HRSA's approval is limited to 90 days.*

<sup>11</sup> See *Health Center Program Requirements—PINs/PALs* at <http://bphc.hrsa.gov>

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## OTHER CONSIDERATIONS FOR PARTNERSHIP AGREEMENTS

### Alternative Sources of Liability Protection

Given the potential limitations of FTCA coverage in emergency and disaster scenarios, health centers involved in emergency preparedness partnerships may want to seek other methods of liability protection. There are a few avenues the health center can explore.

**The health center could seek liability insurance through the other parties in the partnership.**

Having the health center and its staff become a named insured of another party's policy for actions under a partnership agreement can provide protection where the FTCA may not. In the alternative, **the health center could secure gap insurance from a private carrier for services provided under the partnership agreement.** Health centers choosing this option should speak with several carriers to find the best product available for their situation. Finally, **health centers should be cognizant of any state statutes that may provide immunity or other liability protection in activities contemplated in a partnership agreement.**

### Partnership Agreements Documentation Requirements

**The FTCA requires that the services provided be within the scope of employment of the individual.** Failure to maintain an adequate position description/employment agreement/job description that fully describes the expectations of the employee can lead to denial of coverage. The description should include duties to be carried out under the implementation of a partnership agreement.

**Patients seen in approved temporary locations are considered health center patients.** A medical record can serve as evidence that the individual accessed care at a health center site and is a health center patient. When a partnership agreement is activated and health center staff are deployed to approved temporary locations, failure to maintain a complete medical record could jeopardize FTCA coverage.

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## CONCLUSION

Health centers that desire to enter into partnership agreements must carefully structure such agreements to remain compliant with Section 330 and FTCA requirements. As in all cases, grant funding and FTCA coverage are limited to activities within the scope of project. **Health Center Program policy regarding emergency preparedness and management is a relaxation of the rules of scope of project only in declared emergencies, only for a limited period of time, and only in a limited geographic location.**

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## RESOURCES

Health centers can learn more about emergency management activities and the development of emergency management plans through sources that include:

- ◆ American College of Physicians/American Society of Internal Medicine
- ◆ American Health Information Management Association
- ◆ American Hospital Association
- ◆ American Medical Association
- ◆ American Society for Healthcare Engineering
- ◆ American Society for Healthcare Risk Management
- ◆ Association for Professionals in Infection Control and Epidemiology
- ◆ Centers for Disease Control and Prevention
- ◆ Environmental Protection Agency
- ◆ The Joint Commission
- ◆ Medline – National Library of Medicine
- ◆ National Institutes of Health
- ◆ Occupational Safety and Health Administration
- ◆ U.S. Department of Health and Human Services

Copies of Policy Information Notices (PINs) and Program Assistance Letters (PALs) at the HRSA/BPHC website at [www.bphc.hrsa.gov](http://www.bphc.hrsa.gov), under Health Center Program Requirements

Annual Emergency Preparedness and Management Plan (Form 10), HRSA at [www.bphc.gov](http://www.bphc.gov), under Program Opportunities, Funding Opportunities

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